

Case Hungarian and Russian Canoe Federations v. International Canoe Federation

CAS 2020/A/7590-7591

COMMENT ON THE CAS AWARD OF 23 DECEMBER 2021

CAS fine tunes fundamental concepts such as the definition of an appealable decision, the Appellants standing to sue, the Respondent's standing to be sued alone and the admissibility of declaratory prayers for relief.

CAS further confirms that the Olympic Games Program belongs to the IOC and not to the International Federation or the National Federations.

In an award dated 23 December 2021, the Court of Arbitration for Sport (CAS) dismissed the appeal filed by the Hungarian Canoe Federation (HCF) and the Russian Canoe Federation (RCF), both aimed against a purported decision taken by the International Canoe Federation (ICF), relating to a proposal made to the International Olympic Committee (IOC) to transfer two medals from the Canoe Sprint event to the Extreme Slalom event (the "ICF Proposal"). Such Proposal was adopted on 24 November 2020 by the ICF Board of Directors and referred to the IOC.

On 7 December 2020, the IOC published on its official website that its Executive Board had accepted the Olympic Event Programme for the Paris 2024 Olympic Games, including the ICF Proposal.

In its appeal, the HCF requested that the ICF Proposal be declared contrary to the ICF Constitution and Competition Rules. In turn, the RCF requested the same and, in addition, that the ICF Proposal be cancelled.

In its answer, the ICF requested that the appeal be dismissed, putting forward that the ICF Proposal was not a decision producing legal effect and was therefore not subject to an appeal, that the Appellants did not have the standing to appeal against the ICF Proposal, as they were only indirectly affected by the latter, that ICF did not have standing to be sued alone, as the final decision on the Olympic Programme pertained to the IOC, which was not a party to the proceedings, and that the Appellants' declaratory prayers for relief (to declare that the ICF Proposal had been taken in violation of the ICF Constitution and regulations) were inadmissible.

After a thorough review of the jurisprudence issued by the CAS and by the Swiss Federal Tribunal, as well as of the relevant legal literature, the CAS Panel dismissed the Appellants' appeals for the following reasons:

The ICF Proposal Was Not a Decision Subject to an Appeal

The CAS Panel considered that the only decision which produced legal effect was the IOC Executive Committee decision to change the Canoe Olympic Event Programme. Only that decision materially affected the Appellants' situation between them and the IOC. The CAS Panel concluded that it was obvious that the ICF Proposal did not produce any legal effects and was certainly not affecting the Appellants' membership rights or legal situation. Therefore, the ICF Proposal did not amount to a decision in the sense of Article R47 of the CAS Code. The only possibility to change the legal situation produced by the IOC Executive Committee would have been to challenge the latter's decision. Accordingly, and for that reason only, the appeals were not admissible.

Lack of Standing to Appeal

Here again, the CAS Panel recalled the jurisprudence of the CAS and of the Swiss Federal Tribunal, as well as the relevant legal literature, in relation to the requirement of the existence of a legal interest to have standing. The CAS Panel considered that the Appellants were not involved in the process leading to the ICF Proposal and were not the addressees of the same. Therefore, they could only be indirectly affected. The Panel further reckoned that there was not specific rule providing for a right to appeal by indirectly affected Parties and that, concretely, none of the Appellants' rights were actually disposed of in the ICF Proposal. It highlighted that:

No International Federation has any right to impose an Olympic Event Programme on the IOC. If, however, no International Federation has such right, no member federation of such International Federation has such right either. In other words, the Respondent as International Federation does not have any right to impose the Olympic Event Programme on the IOC and the Appellants, as member federation of the Respondent, do not have any right either.

The CAS Panel therefore concluded that the Appellant did not have standing to appeal the ICF Proposal, even if the latter had been an actual decision.

Lack of Standing to Be Sued Alone

In its answer, the ICF pointed out that according to Swiss Law, a Respondent has standing to be sued if it is personally obliged by the "disputed rights" at stake. As the transfer of medals in the Canoeing Olympic Games Programme for Paris 2024 had been taken by the IOC Executive Committee, the request could not be filed against the Respondent alone without taking the IOC as second Respondent.

The CAS Panel considered that the Olympic Charter clearly provides that the Olympic Games Programme is decided by the IOC itself and that no International Federation has any right in that respect. Therefore, the Appellants' prayers for relief to cancel the change of the Olympic



Games Programme for Paris 2024 regarding Canoeing should have been filed against the IOC and not against the ICF, which merely made a proposal.

Admissibility of Declaratory Reliefs

In its answer, the Respondent put forward that the Appellant had failed to demonstrate the existence of a special legal interest and of a legal uncertainty, both required for declaratory reliefs to be admissible, in addition to the impossibility to resolve the dispute by any other way than a declaratory relief.

The CAS Panel expressed the opinion that the Appellants do not have any legal interest to set aside the ICF Proposal. They only had a factual interest to ensure as many Canoe Sprint Events as possible remain in the Olympic Games Programme. In lieu of requesting for a declaration of the purported violation of the ICF Constitution and Regulations, the Appellants would have needed to pray for performance, which they did not, as they did not challenge the decision that might have affected them, namely the IOC decision to change the Olympic Programme.

Accordingly, the Appellants' declaratory prayers for relief were considered inadmissible.

Final Comments

It is desirable that the CAS publishes this award, which should serve as a useful guidance for CAS practitioners when the above-mentioned concepts are at stake.

This precedent is not really a cornerstone in the CAS jurisprudence but constitutes a pragmatic refresh not only of the definitions of an appealable decision, the standing to appeal, the standing to be sued and the admissibility of the declaratory prayers for relief, but also of the principle that the rights over the organisation of Olympic Events and of the Olympic Programme belong exclusively to the IOC and not to the International Federations, let alone to their National Federations.

Lausanne on 4 February 2022

Jorge Ibarrola
Partner at Libra Law