

**Tribunal/2022/03 Alicja Pyszka-Bazan vs World Triathlon Competition Jury of
the Europe Triathlon AG (25-29) Championships held in Olsztyn (Poland) on 29
May 2022**

DECISION

rendered by the

WORLD TRIATHLON TRIBUNAL

sitting in the following composition:

Chair of the Panel: Angelo Rigopoulos (Italy)

Members of the Panel: Judge Jones (USA)
Tom O'Donnell (Ireland)

in the appeal proceedings between

Alicja Pyszka-Bazan (Poland)
represented by Mr Michał Dudkowiak, *attorney at law*

Appellant

against

Competition Jury of the
Europe Triathlon AG (25-29) Championships
held in Olsztyn (Poland) on 29 May 2022

Respondent

I. PARTIES

1. The Appellant, Alicja Pyszka-Bazan (hereinafter “the Appellant” or “the Athlete”) is an Age Group (25-29) athlete from Poland.
2. The Respondent, the World Triathlon Competition Jury (hereinafter “the Competition Jury”) is the recognised body for World Triathlon Events and other Games that do not include the Olympic Games and is constituted of three persons appointed by the World Triathlon Technical Delegate.

II. BACKGROUND FACTS

3. The elements set out below are a summary of the main relevant facts, as established by the Panel on the basis of the written submissions, the exhibits filed and the statements produced by the Appellant in the course of the proceedings. While the Panel has considered all the facts, allegations, legal arguments and pieces of evidence submitted by the Appellant in these proceedings, it refers in the present decision only to those it considers necessary to explain its reasoning.
4. The Europe Triathlon (Age Group) Championships (“the Race”) took place on 29 May 2022, in Olsztyn, Poland.
5. The Athlete was ‘DSQ’ from the race for the following two infringements: a) for blocking offense during the bike course and, b) failure to execute the penalty.
6. After the race, the Athlete, lodged a protest before the Competition Jury.
7. The Competition Jury, composed of three members, heard the protest, deliberated, and decided to reject the protest of the Athlete.
8. On 27 June 2022, the Appellant filed a “Level 2 Appeal” in accordance with article 13.7 of the World Triathlon 2022 Competition Rules (hereinafter “the Rules”) with the World Triathlon Tribunal.
9. Before entering in the merits of the case and the reasons for the appeal of the Appellant, the Panel decided to first turn its attention and analyse the jurisdiction and admissibility elements of this appeal.

III. LEGAL ANALYSIS

A. JURISDICTION

10. The World Triathlon Tribunal has jurisdiction of this Appeal under:
11. Article 50.7(a) of the World Triathlon Constitution (hereinafter: “Constitution”), which provides that: “*A panel or a Single Judge is responsible to handle and decide on all cases brought before the Tribunal in accordance with the Constitution, Rules, Regulations and Codes.
With the exception of ethical and safeguarding issues which shall be handled and adjudicated exclusively by a Panel, all other matters shall be adjudicated by either a Panel or by a Single Judge.
Disciplinary and appeal cases shall be handled and decided by either a Disciplinary or Appeal Panel, or by a Single Judge.*”
12. Article 2.2 of the ITU Disciplinary Rules (DR) that provides that “*The Arbitration Tribunal recognizes recourses submitted to it according to (...) the Constitution of World Triathlon.*”
13. Article 13.7(i) of the Rules stating that “*Decisions from any Competition Jury and any World Triathlon panel (except the World Triathlon AD Hearing Panel) may be appealed to the World Triathlon Tribunal;*”
14. Based on these provisions, this Panel has jurisdiction to decide this Appeal.

B. APPLICABLE LAW

15. Pursuant to Article 62.1 of the Constitution, *“The governing law of World Triathlon shall be Swiss law”*. Article 1 of the DR states that *“These rules set out the applicable procedure before the ITU, within the limitations of Swiss law”*.
16. As the Appeal against the Competition Jury concerns a decision regarding an incident during a competition, the Rules and the DR govern this matter.

C. SCOPE OF PANEL’S REVIEW

17. According to Article 16 of the DR *“The Panel has full power to review the facts and the law”*.

D. ADMISSIBILITY

18. Article 13.7 of the Rules defines the procedure for Level 2 Appeals as follows (emphasis added):

13.7 Level 2 Appeal Procedure:

The following procedure will be followed in the event of a Level 2 Appeal:

- (i) Decisions from any Competition Jury and any World Triathlon panel (except the World Triathlon AD Hearing Panel) may be appealed to the World Triathlon Tribunal;*
- (ii) Only appeals supported by National Federation will be admitted;*
- (iii) Appeals may be submitted up to thirty natural days after the Competition Jury met or within thirty natural days from the Competition Jury or Panel decision;*
- (iv) Appeals will be submitted in writing to the World Triathlon Secretary General and will be accompanied by a deposit of \$ 500 USD. It will only be refunded if the appeal is successful.;*
- (v) Level 2 appeal decisions may be appealed to CAS (Level 3 of Appeal)*

19. Looking at the DR, the following rules are of relevance (emphasis added):

Art. 31 “Article 31 Start of the Proceedings and Fee

- 1. The Appellant files an appeal with the Arbitration Tribunal by mail or by email at the ITU headquarters.*
- 2. The appeal must be submitted no more than thirty (30) days following the communication of the contested decision to the Appellant.*
- 3. The Appellant must pay the fee concurrently with the filing of the statement of facts. If the payment is not made, the appeal is deemed non-compliant with these rules and the appeal shall be inadmissible.*
- 4. The amount paid will only be refunded if the appeal is successful.”*

Art. 34 Preliminary examination

- 1. The Arbitration Tribunal shall examine the compliance of the factum with these rules including:*
 - a) That the appeal is signed;*
 - b) That the appeal is submitted within the time required by these rules;*
 - c) That the payment of fees was done within the time required time; and*
 - d) That the appeal is otherwise compliant with these Rules.*
- 2. In the case of non-compliance with paragraph 1, the Arbitration Tribunal shall determine the appeal to be inadmissible. If the Appellant asserts extenuating circumstances in his factum which are deemed to justify a violation of any an untimely submission or other non-compliance, the Arbitration Tribunal may deem the appeal admissible.*

3. *In the case of a reparable error, the Panel Chair may grant an extension of time to the Appellant during which he must remedy said error. If the Appellant fails to remedy such error, the Arbitration Tribunal shall deem the appeal inadmissible.*"

20. The Panel noted that, by means of a letter dated 27 July 2022, the Appellant informed the Tribunal that the "Polish Triathlon Federation – Polski Związek Triathlonu ("PZT") decided not to support an Appeal Level 2 (i.e. the current appeal to the World Triathlon Tribunal) of the Appellant.
21. Furthermore, the Panel took note of the Appellant's request in the same letter *"to make a derogation from the article 13.7.a.ii of the Competition Rules and in consequence recognize the Appeal Level 2 despite absence of support of the [PZT]. Such action would be justified by existing conflict of interest, prevailing rule of justice and fair competition"*.
22. Finally, the Appellant also stated that *"(a)s the fee for the Appeal Level 2 was not yet paid, we inform that it will be paid immediately, should the (...) Tribunal decide to hear the case despite absence of PZT support"*.
23. In view of the information received in the above-mentioned, the Panel made the preliminary examination of compliance of the Appeal with the applicable rules so as to establish whether the Appeal fulfilled all relevant conditions.
24. In doing so, the Panel noted that, on the one hand, the appeal fee of USD 500 was not paid on time, i.e. was not paid *"concurrently"* with the filing of the statement of facts. Rather, the Appellant made the payment of the fee conditional to a decision of the Panel to hear the case.
25. Equally, on the other hand, in analysing the procedure to follow for Level 2 Appeals, as the present one, which is to be found in article 13.7 of the Rules, the Panel noted that one of the conditions to admit the appeal was also not fulfilled. In fact, the PZT does not support the appeal of the Athlete.
26. With respect to the lack of payment of the appeal fee, as required by article 34(1)(c) DR, the Panel looked at the wording of the rule and acknowledged that article 34(2) DR establishes that *"in the case of non-compliance with paragraph 1, the Arbitration Tribunal shall determine the appeal to be inadmissible."* In this sense, the Panel would like to stress, that the use of the term *"shall"* does not leave any discretion to the Tribunal as such term is to be considered as a *"must"*. The provisions of article 34(1) DR therefore, are a *condicio sine qua non* for the appeal to be declared admissible.
27. Furthermore, with respect to the lack of support of the PZT, as described in paragraph 20 above, the Panel noted that the term used in the Rules when referring to appeals supported by a national federation being admitted is *"only"*. This means, *a contrario*, that those not supported by a national federation are not admitted. The Panel has no discretion to decide otherwise.
28. Having analysed the fulfilment of the conditions set in the Rules and the DR, the Panel came to the conclusion that at least two of them have not being fulfilled by the Appellant and, therefore, has no other choice than to declare the Appeal clearly inadmissible, without therefore entering into the merits of the case.

ON THESE GROUNDS

The Panel of the World Triathlon Tribunal decides that:


1. The Appeal of the Appellant is inadmissible
2. The decision of the Competition Jury is binding

Lausanne, Switzerland, 17th August 2022

WORLD TRIATHLON TRIBUNAL


Angelo Rigopoulos (Aug 17, 2022 14:52 GMT+2)

Angelo Rigopoulos
Chair of the Panel


Judge Jones (Aug 17, 2022 10:43 EDT)

Judge Jones
Member of the Panel


Tom O'Donnell (Aug 18, 2022 09:22 GMT+1)

Tom O'Donnell
Member of the Panel

Appeal to the Court of Arbitration for Sport

According to Article 52 of the Constitution, final decisions made by World Triathlon under the Constitution may be appealed exclusively to the CAS which will resolve the dispute definitively in accordance with the CAS Code of Sports-related Arbitration.

Any appeal must be filed with the CAS within twenty-one (21) days of the party's reception of the written, reasoned decision of World Triathlon in question.

Pending resolution of the appeal by the CAS, the decision being appealed shall remain in full force and effect unless the CAS orders otherwise.












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Final Audit Report

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