

**Tribunal/2021/12 In the matter of potential suspension of the Bulgarian
Triathlon Federation****DECISION**

rendered by the

WORLD TRIATHLON TRIBUNAL

sitting in the following composition:

Chair of the Panel: Judge Jones (USA)

Members of the Panel: Sahin Hazal (Turkey)

Angelo Rigopoulos (Italy)

in the proceedings against the

Bulgarian Triathlon Federation (BTF)

for potential lack of fulfilling all the requirements for membership with World Triathlon as defined in Article 5.3 of the World Triathlon Constitution

I. PARTIES

1. The Bulgarian Triathlon Federation (BTF)

II. BACKGROUND FACTS AND PROCEEDINGS BEFORE THE WORLD TRIATHLON TRIBUNAL

2. 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 provided to the Panel in the course of the proceedings. While the Panel has considered

all the facts, allegations, legal arguments and pieces of evidence submitted by the BTF and other stakeholders involved, it refers in the present decision only to those it considers necessary.

3. On 3 December 2021, the World Triathlon Tribunal (the “Tribunal”) received a letter by World Triathlon by means of which the latter was requesting the former, in accordance with article 11.2 of the World Triathlon Constitution (the “Constitution”) *“to examine the possibility of suspending the existing National Federation of Bulgaria (Bulgarian Triathlon Federation), due to the fact that is not fulfilling the requirements of article 5.3. of the Constitution, in particular the required recognition by the NOIC and there is a few activities ongoing”*.
4. On 10 December 2021, the Chair of World Triathlon Tribunal informed World Triathlon about the composition of the Tribunal Panel that would judge the matter related to the BTF.
5. On 28 December 2021, the chair of the Panel contacted the BTF informing them of the request received by World Triathlon as per paragraph 3 above as well as of the composition of the Panel appointed to judge the matter at hand.
6. In the same letter, the Panel informed the BTF that allegations provided to the Tribunal were indicating that the Bulgarian National Olympic Committee (BOC) has recognised as the national federation for the sport of triathlon in Bulgaria a different body, i.e. the Bulgarian Triathlon Association (BTA), which apparently has been recognised by the Government of Bulgaria. This correspondence was originally sent from the NOC to the President of the International Olympic Committee (IOC), which in turn contacted World Triathlon for assistance.
7. BTF was invited to provide with any statements before 14 January 2022.
8. On the same date, i.e. 28 December 2021, the Panel addressed a letter to the BOC requesting to be provided, within the same deadline of 14 January 2022, with the official minutes of the General Assembly that allegedly approved the membership of the BTA and revoked the membership of the BTF.
9. On 11 January 2022, the BOC provided to the Panel an extract of the Minutes of the BOC General Assembly held on 7 September 2021. According to these minutes, the General Assembly of the BOC:
 - i. unanimously approved by a vote of 43 to 0 adopted a decision to terminate the membership of the BTF as the national federation in BOC. The General Assembly noted that on 15 July 2021 a five-member panel of the Supreme Administrative Court confirmed the decision of the Ministry of Youth and Sports to revoke the sports license of the BTF;
 - ii. considering that the BTA has a valid sports license issued by the Ministry of Youth and Sports and meets the requirements for membership of national federations in BOC, the BTA was accepted as a member of the BOC.
10. On 12 January 2022 the BTF submitted its position stating, *inter alia*, that the BTF:
 - i. has always fulfilled its obligations, observed the Articles of Association and followed the rules and regulations of the organisations it is member of as World Triathlon, Europe Triathlon and the BOC;
 - ii. has always paid the membership fees to World Triathlon and Europe Triathlon;
 - iii. membership was terminated at the BOC General Assembly of 7 September 2021;

- iv. has initiated a court procedure against the BOC claiming that the decision of termination of membership is illegal, incorrect, and completely unfounded and requested its annulments. The decision is pending.

III. LEGAL ANALYSIS

A. JURISDICTION

11. The World Triathlon Tribunal has jurisdiction over this matter under:

- Article 50.1 of the World Triathlon Constitution ("*Constitution*"), which provides that: "*The role of the [Tribunal] is to contribute to the protection of integrity and fairness in the sport of Triathlon. It achieves this goal by investigating and prosecuting any breach of the Constitution, Rules, Regulations and Codes, and by deciding on cases brought to it and on appeal.*"
- Article 11.2 of the Constitution which reads as follows: "*Provisional Suspension by the World Triathlon Tribunal: a. The Tribunal may provisionally suspend a Member (...)*"

12. Based on these provisions, the Panel has jurisdiction to adjudicate this case.

B. APPLICABLE LAW

13. The following articles of the Constitution are of relevance to this case:

- *Article 5.1 "Admission as a Member*
Be the national governing body for the sport of Triathlon, Para triathlon and its Related Multisports, recognised by the National Olympic Committee (recognised by the IOC) of the relevant sovereign states"
- *Article 5.3 "To be considered for Membership, an applicant seeking admission as a Member shall demonstrate to the Executive Board's satisfaction that it fulfils the following admission requirements:*
 - a. it is recognised by the National Olympic Committee, as the Governing body for the sport of Triathlon under Art 5.1;*
 - b. it is a separate legal registered body and/or can satisfy World Triathlon that it has the legal and administrative ability to administer the sport to an acceptable standard of good governance;*
 - c. it is financially solvent;*
 - d. it recognises the Court of Arbitration for Sport, as specified in this Constitution;*
 - e. its application for Membership is supported by the Continental Confederation in which the applicant is situated; and,*
 - f. such other requirements as set out in this Constitution."*
- *Article 8 "Obligations of Members*
 - 8.1. In accordance with this Constitution, the Rules, Regulations and Codes each Member shall:*
 - a. govern, promote and develop Triathlon, Para triathlon and their Related Multisports, in the Member's Country in accordance with the Mission under Art 1 and Objects under Art 2 of the Constitution;*
 - b. comply with this Constitution and all Rules, Regulations, and Codes and in particular shall:*

- (1) meet all the requirements for admission to Membership set out in Art 5.3;
- (2) submit annually to World Triathlon before the 1st of May of each year, which shall include, but not limited to, the following information:
 - (a) all (extraordinary) congress/general assembly reports including the approved financial report and budget;
 - (b) the annual Survey of World Triathlon,
 - (c) adopt a constitution, rules and regulations which comply with, and are consistent with, this Constitution and the Rules, Regulations and Codes;
 - (d) be a member of its Continental Confederation and co-operate with it, in accordance with the Continental Confederation's constitution, rules and regulations; and, (e) pay the annual Membership Fee, by the due date as set out in Art 9.1.

8.2. In the event of any inconsistency between the constitution, rules, regulations and codes of a Member or Continental Confederation, then the provisions of this Constitution, or relevant Rules, Regulations and Codes of the World Triathlon”

- Article 11.2 “Provisional Suspension by the World Triathlon Tribunal:
 - a. The Tribunal may provisionally suspend a Member for a period specified in article Art 11.2.b. if, in the opinion of the Tribunal, the Member:
 - (1) is in breach of any one or more of its obligations under Art 8 (Obligations of Members);
 - (2) is otherwise in breach of any other article in this Constitution or any Rule, Regulation, Code or a decision of Congress;
 - (3) acts in a manner which is contrary to any of the Purposes of World Triathlon, or the government of the territory that the Member represents;
 - (4) ceases to meet one or more of the admission requirements set out in Art 5.3;
 - b. The period of a provisional suspension imposed by the Tribunal under Art 11.2. shall be:
 - (1) a fixed period decided by the Tribunal, provided that the period is no longer than the period to the next Congress; or
 - (2) an indefinite period dependent of terms and conditions imposed by the Tribunal, provided that the period is no longer than the period to the next Congress.
 - c. The Tribunal may at any time during the period of any provisional suspension of a Member extend the period from that imposed under article 11.2.b. for a further period, provided that the further period is no longer than the period to the next Congress.”
- Article 11.3 “Additional Sanctions by the Tribunal:

Ancillary to any provisional suspension imposed under Art 11.2.a. or where a Member is not in Good Standing under Art 17, the Tribunal may impose any one or more of the following sanctions on that Member:

 - a. set specific terms or conditions to be met or steps to be undertaken to the satisfaction of the Tribunal;
 - b. issue a caution or censure;
 - c. impose a fine;
 - d. withhold grants or subsidies;
 - e. exclude a Member's athletes, athlete support personnel and/or Officials who are members of the Member, and the Member's officials, from any International Competitions or any World Triathlon position or body;
 - f. remove or deny accreditation of, or other benefits to, athletes, athlete support personnel and/or Officials who are affiliated to the Member, for any International Competitions and other World Triathlon events and activities;
 - g. impose any other sanction(s) it considers appropriate”

III. MERITS

14. In order to decide the case, the Panel is of the opinion that the legal issues on this matter revolve around the following elements:

A. Has the BTF ceased to meet one or more of the admission requirements defined in Article 5.3 of the Constitution and, as such, is in breach of Article 11.2(a)(4) of the Constitution?

B. If yes, what are the consequences of such breach?

15. Accordingly, the above questions are analysed below:

A. Has the BTF ceased to meet one or more of the admission requirements defined in Article 5.3 of the Constitution and, as such, is in breach of Article 11.2(a)(4) of the Constitution?

16. According to Article 5.3(a) *“To be considered for Membership, an applicant seeking admission as a Member shall demonstrate to the Executive Board’s satisfaction that it fulfils the following admission requirements: a. it is recognised by the National Olympic Committee, as the Governing body for the sport of Triathlon under Art 5.1”*

17. In accordance with Article 11.2(a)(4) *“the Tribunal may provisionally suspend a Member for a period specified in article Art 11.2.b. if, in the opinion of the Tribunal, the Member: (4) ceases to meet one or more of the admission requirements set out in Art 5.3”*

18. The Panel notes that one of the criteria for membership to World Triathlon is the recognition of the member by the relevant National Olympic Committee (NOC) (as recognized by the IOC).

19. Furthermore, by reading Article 11.2(a)(4) above, the Panel wishes to stress that such requirement of recognition by the relevant NOC, equally to all other requirements, needs to be fulfilled at all times, failure of which, the member concerned may be provisionally suspended.

20. It is uncontested that the BTF has lost its recognition by the BOC at the latter’s General Assembly of 7 September 2021. This was confirmed in the minutes provided by the BOC, which report the unanimous decision taken in this sense, as well as by the BTF itself in its submission of 12 January (cf. paragraph 10(iii) above).

21. In this respect, the Panel took note of the statement and evidence provided by the BTF according to which the decision of the BOC to revoke its membership has been challenged before the competent local courts. Nevertheless, the BTF has not produce any evidence indicating that, pending this appeal, the decision of the BOC to revoke BTF’s membership would be suspended.

22. Accordingly, the Panel is comfortably satisfied that the BTF has ceased to be a recognised member of the BOC.

23. Given that it is necessary to fulfill all the admission requirements of Article 5.3 of the Constitution and that, conversely, in order to be in breach of Article 11.2(a)(4) it is enough for one of these requirements not to be fulfilled, the Panel finds that the BTF is in clear breach of Article 11.2(a)(4) of the Constitution.

24. Having established the above, the Panel needs now to analyse the next legal element:

B. If yes, what are the consequences of such breach?

25. By recalling Article 11.2(a)(4) above, the Panel notes that, in case a member ceases to meet one or more of the admission requirements set out in Art. 5.3., the member may be provisionally suspended.
26. As to the period of time of the potential suspension, Article 11.2.b clearly indicates that this shall be: “(1) a fixed period decided by the Tribunal, provided that the period is no longer than the period to the next Congress; or (2) an indefinite period dependent of terms and conditions imposed by the Tribunal, provided that the period is no longer than the period to the next Congress.”
27. In this respect, the Panel finds that a breach of the Constitution, in particular, related to an admission requirement for membership goes in the core of World Triathlon, i.e. an Association created under Article 60 of the Swiss Civil Code.
28. Accordingly, the Panel was of the unanimous view that fulfilling the requirements for membership to World Triathlon constitutes a *condicio sine qua non* for the members to validly operate within World Triathlon.
29. Therefore, the Panel finds that the BTF’s membership shall be provisionally suspended.
30. Turning its attention to the duration of such provisional suspension, the Panel wished first to underline that:
 - the Tribunal, under a different composition, had already faced a case of potential suspension of the BTF in 2020 (cf decision ITU-BTF/BTA-2020);
 - the General Assembly of the BOC of 7 September 2021 not only had revoked the membership of the BTF but, at the same time, had accepted the membership of the BTA;
 - the BTA has, meanwhile, contacted World Triathlon seeking to become a member;
 - the BTF did not provide any indication as to the potential duration of the appeal that it lodged against the BOC decision, other than mentioning that “*the decision is pending*”;
31. Against this background, the Panel finds that it would be appropriate to provisionally suspend the membership of the BTF with immediate effect and until the next World Triathlon Congress.
32. With respect to the possible additional sanctions that the Tribunal could impose in accordance with Article 11.3 of the Constitution and considering the consequences that the provisional suspension until the next Congress would bring as outlined in the Constitution, the Panel finds the provisional suspension being proportionate and, thus, decides that no additional sanction shall be imposed to the BTF.
33. Finally and as a side note, the Panel was eager to emphasize that the competence to admit members to World Triathlon, to wit, to accept as a member of the World Triathlon the Bulgarian Triathlon Association, falls exclusively within the competence of World Triathlon in accordance with its Constitution.

ON THESE GROUNDS

The Panel of the World Triathlon Tribunal decides that:


1. the membership of the Bulgarian Triathlon Federation is provisionally suspended with immediate effect and until the next World Triathlon Congress.

COSTS


The Panel decides not to impose procedural costs upon the Bulgarian Triathlon Federation.

Lausanne, Switzerland, 3rd February 2022

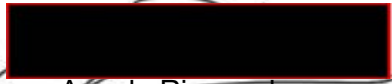
WORLD TRIATHLON TRIBUNAL



Judge Jones
Chair of the Panel



Sahin Hazal
Member of the Panel



Angelo Rigopoulos
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.