

Submission 091-04 – Court of Arbitration for Sport – Violation of RRS 3

COUNCIL MINUTE – NOVEMBER 2004

Decision

Council deferred Proposal 1 of Submission 091-04 to the Constitution Committee for recommendation.

COMMITTEE RECOMMENDATIONS – NOVEMBER 2004

Reporting Committee:

The Executive Committee supports submission 091-04 from the Executive Committee about the Court of Arbitration for Sport but recommends that the wording is checked to ensure the objectives of the submissions are achieved.

Racing Rules Committee:

Proposal 1 be rejected – not practical.

Action be deferred in respect to proposal 2 for consultation with the Constitution Committee and representatives of the International Classes Committee

Constitution Committee:

Paragraph 1

The Constitution Committee reminds Council that in November 2002, ISAF decided who is required to sign the Court of Arbitration for Sport, which is as detailed in ISAF Regulation 19.2(c)(ii).

If Council were to consider this paragraph, the Constitution Committee sees great difficulty in requiring all competitors to sign any waiver.

However if Council decides to proceed with the proposal the Constitution Committee recommends the CAS waiver as currently used.

Paragraph 2

The Constitution Committee recommends that Paragraph 2 be approved, amended as follows:

where the matter is not one to be determined under the Rules, not to resort to any court of law or any tribunal until all internal remedies provided by ISAF or by the Court of Arbitration for Sport have been exhausted. ~~With respect to such determination, not to resort to any court or other tribunal not provided by the rules.~~

~~(d) in all other areas, a competitor shall not resort to any state court or tribunal until exhaustion of all administrative remedies.~~

ORIGINAL SUBMISSION

From the Executive Committee

Proposal:

1. All competitors taking part in events that use the ISAF Racing Rules of Sailing (RRS) shall sign a properly executed waiver as follows:
"I agree that any dispute about the ...xyz regatta... not resolved after exhaustion of the legal remedies established by ...xyz national authority ... or the International Sailing Federation shall be submitted only to the Court of Arbitration for Sport (CAS) for final and binding arbitration. The CAS shall rule on its jurisdiction and has the exclusive power to order provisional and conservatory measures. The decision of the CAS shall be final. In the interest of speedy and expert resolution of all disputes arising about the ... xyz regatta ..., I now surrender any right I may have to start proceedings in a court about any dispute or to file any appeal, review, or recourse to any state court

or other judicial authority from any arbitral award, decision, or ruling given by the CAS. In particular, without restricting the generality of the foregoing and for better and further assurance notwithstanding that such provision have no applicability.”

2. Amend ISAF Racing Rules of Sailing (RRS 3) as follows:

3 ACCEPTANCE OF THE RULES

By participating in a race conducted under these racing rules, each competitor and boat owner agrees

- (a) to be governed by the *rules*;
- (b) to accept the penalties imposed and other action taken under the *rules*, subject to the appeal and review procedures provided in them, as the final determination of any matter arising under the *rules*; ~~and~~
- (c) with respect to such determination, not to resort to any court or other tribunal not provided by the *rules*.
- (d) in all other areas, a competitor shall not resort to any state court or tribunal until exhaustion of all administrative remedies

Current Position:

See Above

Reason:

Although difficult to administer, a signed and properly executed waiver between the competitor and ISAF is the best procedure to limit access to the state courts by a competitor.

In addition, ISAF Racing Rules of Sailing (RRS) 3 relates only to competitors and boat owners participating in a race. It does not address other areas of controversy, which might arise and lead to litigation, i.e., measurement or eligibility.