



”Institutional Liability in Sport vs IFs’ Quasi Monopoly”

or

“Principles of Integrity, Health and Safety vs Commercial Interests in Sport”

1st Annual Conference on EU Law - Competition and Sport

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24.05.2024

- https://www.youtube.com/watch?v=vT8n_cpx73o
- **Nodar Kumaritashvili** (25.11.1988 - 12.02.2010) was a Georgian luge athlete who suffered a fatal crash during a training run for the 2010 Winter Olympics competition in Whistler, British Columbia, Canada, on the day of the opening ceremony.



- He became the fourth athlete to die during preparations for a Winter Olympics, and the eighth athlete to die as a result of Olympic competition or during practice at their sport's venue at an Olympic Games.
- Who was liable for this tragic accident? The IF, IOC, NOC, LOC, Venue, or only the Athlete???

Institutional Liability in Sport vs IFs' Monopily

CASE AT.40208 - International Skating Union's Eligibility Rules

3

- According to the ISU's Eligibility rules adopted in 2014 (the "2014 Eligibility rules") - which clarified the Eligibility rules as they were already in place since 1987 - a speed skater became ineligible for a period up to a lifetime to participate in the ISU's international speed skating events if he or she participated in any speed skating events not authorized by the ISU or one of its Members.
- On 23 June 2014, the Commission received a complaint pursuant to Article 7 of Regulation (EC) No 1/2003, lodged by two Dutch professional speed skaters against the 2014 Eligibility rules³⁴.
- The Complainants alleged in their complaint that the 2014 Eligibility rules establishing a lifetime ban for athletes and officials taking part in competitions not authorized by the ISU were in breach of Articles 101 and 102 of the Treaty.

EU Commission Rule

4

On the 8th of December 2017, the European Commission ruled that ISU's eligibility rules breached EU competition law.

In particular, the Commission focused on the ISU's eligibility rule, according to which speed skaters participating in competitions that were not approved by the ISU face severe penalties up to a lifetime ban from all major international speed skating events.

The Commission found that such rules restrict competition and enable the ISU to pursue its own commercial interests to the detriment of athletes and organizers of competing events.

Conclusions

5

In light of content and objectives of the Eligibility rules, their economic and legal context and the ISU's intent to exclude competition from third party organisers, the Commission concludes that the **Eligibility rules restrict competition** by object in the worldwide market for the organisation and commercial exploitation of international speed skating events within the meaning of Article 101(1) of the Treaty, even though the Eligibility rules may at the same time also **pursue other objectives** such as **protecting the integrity of the sport**.

ISU Statement vs EU Commission Decision

6

The International Skating Union (ISU) disagrees with the European Commission's decision that the ISU's eligibility rules breach EU competition law. **The decision failed to consider the specific nature of sport by putting commercial interests ahead of the principles of integrity, health and safety that protect fair play in sport.** This contravenes the Treaty which recognises the voluntary, social and educational functions of sport. The decision harms not only the ISU but also Skaters and the entire Skating community.

The ISU cannot accept the proposition that the ISU should allow Skaters to compete in unauthorized events where their organizers refuse to adhere to the ISU's standards. **Without the enforcement of these standards there is no safeguard for the protection of the health and safety of Skaters and the integrity of the sport at these unauthorised events.** The ISU is not in a position to check and enforce its standards upon unauthorised events. It is for this reason that Skaters are required to participate in events authorised by the ISU (which includes authorised events by independent organisers) and not unauthorised events.

Rule 102 - Eligibility Status B)

7

As the ISU is only able to adequately protect and enforce these objectives in events which have been sanctioned by the ISU, it is indispensable to the attainment of these objectives that an eligible person is one who elects to take part only in International Competitions which are:

- i) sanctioned by the ISU, if the type of event falls under the jurisdiction of the ISU based on Article 3 of the ISU Constitution;
- ii) conducted by ISU recognized and approved Officials, including Referees, Technical Controllers, Technical Specialists, Judges, Starters, Competitors' Stewards and other Officials approved by the ISU; and
- iii) conducted under ISU Regulations (subject to any novelties approved by the ISU Council thus exempting them from the otherwise applicable ISU Rule).

B. Eligibility; Rule 102; 7 Loss of Eligibility As to an Athlete

8

- i) issue a “no fault” finding for a first time breach where the Skater participated in an event that would clearly have been sanctioned by the ISU but for administrative error by the organizer of the unsanctioned event or a “warning” for a first time breach where the Skater was reasonably aware that the event was not sanctioned (and there is no suggestion of an administrative error by the organizer) but has demonstrated that the event otherwise adhered to the objectives of the ISU protected by the eligibility Rules;
- ii) impose a warning or period of ineligibility for up to one (1) year for a first time participation at a non-sanctioned event where clearly the event would not have been sanctioned;
- iii) impose a warning or period of ineligibility for up to two (2) years for any further participation at a non-sanctioned event, where clearly the event would not have been sanctioned.

B. Eligibility; Rule 102; 7 Loss of Eligibility: As to an Official

9

- i) Issue a warning in case of a minor violation, which includes first-time participation in a non-sanctioned event which would otherwise have been sanctioned;
- ii) Impose a period of ineligibility for up to one (1) year for a first-time participation at a non-sanctioned event where clearly the event would not have been sanctioned;
- iii) Impose a period of ineligibility for up to two (2) years for any further participation at a non-sanctioned event which would otherwise have been sanctioned;
- iv) Impose a period of ineligibility for up to two (2) years for a second-time participation at a non-sanctioned event where clearly the event would not have been sanctioned;
- v) Impose a period of ineligibility for up to fifteen (15) years for any further participation at a non-sanctioned event where clearly the event would not have been sanctioned.

Walrave & Koch v. UCI Case (C-36/74)

10

The case concerning the freedom of movement of persons - arising from the sport of cycling - is the first in a series of court cases (dating back to 1974!), the essence of which is that the International Cycling Union (UCI) rule in force in 1973 required cyclists and their motorcycle companions to have the same nationality at the World Championships.

However, two Dutch riders refused to accept this rule and entered a race with a German and a Belgian cyclist.

The European Court of Justice ruled against the two Dutch riders (Walrave and Koch) on the grounds that the **Community is only entitled to intervene if sport constitutes an economic activity (commercial interest)**.

The Court also ruled that discrimination on grounds of nationality is not in line with the Treaty provisions prohibiting any discrimination on grounds of nationality (Article 7), ensuring the free movement of workers (Article 48) and the free provision of services (Article 59) between Member States.

And the prohibition of discrimination on grounds of nationality applies not only to government measures but also to non-governmental organisations and their measures (such as the statutes of sports federations).

The European Court of Justice has allowed one exception to the prohibition of discrimination on grounds of nationality: since the national teams are made up solely on the basis of sporting interests, and therefore not on economic grounds, there is no discrimination on grounds of nationality. Therefore, there is no conflict with Community law.

Doná v. Mantero Case (C-13/76)

11

European Court of Justice (1976): compatibility of a provision of the Italian Football Federation with Community law. Under the Italian Football Federation's regulations, only players of Italian nationality were allowed to participate in the league. Mr Mantero (the president of an Italian football club) entrusted Mr Doná with the task of recruiting players for his team (as a so-called 'player-manager'). Mr Doná placed an advertisement in a Belgian newspaper on the basis of the mandate, but Mr Mantero refused to bear the costs of this, claiming that he wished to recruit only Italian players for his team.

European Court of Justice: discrimination on grounds of nationality is not in line with the Treaty (Articles 7, 48 and 59). Nor should professional footballers be deprived of the rights guaranteed by the Treaty. It also follows that a contrary provision of the Italian Football Federation is incompatible with Community law.

Furthermore, the Court of Justice of the European Communities has ruled, in accordance with Article 2 of the Treaty, that only ***professional and semi-professional sport is subject to Community law: 'sporting activities are subject to Community law only if they can be regarded as forming part of economic life' (commercial interest).***

It is also concluded that the Community rules do not apply to amateur sportsmen and sportswomen. It should be stressed that, according to the judgment, this applies only to members of club teams and not to members of national teams, since the Court of Justice has already allowed an exception to the prohibition of discrimination in the latter case, where sporting considerations prevail over economic considerations (cf. Walrave and Koch v. UCI).

The European Sport Model

12

The European Sport Model and the specific nature of sport in Europe should be recognised and supported. A differentiation should be made between non-profit sport organisations and commercial providers of sport services. One particular example is the application of antitrust policy as the pyramidal structure of sport with its unique role of federations should be taken into consideration when applying the relevant Treaty articles. This structure ensures the sustainability of grassroots sport and its social benefits (e.g. social inclusion), for instance through the solidarity mechanisms in sport.

Promotion, Relegation, Solidarity in Sport

13

It is designed to reward merit and promote equality of opportunity and balance competition among teams.

The promotion and relegation system also performs an ethical function by mandating relegation to a lower tier of any team that has engaged in specified questionable practices.

The European Sport Model is based upon Sporting Federations and is characterized by a long tradition of autonomous, democratic, territorial and pyramidal organization of sporting and financial solidarity mechanisms such as promotion and relegation, open competitions involving clubs and national teams.

IOC President Thomas Bach on European Sport Model

14

“Our concern stems from the fact that a **purely market-based** approach to sport organisations would **ignore** the **social contribution of sport** to help achieve objectives of common interest. **Without a proportional application of the anti-trust rules**, a **sport organisations** would be **treated** like a regular **for-profit business**. Some appear to ignore the fact that it is the sport organisations, through the **grassroots**, the **clubs** and **associations** that are **investing in youth**. We have millions of **volunteers** who are contributing their time and skills to bring the benefits of sport to society. Such sport organisations **cannot be compared** to commercial sports businesses at the top of the pyramid, who want to cherry-pick and profit from this system for **commercial interests** without contributing to the spread of sport and its values.”

Summary & Conclusions

- **Fact:** Ifs do govern their sport, adopt, apply and enforce their own rules. In case of violation of their rules, IFs do even establish their own jurisdiction in disputes to rule and issue judgement.
- **Question:** Does the Rule of Law principle, specifically the Separation of Powers in Sport exist?
- Indeed, a quasi-legal monopoly status may be observed
- Protection of integrity, safety and health in sport seem to collide with such monopole position (exclusive recognition) of IFs
- **Strong competitions among IFs:** GAISF terminated / dissolved
- **IOC Recognition:** IBA vs World Boxing. Global structure: exclusive recognition per sport.
- **ESM Advantages:** inclusion, solidarity, good governance, liability
- **ESM Disadvantages:** quasi monopole status



24.05.2024

15