

4A\_543/2019<sup>1</sup>

Judgment of April 30, 2020

First Civil Law Court

Federal Judge Kiss, Presiding,  
Federal Judge Niquille, and  
Federal Judge Rüedi  
Clerk: Mr. Thélin

Kuwait Motor Sports Club,  
represented by Jean-Marc Reymond,  
*Appellant*

v.

International Motorcycling Federation,  
represented by Luc Pittet,  
*Respondent*

Facts:

A.

The International Motorcycling Federation is an association with headquarters in the canton of Vaud. Its main purpose is to promote motorcycling in all its aspects. According to its statutes, its members are national motorcycling federations as affiliate members, and other organizations active in the motorcycling sector as associate members. Only affiliated members have the right to vote at the general assembly. The International Federation can admit as an affiliate member only one national federation per country. The applications are examined by the management committee; the latter is empowered to reject them or to present a proposal for admission to the general assembly.

B.

On May 7, 2013, the organization Kuwait Motor Sports Club in Kuwait, requested the International Federation to be admitted as an affiliate member for this country and to expel the organization Kuwait International Automobile Club, which is an affiliate member since 1980.

In an appeal filed by Kuwait Motor Sports Club, the Court of Arbitration for Sports (CAS) in Lausanne issued a final Award on May 1, 2017. It found that the International Federation (here, the Respondent)

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<sup>1</sup> Translator's Note:

Quote as Kuwait Motor Sports Club v. International Motorcycling Federation, 4A\_543/2019. The decision was issued in French. The full text is available on the website of the Federal Tribunal, [www.bger.ch](http://www.bger.ch).

committed a denial of justice was attributable to the International Federation, because this organization did not rule on the application presented on May 7, 2013. The CAS ordered the International Federation to rule on this matter within nine months of the notification of the Award, based on the rules in effect at the time of the application and in respecting the right to be heard from Kuwait Motor Sports Club.

The Federal Tribunal ruled on May 28, 2018 on the civil law appeal brought by the International Federation. It dismissed this appeal, insofar as it was admissible (judgment 4A\_314/2017<sup>2</sup>).

C.

Kuwait Motor Sports Club filed a claim before the Justice of the Peace of the district of Lausanne for the enforcement of the arbitral Award. The Justice of the Peace issued a decision on October 24, 2018. It ordered the enforcement and ordered the International Federation to rule on the application no later than December 1, 2018, based on the rules in effect on May 7, 2013 and respecting the right to be heard by the applicant organization. It declared that the International Federation, if necessary, would be subject to a fine of CHF 500 per day of non-execution, and that the first day of non-performance would be December 2, 2018.

The Civil Appeal Chamber of the Vaud Cantonal Court ruled on November 13, 2018 on the appeal of the International Federation; it dismissed the appeal and confirmed the order.

D.

Kuwait Motor Sports Club filed a second request for enforcement with the Justice of the Peace on February 21, 2019. According to its requests, the Justice should note that its previous order remained unenforced, order the International Federation to pay the fine at the rate of CHF 500 per day as of December 2, 2018 until the day of the newly requested order, and declare that the International Federation would be liable for a fine of CHF 1'000 for each additional day of non-performance.

The International Federation requested that the application be dismissed.

The Justice of the Peace issued a decision on July 2, 2019 and rejected the request. It found in fact that on November 23, 2018, the International Federation gave the requesting party five days to communicate any new elements in support of its application, and that the management committee rejected this application on the 29th of the same month.

The Civil Appeal Chamber of the Vaud Cantonal Court ruled on September 24, 2019 on the petitioner's appeal; it dismissed the appeal and confirmed the order.

E.

In a civil law appeal, Kuwait Motor Sports Club attacks this second judgment of the Court of Appeal; it requests from the Federal Tribunal relief that corresponds to its second request to the Justice of the Peace.

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<sup>2</sup> Translator's Note:

The English Translation of this decision is available here:  
<http://www.swissarbitrationdecisions.com/atf-4a-314-2017>

The International Motorcycling Federation, Respondent, contends that the appeal should be dismissed.

Without being invited to do so, the parties filed a reply and a rejoinder.

Reasons:

1.

The final cantonal decisions concerning the enforcement of arbitral awards are subject to appeal in civil matters according to Art. 72(2)(b)(1) LTF<sup>3</sup> (Bernard Corboz, in *Commentary on the LTF*, 2nd ed., 2014, no. 33 ad Art. 72 LTF) and Art. 75(1) LTF.

Disputes relating to membership to an association are not pecuniary matters under Art. 74(1) LTF (ATF 108 II 6 at 1 p. 9; 108 II 77 at 1a p. 79); the appeal in civil law is therefore admissible without regard to the value at stake.

2.

The Award rendered by the CAS on May 1, 2017, is the result of an international arbitration procedure subject to Arts. 176 et seq. of the Federal Statute on Private International Law (PILA<sup>4</sup>). Because this Award was subject to the appeal provided by Art. 191 PILA, its execution in Switzerland is subject to Arts. 335 et seq. CPC (Franz Kellerhals, in *Berner Kommentar*, no. 8 ad Art. 335 CPC; Andreas Bucher, in *Commentaire Romand*, no. 4 ad Art. 194 LDIP). The Justice of the Peace ruled on October 24, 2018, and then on July 2, 2019, as an enforcement tribunal under Art. 338(1) CPC.

The same arbitral Award or the same judicial decision may, if necessary, be followed by several successive procedures before the enforcement court, in particular when the initially ordered enforcement measures do not lead to the desired result and it seems necessary to repeat or complete them (Kellerhals, op. cit., no. 48, ad Art. 343 CPC). On the other hand, a decision of the enforcement court is not itself subject to enforcement proceedings under Arts. 335 et seq. CPC. In the present case, the second request addressed to the Justice of the Peace could therefore only seek new measures for the execution of the arbitral Award of May 1, 2017. With respect to the pleas filed before the Federal Tribunal, the latter must verify if the refusal of these new measures is lawful or not.

3.

The Court of Appeal noted that the Respondent had executed the arbitral Award by inviting the Appellant club to bring forward any new elements in support of its application on November 23, 2018, and by ruling on the application on November 29, 2018 of the same month. The Award being thus executed, there is no issue of enforcement any longer.

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<sup>3</sup> Translator's Note: LTF is the French abbreviation of the Federal Statute of June 17, 2005, organizing the Federal Tribunal, RS 173. 110.

<sup>4</sup> Translator's Note: PILA is the most commonly used English abbreviation for the Federal Statute on Private International Law of December 18, 1987, RS 291.

The Appellant categorically disputes that the Award is duly executed. It asserts in particular that the five-day period allowed according to the application of November 23, 2018, was all the less sufficient as this request only reached it in the early hours of the following day November 24.

The request and the time allowed should enable the Appellant to exercise the "right to be heard" provided for in the operative part of the arbitral Award. The importance of the right to be heard should not be overstated as the Appellant's application had been pending and contentious for several years, so the position and arguments of each party were obviously well known to the other party. The Appellant should also have expected an approach from the Respondent within the time limit for execution assigned by the first order of the Justice of the Peace; it could therefore have been prepared to make its case appropriately. It is immaterial in this respect that the order was challenged before the Court of Appeal because, according to Art. 325(1) CPC, the appeal had no suspensive effect. Finally, the Appellant fails to list the new, useful elements for its application which it allegedly could not have asserted in just four days but rather only in a longer period.

The Appellant also states that the decision to reject its application taken on November 29, 2018, was never formally notified to it and that the CAS had annulled this decision on October 14, 2019, after a new arbitration procedure. The Appellant loses sight of the fact that by the effect of Arts. 326(1) CPC and 99(1) LTF, the pleas inferred from facts which were not alleged before the enforcement court, including facts subsequent to the execution procedure, are inadmissible. For the rest, said decision was known to the Appellant when it introduced its second request on February 21, 2019. The management committee was legally competent to adopt it. By its wording, the terms of the Award of May 1, 2017, did not require a decision of the general assembly and even less a decision welcoming the application. The decision therefore corresponded to what was required by the operative part of the Award. As the Award was fully executed, there was no reason to order further enforcement. Thus, to the extent that it is admissible, the civil law appeal is unfounded.

4.

As the unsuccessful party, the Appellant must pay the legal costs to the Federal Tribunal and the costs claimed by the other party.

For these reasons, the Federal Tribunal decides as follows:

1.

The appeal is dismissed in so far as it is admissible.

2.

The Appellant shall pay a judicial fee of CHF 2'000.

3.

The Appellant shall pay compensation of CHF 2'500 to the Respondent for its legal costs.

4.

This judgment is communicated to the parties and to the Cantonal Court of the canton of Vaud.

Lausanne, April 30, 2020

On behalf of the First Civil Law Court of the Swiss Federal Tribunal

The Chair:  
Kiss

The Clerk:  
Thélin