



Introduction to Sports Law

26 June 2019

Duration: 120 minutes

- Please check at receipt of the exam the number of question sheets. The examination contains 5 pages and 2 questions.

Notes on marking

- When marking the exam each question is weighted separately. Points are distributed to the individual questions as follows:

Part I 50 %

Part II 50 %

Total 100 %

We wish you a lot of success!



Part I (Weight: 50%)

The International Paralympic Committee ("IPC") with seat in Germany is the world federation for Paralympic sports. The IPC organizes the summer and winter Paralympic Games and supervises world championships in different sports and other Paralympic sports competitions. The members of the IPC consist of the National Paralympic Committees.

The Russian Paralympic Committee ("RPC") is the Russian national association for Paralympic sport. Its members include Russian sport associations, registered Russian non-profit organizations and Russian Paralympic athletes.

In 2016, an attorney appointed by the World Anti-Doping Agency ("WADA"), published a report which described systematic state-sponsored doping of Russian Athletes during the Olympic Games 2014 in Sochi. Thereafter, the IPC initiated internal proceedings against the RPC. The internal proceedings resulted in the suspension of the RPC's membership rights as of 7 August 2016. The IPC was of the view that the RPC was unable to comply with its membership obligations, in particular, with its obligations under the IPC Anti-Doping Code and the WADA Code.

The decision on the suspension emphasized the importance that the RPC should no longer be able to nominate athletes for the IPC competitions, in particular for the summer Paralympic Games 2016 in Rio de Janeiro, which were held from 7 to 18 September 2016. Due to this suspension of the RPC, the Russian Paralympic athletes were not allowed to take part in the Paralympic Games 2016 in Brazil.

On 11 August 2016, the IPC and the RPC signed an arbitration agreement providing for the jurisdiction of the Court of Arbitration for Sport ("CAS"). The arbitration agreement stated that both parties agree to the jurisdiction of CAS and that the award of CAS shall be *"final and non-appealable"*. No athletes were allowed to participate in the proceedings before CAS.

On 15 August 2016, the RPC filed an appeal against its suspension from the IPC. After a hearing took place on 22 August 2016 in Rio de Janeiro, the CAS confirmed one day later the RPC's suspension as imposed by the IPC.

Question:

On 20 September 2016, the representatives of the RPC approach you and ask you whether there is any legal remedy the RPC can take against this CAS award. The RPC would like to receive a detailed analysis of the prerequisites of such a remedy, the possible legal grounds to challenge this award and an assessment of its chances of success.

Part II (Weight: 50%)

Mr. K is a 23-year old Swedish ski racer living in Austria and a member of the Swedish national alpine skiing team. He is not an employee of the Swedish Ski Federation ("SSF") but has



signed a standard athlete's contract with the SSF in order to be able to participate in the national team. Only the International Ski Federation ("FIS") and its national federations, such as the SSF, organize alpine skiing races of financial value to alpine skiers. The SSF is a non-profit organization whose purpose is, inter alia, to provide the best possible conditions for skiing at elite and popular level. This includes recruitment, education and children's and recreational sports. The SSF is mainly financed by marketing revenues (around 71% of SSF's total income) and is affiliated to the Swedish Olympic Committee and FIS. The SSF covers all expenses (e.g. board and lodging, transport, equipment, medical support, etc.) of the members of the Swedish national alpine team for approx. 200 days a year, but the athletes do not receive any of the funds that the SSF collects from the main and co-sponsors as the athletes' own income.

Mr. K intends to enter into a sponsorship agreement with Red Bull (with seat in Austria). At stake are the commercial markings on his helmet and headgear in races organized under the SSF's umbrella. However, according to the applicable regulations, individual sponsorship agreements are subject to the SSF's approval. There is only one exception where such an approval is not necessary: The SSF's standard athlete contract foresees that an athlete may enter into individual sponsorship agreements with equipment providers in the so-called SSF "skipool". The SSF "skipool" is a pool scheme that is open to selected equipment suppliers without requiring the SSF's approval. To become a member of the SSF "skipool", suppliers must be approved as an equipment supplier by the FIS or SSF. In addition, they also must pay an annual fee to the SSF. Red Bull, the sponsor with which Mr. K intends to enter into a contractual relationship, is not a member of the SSF "skipool". For this reason, Mr. K asks the SSF for its permission to enter into a sponsorship agreement with Red Bull. The SSF refused this sponsorship because it had already granted the advertising on helmet and headgear to its own main sponsor, Telenor.

Question:

Mr. K approaches you and requests a legal analysis. Mr. K would like to know in detail whether Art. 49 (freedom of establishment) and / or Art. 56 (freedom to provide services) on the Treaty on the Functioning of the European Union ("TFEU") are infringed.

Note: Relevant provisions of the concerned federations on the following pages



The "FIS International Ski Competition Rules, Joint Regulations for Alpine Skiing" contain the following provisions:

Article 200.3:

"Competitions listed in the FIS Calendar are only open to all properly licensed competitors entered by their National Ski Associations in accordance with current quotas."

Article 204.1:

"A National Ski Association shall not support or recognise within its structure, nor shall it issue a licence to participate in FIS or national races to any competitor who:

[...]

permits or has permitted his name, title or individual picture to be used for advertising, except when the National Ski Association concerned, or its pool for this purpose, is party to the contract for sponsorship, equipment or advertisements. [...]"

The "Swedish Olympic Committee's Statutes" contain the following provisions:

Section 13:

"Entering into contracts and establishing collaboration between the sport and commercial undertakings shall take place in writing. Only organisational entities may be party to such contracts/collaboration unless otherwise specified in Section 14-4(2) of the [Swedish Olympic Committee's] Statute."

Section 14:

"The purpose of the provisions of this chapter is to regulate the sport's internal rights as regards event-related and market-related conditions, having regard to the structure and organisation of the sport and considerations of solidarity in the sports organisation."

Section 14-4(1) and (2):

"(1) The right to enter into marketing contracts rests with the organisational entity of the sport. A marketing contract means any agreement that entitles a legal person to exploit an organisational entity and/or its affiliated athletes in its marketing or other activities.

(2) An organisational entity may permit that an athlete be given the right to enter into individual marketing contracts within the framework set out by the individual sports federation. This applies both to athletes who are members of a sports club and athletes who participate in a national team or have other representation duties. The organisational entity shall approve such contracts and ensure that it receives a fair share of the income generated by the athletes' own marketing contracts."



The "SSF Joint Regulations" permit athletes to enter into individual marketing contracts under the conditions of point 206.2.5:

"(a) the relevant organisational entity has given its written consent for the athlete to initiate negotiations with the partner in question,

(b) the organisational entity approves the contract by co-signing it together with the parties (athlete and partner), and

(c) the organisational entity receives a fair share of the value that the collaboration agreement represents.

The organisational entity may refuse to accept the athlete's proposal for a contract with the sponsor. [...]"