worldsportslawreport

THE NEWSLETTER FOR THE SPORTS BUSINESS
VOLUME 09 ISSUE 05 MAY 2011
WWW.E-COMLAW.COM

Traders must reapply for L2012 licences

Licensed street traders face having to reapply for a licence to trade in public places within 'event zones' during the London 2012 Olympic Games under UK Government plans. 'In the areas where the regulations will apply (the "event zones") during the periods when they apply ("relevant periods"), the regulations will override any existing advertising and trading authorisations and licences', reads 'Regulations on Advertising Activity and Trading Around London 2012', a March consultation launched by the Department for Culture Media and Sport (DCMS) that closes on 30 May.

There are 26 event zones covering large areas of London and more. "All unauthorised advertising is banned", said Guy Osborn, a Professor in Law at the University of Westminster at Ithaca College's conference on Law, Policy and the Olympic Movement on 20 May. "News vendors are exempt, as is milk delivery, taxis and buses. All unauthorised trade is also banned – for example, ice cream vans are banned and all boats are banned from sailing on Weymouth harbour from two weeks before the sailing event until after it finishes. There is a question about whether this is proportionate."

IN THIS ISSUE

Player agents Cricket regulates agents **03**
Doping Athlete status during ineligibility **06**
Gambling Integrity: the amateur perspective **08**
Ticketing Obtaining touting information **11**
Doping Olympic bans for convicted dopers **14**

Arbitration court to rule on Tampere United's expulsion

An independent arbitration court will rule on Tampere United's appeal against its expulsion from all competitions by the Finland football association (SPL) for violating rules on third party influence before the end of May. The Suomen Palloliitto's (SPL) disciplinary commission found Tampere in violation of Article 18bis of FIFA's Regulations for the Status and Transfer of Players, which prevents clubs from entering into contracts which enable third parties to influence 'employment and transfer-related matters'. Clubs must comply with FIFA and UEFA rules under §5, paragraph 2 of the SPL's rules. Tampere's punishment is the harshest possible under SPL rules, as it suspects that Tampere had become involved in a plan to fix matches.

The SPL said that Tampere had a marketing agreement with Singapore company Exclusive Sports PTE Ltd. (ESP), which supplied €300,000 to the club. In return, Tampere agreed to use players provided by ESP and to pay ESP back if the company considers such players haven't played enough games. ESP also had a say in the sale of players. It is understood that ESP worked with Wilson Raj Perumal, a player agent arrested in Finland for having fake ID, who is suspected of fixing games.

"This is the first time that Article 18bis has been applied in practice", said Pekka Albert Aho, a Lawyer with Studio ELSA Avvocati Associati. "The case should provide some clarity as to the situations in which third party influence on a football club can be sanctioned according to the article and clarify the rules concerning outside investors. Secondly, match-fixing is currently a hot topic and the application of Article 18bis as a means to combat it is surely an interesting perspective for FIFA and national federations."

The appeals committee of the SPL refused to suspend the ban, stating on 27 April that it had 'a reasonable degree of certainty that by cooperating with ESP, Tampere has become involved with illegal betting or other criminal activity'. Finland's national bureau of investigation released a 20 May statement that following an investigation, it will 'move for prosecution' against 'a Singaporean man suspected of attempting to influence the outcome of three matches through payment of financial compensation to 11 players'.

Perumal was also being investigated by FIFA, which on 9 May committed €20 million to a ten-year programme to tackle corruption with Interpol.

ICC investigates regulation of player agents in cricket

The International Cricket Council (ICC) is investigating whether it should regulate the use of player agents after two national associations issued separate player agent regulations in response to last year's spot-fixing case involving player agent Mazhar Majeed.

"The ICC does not currently regulate use of player agents but the recent corruption case obviously raised concerns about this, so that we are considering the position in this regard", said Iain Higgins, Company Lawyer for the International Cricket Council (ICC). "In the meantime, our Members have been encouraged to put in place effective regulation for agents operating within their respective domestic jurisdictions".

Regulations issued by the England and Wales Cricket Board (ECB) that came into force on 1 April have been welcomed. However regulations issued last year by the Pakistan Cricket Board (PCB) have faced criticism regarding their drafting and a 200,000 Rupee (£2,700) registration fee.

"The Professional Cricketers Association (PCA) supports the regulation of agents", said Ian Smith, PCA Legal Director. "Agents are happy with the ECB regulations, however we are outraged by the PCB regulations, which appear to be just a form of making money".

'The PCB regulations fail to address the basic question of who is an "agent" and what constitutes "agency activity", although the regulations refer to both terms in their definitions', writes Amrut Joshi, an Advocate with MMB Legal, in this edition of *World Sports Law Report*.

IOC 'Osaka rule': prohibition of dopers from the Olympics

The Court of Arbitration for Sport has been asked to rule on the legitimacy of the IOC's Regulations Regarding Participation in the Olympic Games - Rule 45 of the Olympic Charter, which bans athletes convicted of doping from competing at the next edition of the Olympic Games. Alexandre Miguel Mestre, a Senior Associate with PLMJ, examines whether the so-called 'Osaka Rule' constitutes a disciplinary sanction or an eligibility condition, assessing whether it constitutes a violation of the common law principle that double punishments should be prohibited.

Introduction

On 27 April, the International Olympic Committee (IOC) announced: 'The International Olympic Committee (IOC) and the U.S. Olympic Committee (USOC) have agreed to ask the Court of Arbitration for Sport (CAS) for a definitive ruling concerning the IOC's "Regulations Regarding Participation in the Olympic Games - Rule 45 of the Olympic Charter", known as the "Osaka" or "6 Month" rule'[1]. The position of CAS will be vital in the countdown to the London 2012 Olympic Games (OG), as its role will be to provide the necessary legal certainty and to clarify who may and who may not take part in the said event. In this context, a discussion of the 'Osaka Rule'[2] is therefore necessary. This short article is our modest contribution to that discussion.

The 'Osaka Rule' and similar rules in sport

According to the 'Osaka Rule', '[a]ny person who has been sanctioned with a suspension of more than six months by any anti-doping organization for any violation of any anti-doping regulations may not participate, in any capacity, in the next edition of the Games of the Olympiad and of the Olympic Winter Games following the date of expiry of such suspension'.

This rule is very similar to a rule that was considered by CAS in the Valverde[3] award, according to which a licensee, in relation to which an investigation has been commenced regarding a fact that could amount to a violation of the Union Cycliste Internationale anti-doping regulations, cannot be selected for the world championships. CAS classified the said rules as a disciplinary sanction (§ 53). In another case[4], CAS considered that there was 'at least an inherent disciplinary aspect' in a rule in the 'UEFA Champions League Regulations', which established the following necessary requirement: '[t]o be eligible to participate in the competition', the club in question 'must not be or have been involved in any activity aimed at arranging or influencing the outcome of a match at national or international level'.

With all due respect, I disagree with the said classification. What is involved here is not a disciplinary sanction for violation of a rule of conduct but a participation requirement, an eligibility condition for participation in the OG. The key words are in fact eligibility and participation.

History of the 'Osaka Rule'

A historical interpretation of the rule takes us back to 1964 when the 'Eligibility Rules of the International Olympic Committee', were adopted one of which concerned 'Doping of athletes', and had the following text: 'The use of drugs or artificial stimulants of any kind is condemned and any person offering or accepting dope, in any form whatsoever, cannot participate in the Olympic Games'.

So far as systematic interpretation is concerned, the IOC placed Rule 45 in the part of the Olympic Charter (OC), entitled 'Participation in the Olympic Games'[5], and not in the part regarding 'Measures and Sanctions'[6]. The first section within the said Rule is not only entitled 'Eligibility Code', but provides that '[t]o be eligible for participation in the Olympic Games', it is necessary to comply with both the OC and the World Anti-doping Code (WADC).

Finally, it appears from the text and purport of the rule that it is not intended to punish the athlete, as the punishment occurred previously when the disciplinary

sanction was imposed. What the rule involves is something quite different: i.e. the protection of the image, prestige and reputation of the OG, in terms of the ethical principles that are reflected in the OC, particularly in its Preamble. The credibility of the event depends, to a great extent, on the profile of those who take part in it and the history of the OG is such a valuable asset that it must be preserved in order not to place the future of the OG at risk.

Analysis

I do not consider that disciplinary jurisdiction and eligibility conditions should be regarded as equivalent. This can be seen from the differing nature of the legal assets intended to be protected by the rules. Essentially, the aim of any disciplinary sanction within the ambit of doping is the protection of the physical and mental health of athletes and to ensure fair competition between all participants, so that sports results are not the consequence of the administration of forbidden substances or methods which artificially improve athletes' performances. A rule that prevents participation in a sports event by those who have been punished for a disciplinary offence committed during another event, is different. In that case, the aim is to prevent the image, prestige and reputation of the event from being negatively affected by the participation of athletes who have not complied with the principles of sportsmanship and who are not identified with the principles and values inherent in the event. There are legal precedents for this. Firstly in the awards referred to above. In the Valverde award, the need to protect the integrity, serenity and reputation of the World Championships is invoked (§ 43)[7]; the decision regarding the UEFA rule states as follows: 'the candidate has seriously violated the values and objectives of UEFA. The intent and purpose of non-admission to the CL is (...) that a club, whose violation of UEFA's values and objectives has been established, "may not take part in the most prestigious competition unpunished."(§ 37)'.

Our position is that the 'Osaka Rule' does not involve a further disciplinary sanction, but rather concerns questions of eligibility and participation

Our position is that the 'Osaka Rule' does not involve a further disciplinary sanction, but rather concerns questions of eligibility and participation, even if there is a prior disciplinary sanction on which exclusion from participation is based. This view also finds support from the following:

- Rule 20.1.6 of the WADC, which provides that 'to agree to be bound by anti-doping rules on conformity with the Code' is 'a condition of such participation'.
- Article 48 of Portugal's 'Legal Framework governing Sports Federations'[8] which - under the heading of 'Eligibility requirements' - provides that persons who have been convicted of criminal offences, administrative misdemeanours or disciplinary offences involving doping are ineligible for election to the governing bodies of sports federations until five years after compliance with the penalty imposed.
- CAS also states[9] 'prosecution against doping is a condition to belong and to participate in the internationally recognized Sporting system and [...] failure to abide by and enforce anti-doping rules puts an entity outside the Olympic Movement'.

Conclusion

In the light of all of the matters stated above, it appears to me that the approach adopted by the IOC in another case decided by CAS[10] was correct: '(...) the right to accept or reject entries into the Olympic Games, and (...) the decision as to whether to accept or reject an entry is a purely administrative decision'.

However, even if the 'Osaka Rule' must be classified as a disciplinary sanction, I consider that there is nevertheless no question of double punishment (being punished twice for the same offence), contrary to the principle of *ne bis in idem* (double jeopardy, to use the common law expression). This is firstly because CAS itself held in 1996[11] that there was no violation of *ne bis in idem* when the sanctions are not based on the same rules and are of differing ambit, even if the facts are the same.

Accordingly, for instance, there is no violation of *ne bis in idem* when the IOC bans an athlete from taking part in the OG who has already served a two-year suspension from participation in a national event imposed by a national anti-doping agency in accordance with the national anti-doping rules.

Indeed, this appears to be the logic underlying the WADC. For example, Rule 23.5 - which is entitled 'Additional Consequences' - provides that violation of the WADC can also result in 'other consequences pursuant to the Olympic Charter', i.e. instead of the WADC establishing one or more ancillary sanctions, it refers to other rules in another text - the OC - which necessarily has a different and more limited ambit (limited to the OG)[12]. For all of these reasons, the question that has so concerned CAS does not arise here, i.e. the 'legitimate expectation [of the athlete] that, once he has completed the punishment imposed on him, he will be permitted to enter and participate in all competitions absent some new reason for refusing his entry'[13].

In any event, whatever the legal

classification of the 'Osaka Rule', it is my view that the rule is proportionate, as it does not involve permanent and complete ineligibility: The athlete is not permanently banned from competing in the OG and may always compete in other events organised by public and private, national and international organisations, particularly World Championships organised under the auspices of the corresponding International Federation. Accordingly, any potential for conflict between the 'Osaka Rule', on the one hand, and competition law[14] and the right to work, on the other, appears to be excluded.

Alexandre Miguel Mestre Senior Associate
A.M.Pereira, Sáragga Leal, Oliveira Martins, Júdice e Associados (PLMJ), Lisbon
alexandre.mestre@plmj.pt

Alexandre is Author of the book 'The Law of the Olympic Games' (2009).

1. www.olympic.org/media?articleid=126290, accessed on 27 April 2011.
2. Approved at the IOC Executive Board Meeting held in Athens on 27 June 2008, these Regulations apply to violations of any anti-doping regulations committed after 1 July 2008.
3. CAS 2007/0/1381 'RFEC & Alejandro Valverde c. UCI', award dated 26 September 2007.
4. CAS 2008/A/1583 'Sport Lisboa e Benfica Futebol SAD v. UEFA & FC Porto Futebol SAD' & CAS 2008/A/1584 'Vitória Sport Clube de Guimarães v. UEFA & FC Porto Futebol SAD', award dated 15 July 2008.
5. Rules 41 et seq.
6. Rules 23 et seq.
7. '(...) l' objectif est de '...protéger l'intégrité, la sérénité et la réputation des championnats du monde'.
8. Decree-Law no. 248-B/2008, of 31 December.
9. CAS 2005/C/481, CONI, 16 April 2005, § 61.
10. CAS ad hoc Division OG 02/001, 'Prusis & Latvian Olympic Committee (LOC)/IOC', award dated 5 February 2002.
11. CAS 96/156, 'Jessika Foschi v. FINA', award dated 6 October 1997, § 11.2.
12. The following is a Spanish example of the application of the ne bis in idem principle: The Spanish Sport Discipline Committee, which bases the specific features of sports disciplinary proceedings on the 'specific subordination' which exists in relation to the sports federations and therefore admits the possibility of ne bis in idem in sport, (cf., inter alia, Resolution no. 258/2001 bis).
13. See footnote 8, § 7.
14. See, inter alia, Judgment of the European Court of Justice in Case C-519/04 P, 'David Meca-Medina and Igor Majcen v. Commission of the European Communities', 18 July 2006, ECR 2006, p. I-6991.

SIGN UP FOR FREE E-LAW ALERTS

World Sports Law Report provides a free alert service. We send out updates on breaking news, forthcoming events and each month on the day of publication we send out the headlines and a precis of all of the articles in the issue.

To receive these free e-law alerts, register on **www.e-comlaw.com/updates.asp** or email **ngaio.claris@e-comlaw.com**