

The UCI on August 20, 2013 issued a press release titled:

“TOP LAW FIRM CONFIRMS UCI FOLLOWED PROCEDURES CORRECTLY”

<http://www.uci.ch/Modules/ENews/ENewsDetails2011.asp?id=OTU1NQ&MenuId=MTI2Mjc&LangId=1&BackLink=%2Ftemplates%2FUCI%2FUCI7%2FLayout%2Easp%3FMenuId%3DMTI2Mjc%26LangId%3D1>

The most considerable matter in this press release (and the effects it produces on the UCI Presidency candidates) are detailed in the following sentence:

“In addition, Baker & McKenzie confirmed that the proposed amendment to Article 51.1 of the UCI Constitution, proposals of both of the Malaysian National Federation and the Asian Cycling Confederation had been properly submitted, thus the alleged retroactive elements in the transitional provision were valid under Swiss law – and then the proposal was correctly included on the agenda of the UCI Congress in September”.

The statement *“that the retroactive elements of the transitional provision are eligible under Swiss law”* tends to confirm the formal correctness of the nomination made by McQuaid using the proposed amendment to Art. 51.1 presented by the Malaysian Federation.

However, as stated in the "Swiss Law", cannot find confirmation on the application within the UCI, due to the UCI Statute that has freely provided a different regulatory and operational procedures related to "amend the bylaws," particularly as it pertains to how and when proposition, approval and applicability.

All official procedures that Baker & McKenzie in their opinion conveniently avoided to recognize and evaluate. Not so strange from their “partisan” point of view.

The conclusions of Baker & McKenzie are therefore contrary to the UCI Statute and Regulations, particularly in order to the points below:

a) statement of regularity of the status of multiple memberships into several national federations detained by Pat McQuaid conflicts with the UCI Statute art. 53/6, and with the General Rules of the Organization of Sport Cycling art. 1.1.009 too, that explicitly excludes this opportunity-expediency.

b) retroactive effect of the proposal of amendment of the Articles of UCI Statute directly conflicts with the current UCI Statute art. 29/1/a, art. 30/1, art. 31/3 and art. 38/3/c.

The non-applicability of the "Swiss Law", otherwise stated by Baker & McKenzie, is clearly enshrined by the provisions of art. 44 of the Statute UCI, which establish (excluding all other options) that the decisions of the Congress ((to which exclusively belong decisions about the statutory amendments, due to Article. 29/1/a) shall apply immediately but never with retroactive effects. They (the lawyers) are incredibly forcing the rules.

c) unlawful removal of exclusive powers detained by the UCI Congress and consequent unlawful attribution to UCI Management Committee.

Finally, it should be noted that the applicability of the formula, with the retroactive effect of the proposal to amend (proposed by the Malaysian Federation), has been adopted by the UCI Management Committee on July 29, 2013 (as per the press release) and conflicts with the provisions established in the UCI constitution art. 45/1 and art. 29/1.

d) UCI Statute art. 1-2 states that UCI is settled in accordance with Articles 60 and subsequent of the Swiss Civil Code; those articles of the Swiss fundamental law blatantly contradict the claims of Baker & McKenzie, cause they refer explicitly to the rules contained in the statute of the association (UCI Statute).

Per ulteriori ed esaurienti informazione si riportano gli articoli dello Statuto e Regolamenti UCI richiamati:

For further and exhaustive information we reproduce below the above cited Articles of UCI Statute and Regulations:

UCI STATUTE

Art. 1

2. The UCI is a non-governmental international association with a non-profit purpose of international interest, having legal personality pursuant to Articles 60 ff. of the Swiss Civil Code.

Article 27

The Congress is the general meeting of members and the highest authority of the UCI.

Article 29

1. The Congress shall have the following exclusive powers and duties:

a) Alteration of the Constitution and dissolution of the association;

Article 30

1. Notices convening the Congress shall be sent to the federations at least sixty days before the date of the Congress. The continental confederations will be sent a copy. The notices shall indicate the date, the time, and the place of the Congress as well as the agenda. Should the case arise, they will be accompanied by the full text of any proposals to amend the Constitution and the list of the candidates for the presidency and the Management Committee.

Article 31

3. With the exception of alterations to the Constitution, any question not on the agenda of the Congress can be added to be discussed and voted on by the Congress at the request of fifteen federations.

Article 38

3. A majority of two thirds of the votes cast shall be required in the following cases:

c) amendment of the Constitution.

Nevertheless, the dispositions of Articles 23, 36, 38, 47, and 48.1 of the present Constitution cannot be amended except by a majority of three quarters of the votes cast.

Article 44

Unless otherwise decided by the Congress, the decisions of the Congress shall be effective immediately.

Article 45

2. The Management Committee shall be vested with the most extensive powers as regards the management of the UCI and the regulation of cycling sports. It shall decide all matters not otherwise reserved to another policy body by this Constitution.

Article 51

1. The candidates for the presidency shall be nominated by the federation of the candidate.

Article 53

6. If a member of the Management Committee is no longer a member of his national federation, the Management Committee will decide, at the request of this federation, if it will enter the vote on the possible dismissal of this member on the agenda of the next Congress.

UCI - GENERAL RULES OF THE ORGANISATION OF SPORT CYCLING

1.1.009 A licence holder may hold the licence of only one national federation.

Conclusion:

Therefore it is clear that:

- a. Mc Quaid several times violated the UCI rules, being licenced to four (4!) federations.
- b. the UCI Management Committee is not allowed to take power to amend the Statute, being exclusively reserved in attribution to the Congress. Thus it cannot (in no way) proposes rules that will modify and alter the electoral rules stated by the UCI Statute, overall when those are working in progress in electoral period.
- c. the retroactive application provided by the "Swiss law" (a sort of justification summarily and roughly adopted by the lawyers), as claimed by Baker & McKenzie, is not applicable in accordance with the statutory provision under UCI Statute (Article 44), that establishes that deliberations of the UCI Congress on amendments to the Statute have only two options. The first is the immediate application and effect, the second one is the deferred application (if explicitly approved by the UCI Congress). In any case never apply retroactively.

SWISS CIVIL CODE

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