

Legal Highlights: Sport Claims

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Elena Trusova has been an attorney since 2002. With her participation, judicial and arbitration disputes have been successfully resolved and a multitude of large-scale consultation projects implemented, including ones relating to sports. She worked successfully with such clients as the International Federation of the Phonographic Industry (IFPI), Estee Lauder, Axel Springer Russia and Novator and Elena herself advised within the scope of the Sochi Winter Olympics.

The Sochi Olympics have just finished, where microseconds determined some results, and where judges' decisions were greeted with whistles and screams as fans voiced their approval or disdain.

Many sports fans who recall the Canadian figure skaters getting a second set of gold medals during the 2002 Salt Lake City Olympics, after the Russian pair got their gold, wondered whether competition results could be challenged in the legal field.

Sports disputes are invariably quite contentious, but do not usually involve the reversal of sports judges' decisions. They include, for example, doping disputes, disputes associated with access to competitions, transfers from one club to another, the dismissal of athletes, and sometimes the disciplining or disqualification of athletes.

Many sports cases are decided by arbitration tribunals rather than state courts. This is because sports disputes are quite specific, because they need to be resolved quickly, taking into account the actual specifics of a particular sport.

There is an arbitration panel that resolves disputes arising during the Olympic Games —

the Court of Arbitration for Sport (CAS) (Lausanne, Switzerland). Its special tribunal ("the CAS ad hoc Division") is located wherever the Olympics are taking place, and has for the last few weeks been in Sochi.

The key feature of the CAS ad hoc Division is that, generally, they make decisions within 24 hours, which is critical for the Olympics. The panel is usually composed of three arbitrators, and athletes are not required to pay any fees or charges for their disputes to be resolved. Normally, the judgments are "final and without appeal."

Over the recent years, the CAS ad hoc Division has resolved up to 11 disputes during one Olympic Games. One of the disputes that arose during the Sochi Olympics, and which was resolved by the CAS ad hoc Division, involved the claim brought by Maria Belen Simari Birkner, an Argentinean skier, against the Argentinean ski federation (FASA) and the Argentinean NOC (COA) for entering her in the XXII Olympic Winter Games to compete in the Alpine Skiing events of Slalom, Super G and Giant Slalom. The athlete alleged discrimination by the COA on the basis of her family affiliation — a form of discrimination prohibited by and incompatible with the Olympic Charter and Fundamental Olympic Principles. Her claim was dismissed because she had not established that the COA decision was discriminatory.

One of the most topical and interesting issues in sports arbitration refers to the possibility of challenging judges' decisions. The Sochi Olympics have proved that decisions relating to particular sports competitions do not always look indisputable and correct to athletes or the audience. Did we have any chance to challenge the decision of the American referee who disallowed a goal scored by our player in the U.S.-Russia hockey match (because the net had come loose from the ice before the goal was scored)? Could Korea challenge the gold medal won by Russian figure skater Adelina Sotnikova alleging that her marks were overstated? Decisions of sports judges are so-called "Field of Play decisions" which may only be challenged through sports arbitration in only a limited number of cases. The legal position of the CAS (for example, see the award dated 8 September 2005), reflects a policy of "Non-interference in Field of Play decisions" and normally matters considered by the CAS ad hoc Division reflect circumstances where competition decisions can be demonstrated to be arbitrary, or involve corruption or bad faith.

One of the few judges decisions that might be reversed by the CAS ad hoc Division is the one that awarded gold medals to the Russian figure skaters at the 2002 Salt Lake City Olympics, when the Russian pair, Elena Berezhnaya and Anton Sikharulidze, outscored the Canada's Jamie Salé and David Pelletier by one judge's vote. The French judge said he was pressured by the management of the French Federation of Figure Skating. In that case, the International Olympic Committee decided to award a second set of gold medals to the Canadian skaters before the dispute was resolved by the CAS ad hoc Division.

Another mechanism for challenging decisions is provided by the operational rules of sports federations (for example, the rules applied to figure skaters are determined by the International Skating Union, the rules for hockey players — by the International Ice Hockey Federation). According to the International Skating Union Constitution and General Regulations 2012, a protest to a judges decision must be submitted within 30 minutes of the conclusion of the competition; however according to regulations as a general rule a protest is only possible in the event of an incorrect mathematical calculation.

Therefore, despite well-developed sport legislation systems, sport competition decisions cannot generally be revised by sport arbitration, and cases when competition results have been overturned by legal decisions are rare. However, in cases of other sport disputes, such as instances of doping or disqualification, legal avenues may lead to a positive outcome for athletes.

* Goltsblat BLP is the Russian practice of Berwin Leighton Paisner (BLP), an award-winning international law firm headquartered in London and with offices operating in major commercial and financial centres throughout the world — Moscow, Abu Dhabi, Beijing, Berlin, Brussels, Dubai, Frankfurt, Hong Kong, Paris and Singapore.

The firm has a team of 100 Russian, English and US law qualified lawyers based in Moscow and over 800 lawyers in the other international offices.

Goltsblat BLP currently has over 700 clients among the major international investors operating in Russia, including 23 Fortune 500 companies.

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