



Arbitration CAS 96/157 Federazione Italiana Nuoto (FIN) / Fédération Internationale de Natation Amateur (FINA), award of 23 April 1997

Panel: Mr. John Faylor (USA), President; Mr. Massimo Coccia (Italy); Mr. François Carrard (Switzerland)

*Disciplinary incident after a water polo match at the Junior World Championships
Suspension of one team from the next Junior World Championships
Absence of individual sanctions*

- 1. The CAS can intervene in the sanction imposed only if the rules adopted by the federation concerned are contrary to the general principles of law, if their application is arbitrary, or if the sanctions provided by the rules may be deemed excessive or unfair.**
- 2. To the extent that the properly-constituted deciding body of the federation acts within the limits of the rules which have been validly laid down, the CAS cannot re-open an examination of the decision on the issue whether the measure of the sanctions imposed is fair and appropriate in light of the facts which the deciding body has established. It is the deciding body of the federation which is in the best position to decide which rules and which sanctions are fair and appropriate in light of the facts constituting the violation.**

The Federazione Italiana Nuoto (FIN or “the Appellant”) whose seat is in Rome/ITA, is member of the Fédération Internationale de Natation Amateur (FINA) and of the Ligue Européenne de Natation (LEN). The FINA, whose seat is in Lausanne/CH, is the international body governing Water Polo.

In July 1995, the Italian National Junior Team took part at the VIII Junior Men's World Water Polo Championships in Dunkerque/FRA. During these championships, the Italian team played against the Croatian team on July 27, 1995. Croatia won the match 8-7.

Certain incidents occurred immediately at the end of the match. As described by FIN these incidents were minor in nature: the Croatian players, still in the water, assailed one Italian player, then other Italian players moved to their team-mate.

According to the FINA, a fight took place between players of both teams which began among players still in the pool. Then players from the benches, and, in particular, players from the Italian bench, joined in the fight.

Both depictions of the incident concur in stating that the coaches of the Croatian team dived into the water to separate the players. The referee's report of July 27, 1995 states that coaches of both teams intervened to calm down the players and make them leave the pool. The incident was then ended and no one suffered injury.

The Technical Water Polo Committee ("TWPC"), one of the Standing Committees of FINA, established in its Report of the incident the following:

"Immediately after the match, won by Croatia 9-8, an incident occurred which resulted in violence in the water and players leaving the benches of both teams and entering the water to join the fighting. The altercation occurred in front of the Croatian bench, the Italian players swimming and running the length of the pool. Coaches left the Croatian bench and entered the water in an attempt to stop the altercation. The players were then separated and the coaches shook hands, the altercation ending".

On the morning of July 28, 1995, the TWPC met and considered the incident. It decided to apply the "Interim Guidelines for Disciplinary Action in Water Polo" to this case. These Interim Guidelines were approved by the FINA Bureau in March 1995 and were to be presented in the Extraordinary Water Polo Congress 1996.

In its report, the TWPC stresses the fact that copies of the Interim Guidelines had been specifically provided to each team at the technical meeting immediately before the beginning of the Junior World Water Polo Championships, adding that the TWPC Honorary Secretary had advised all teams to read them and to be aware of the harshness of the sanctions involved.

As a result of the violence following the match, the TWPC members unanimously decided to exclude both the Italian and the Croatian teams from the World Championships in Dunkerque on the basis of art. 5 of the Interim Guidelines.

The application of this provision entailed not only the exclusion of both teams from the event but also a suspension for the next FINA Event, in this case the IX Junior World Water Polo Championships. However, after hearing the referees of the match and the members of the TWPC present at the match, the TWPC considered that the Italian team was the instigator of the incident and that the Croatian team was "less guilty".

Thus, in application of art. 7 of the Interim Guidelines the TWPC decided to recommend to the FINA Bureau that *"the team of Italy not be allowed to participate in the IX Junior World Water Polo Championships but that the team from Croatia be allowed to, if it qualifies"*. The report does not mention the result of the vote.

In conclusion, the TWPC noted that *"its ability to identify the instigators, either as individuals or as teams, of the incident is limited by the prohibition on viewing videotape evidence and by the fact that many players has removed their hats"*.

Finally, the TWPC served a written decision to both teams involved, pronouncing their exclusion from the 1995 Junior World Water Polo Championships. The decision is dated July 28, 1995 and

does not mention the exclusion of the Italian team from participation in the next Junior World Water Polo Championships.

On the afternoon of July 28, 1995, the teams of Croatia and Italy submitted written appeals challenging the decision to exclude them from the event. In the evening, a Jury of Appeal composed of the Bureau Liaison as chair and the members of the TWPC, rejected the appeals and upheld the decision pronounced in the morning.

After the end of the World Championships, the file of the FIN was forwarded to the FINA Bureau. The FINA Bureau summoned the FIN to a hearing which took place in Berlin on February 9, 1996. On August 3, 1996, the FINA Bureau decided to confirm the suspension of the Italian Junior Water Polo team from the IX Men's World Water Polo Championships to be held in 1997. The decision was notified to the FIN on August 8, 1996.

On September 6, 1996, the FIN lodged an appeal with the CAS against the decision of the FINA Bureau.

The Appellant requests relief from the decision of the FINA Bureau as follows: *“The Italian Swimming Federation herewith demands the revocation of the decision of the FINA Bureau, so that the Italian Junior Men's Water Polo Team may take part in the IX Junior Men's Water Polo World Championships”*.

LAW

1. According to art. C 10.5.3 of the FINA Rules, *“An appeal against a decision by the Bureau shall be referred to the Court of Arbitration for Sport (CAS), in Lausanne, Switzerland, within the same term as in C 10.5.2”*, that is to say not later than one month after the member or individual has received the sanction.
2. The FINA Bureau decision is dated August 3, 1996. It was notified to the Appellant on August 8, 1996. FIN filed its Appeal with the CAS on September 6, 1996 and is thus within the time limit laid down by the FINA Constitution. Moreover, it complies with the requirements as to form stipulated in articles R48 and R51 of the Code of Sports-related Arbitration (“the Code”). The appeal is therefore admissible.
3. Art. R47 of the Code provides that: *“a party may appeal from the decision of a disciplinary tribunal or similar body of a federation, association or sports body insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports body”*.

4. Art. C 10.5.3 of the FINA Rules, quoted above, explicitly provides that the CAS is competent to hear appeals. This provision applies to a “Member of FINA”, as well as an “Individual” (art. C 10.5.1 of FINA Rules). The “Member” is clearly defined as being the national body governing swimming (art. C 5.1 of FINA Rules). FIN is such a national body governing swimming and is a member of the FINA; consequently, art. C 10.5.3 applies to it. Moreover, all the judicial remedies granted by the FINA Constitution had been exhausted prior to the appeal to the CAS. We, therefore, conclude that the conditions laid down by art. R47 of the Code are met, and that the competence of the CAS must be accepted in this case.
5. In conformity with art. R58 of the Code, *“the Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports body is domiciled”*. The FINA Rules contained in the “FINA Handbook”, in force for the period 1994 to 1996, are thus applicable in this case, in the same manner as Swiss law. FINA indeed has its headquarters in Lausanne, and the parties did not agree to apply the law of any other country.
6. The applicable procedure in this case is the appeals arbitration procedure stipulated under R47 ff. of the Code.
7. As expressly requested by the parties, the Panel agreed to waive the oral hearing and to rule on the basis of the written submissions.
8. The decision by the TWPC to exclude the teams of Italy and Croatia from the 1995 World Junior Water Polo Championships is dated July 28, 1995 and is worded as follows:
“As a result of the incidents occurring at the end of the match ITALY/CROATIA, won by Croatia 9/8, the TWPC has applied paragraph 5 of the “Interim Guidelines for Disciplinary Action in Water-Polo” which were approved by the FINA Bureau and were circulated to all teams at the beginning of the competition. Accordingly, the teams of both ITALY and CROATIA are immediately ejected from the 1995 WORLD JUNIOR WATER-POLO CHAMPIONSHIPS.
As a result, the schedule of matches for the last 2 days will be re-adjusted by deleting ITALY and CROATIA from the rankings of Groups A-B, and all teams will be notified”.
9. The report and the decision of the TWPC refer to art. 5 and 7 of the Interim Guidelines which state:
“Art. 5 If the disciplinary incident involves any bench players, of any team, that team or teams will be immediately ejected from the event in question. Additionally, that country will not be entitled to participate in the next FINA Event involving that team. For example, if the team is a junior team, it will be the next junior men's FINA Event. Likewise, if it is a senior women's team, it will be the next senior women's FINA Event.
Art. 7 The FINA TWPC shall impose, or recommend, as the case may be, action in accordance with these “INTERIM GUIDELINES” provided that, if extenuating circumstances dictate, it shall be entitled to impose, or recommend, as the case may be, a lesser sanction by a two-thirds majority vote”.

Furthermore, art. 9 states that “*A FINA Event shall mean the World Championships, (senior and junior), the World Cups, Olympic Games, Olympic Games Qualification Tournaments and the Olympic Year Women's Tournament*”.

10. The decision confirming the suspension of the Italian Junior Team from the next Junior World Championships was taken by the FINA Bureau on August 3, 1996. The notification of the decision to FIN dated August 8, 1996 contains no statement of grounds but announces the following:

“At the meeting held in Atlanta on 3 August 1996, the FINA Bureau considered the appeal presented by the Italian Swimming Federation against the decision to suspend the Italian junior men's water polo team from the IX Junior Men's Water Polo World Championships to be held in Havana (CUB) in 1997. Please be informed that the FINA Bureau rejected the appeal”.
11. In its Appeal Brief, the Appellant considers that the incident which occurred during the game Italy – Croatia of “July 27, 1995” was not a real fight but only “movement in the water” and did not constitute a serious act of violence or brutality. Although the Appellant does not challenge the application of a specific rule and has no objection regarding the proceedings before the authorities of FINA, it criticizes the harshness of the sanction. The FIN believes that the Italian Junior Team was already punished enough with the immediate exclusion from the World Championships in Dunkerque. The Appellant also asserts that the sanction will not affect the protagonists of the incident but other athletes who were absolutely not involved in this case and adds that, as a consequence of this, the sanction will have no educative effects on the athletes responsible for the aforesaid facts.
12. For its part, the Respondent considers that the decision of the FINA Bureau is a correct application of the rules. In particular, it underlines that it was clearly correct to apply only the art. 5 of the Interim Guidelines, taking into account the absence of extenuating circumstances for the Italian team which might have justified the application of the art. 7 of the Interim Guidelines.
13. The parties differ in their description of the facts. In particular, they do not share the same opinion about the gravity of the incident. Accordingly, the Panel chooses to rely on the Facts reported by the TWPC, which refers to the referees' reports on the game.
14. On the basis of the referees' reports, the Panel considers as established the fact that several Italian and Croatian players in the water began fighting, that other players from both teams left their benches and jumped into the water to join the fight. This version is confirmed in all the aforementioned reports, confirmed by FINA in its answer and not denied by the Appellant in its Appeal Brief (“*while the other Italian players were leaving the water, (...) Finally almost the majority of both teams were in the water*”).
15. Given these facts, the validity of the decision challenged must be examined in the light of the applicable rules. The incident occurred during the Junior Men's World Water Polo Championships in 1995. Thus, the FINA Rules contained in the FINA Handbook 1994-1996

are applicable. The Junior Men's World Water Polo Championships are conducted by FINA (art. GR 12 of the Rules). According to the FINA Constitution, the FINA Bureau shall decide on and publish regulations for FINA events (art. C 14.11.6 of the Rules). In March 1995, the FINA Bureau approved the Interim Guidelines for Disciplinary Action in Water Polo and decided to present them in the Extraordinary Water Polo Congress 1996. Consequently, these Interim Guidelines were in force during the World Championships in Dunkerque and each team taking part in this competition was informed of these new regulations.

16. In view of the evidence presented to it, the Panel holds that the incident between the Italian and Croatian players constitutes a disciplinary incident involving bench players. Thus, the Panel holds that the TWPC was correct in applying art. 5 of the Interim Guidelines and, as a consequence, was justified in excluding both teams from the event. Pursuant to this provision, the countries sanctioned are automatically suspended from participating in the next Junior World Championships, except if the TWPC imposes or recommends a lesser sanction (art. 7 of the Interim Guidelines).
17. In the present case, the TWPC decided to recommend to the FINA Bureau that the Croatian team be entitled to participate in the next FINA event, if it qualified. However, the TWPC did not find the same extenuating circumstances with regard to the Italian team. The TWPC properly exercised the authority granted to it in the Interim Guidelines to evaluate and to decide upon such facts which it has established. As a result, the Panel has no grounds upon which to raise objection.
18. The Panel also notes that the decision challenged does not violate the procedural rules provided by the Interim Guidelines, namely:
 - “1. *The initial decision of the TWPC shall be made by the members of the TWPC present at the tournament, whether they were present at the match or not.*
 - (...)
 3. *Sanctions shall be immediately imposed upon the decision of the FINA TWPC, or FINA Bureau if present. In the case of a decision by the FINA TWPC, an appeal shall lie to the Bureau, but in the interim, the decision of the FINA TWPC shall stand”.*
19. Since 1996, the Interim Guidelines have been definitively adopted by the competent authorities of FINA and are now entitled “Regulations for Disciplinary Actions in Water Polo at FINA Events”. These regulations are not literally the same as the former Interim Guidelines. In particular, the art. 5 of the new regulations is drafted as follows:
 - “5. *If the disciplinary incident involves any bench players of any team, that team or teams will be immediately ejected from the event in question. Additionally it may be recommended to the FINA Bureau to exclude the team(s) from the next FINA event relevant for the team(s)”.*
20. Even if the wording of the art. 5 of these new regulations is different from that of the art. 5 of the former Interim Guidelines, the Panel notes that the application of the new regulations would not have resulted in a different decision for the Appellant. In its Report to the FINA Bureau, the TWPC expressly recommended to the Bureau that the team of Italy not be

allowed to participate in the IX Junior World Water Polo Championships, but that the team from Croatia be allowed to be so, if they qualify. Acting upon this recommendation, the FINA Bureau ejected both teams from further games of the 1995 World Junior Water Polo Championships and barred the Appellant from participating in the IX Junior Men's Water Polo World Championships to be held in Havana in 1997. This decision was confirmed on appeal of FIN on August 3, 1996.

21. The Appellant asserts that the sanction is not fair and appropriate punishment in light of the significance of the incident and that it will have no educative effects on the "personalities" involved in the fight. The athletes who are and who will ultimately be punished by the sanction are not the actors in the incident which took place on July 27, 1995, but rather on other athletes who have nothing to do with the present case.
22. It is the holding of the Panel that it can intervene in the sanction imposed only if the rules adopted by the FINA Bureau are contrary to the general principles of law, if their application is arbitrary, or if the sanctions provided by the rules can be deemed excessive or unfair on their face. To the extent the properly-constituted deciding body of the federation acts within the limits of the rules which have been validly laid down, it is the opinion of the Panel that the CAS cannot re-open an examination of the decision on the issue whether the measure of the sanctions imposed is fair and appropriate in light of the facts which the deciding body has established. It is the deciding body of the federation which is in the best position to decide which rules and which sanctions are fair and appropriate in light of the facts constituting the violation.
23. In the present case, the Panel holds that the sanction imposed by FINA on the Appellant, although not provided of a thoroughly written motivation, is not subject to review or objection. In particular, the Panel wishes to point out that the decision challenged has indeed an educative purpose and effect vis-à-vis the FIN. It will encourage all those in charge of the 1997 Italian Junior Team (i.e. the coaches) to forewarn and educate their players that brutality will be met with swift and certain punishment similar to that which occurred during the 1995 Junior Men's World Water Polo Championships held in Dunkerque.
24. It is indeed to be regretted that the players involved in the brutality which followed the Italian-Croatian match are not subject to individual punishment. It is these players who may now be permitted, despite their reprehensible conduct during the match in July 1995, to participate in the 1997 World Championships, not as members of the Junior Water Polo Team, but rather as members of senior teams. In a general way, the Panel believes that the national federations should review their rules to determine whether provisions may not be adopted, on the individual level, to punish individual players for aggressive and violent conduct during play. Sanctions imposed on individual players would also contribute to combating violence in water polo. However, the Panel observes that this solution will not be easy to apply, taking into account the decision of the FINA not to accept videotape evidence.
25. In conclusion, the Panel considers that the Interim Guidelines applicable to the 1995 Junior Men's World Water Polo Championships have been properly and validly enforced and that

the sanction imposed is neither contrary to the general principles of law, as argued by the Appellant, nor is it arbitrary, excessive or unfair in light of the facts as established through available evidence. Accordingly, the appeal by FIN shall be dismissed.

The Court of Arbitration for Sport pronounces:

1. The appeal by Federazione Italiana Nuoto of September 6, 1996 against the decision of August 3, 1996 taken by the FINA Bureau is dismissed;
2. (...).