

A new “catch 22”: “Protective measures”, “preventive measures” and “sports sanctions” versus Russian athletes

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After the announcement of a Russian special military operation, the International Olympic Committee (IOC) on February 28, 2022 offered its Recommendations to the Olympic Movement (international sports federations and other global sports’ organizers) on the participation of subjects of Russian sports. The IOC recommended that Russian athletes should not be allowed to participate in international competitions unless Russian participants act as neutral athletes. Since that date, international sports federations have imposed and continue to impose multidirectional negative measures against Russian athletes. Despite the formally non-mandatory status of Recommendations, the federations have chosen Russian athletes’ suspension and not “neutral status”, with rare exceptions (and the nuances of the decisions): the International Judo Federation (IJF), the International Tennis Federation (ITF), the International Automobile Federation (FIA), the International Cycling Union (ICU). Unfortunately, suspensions of Russian athletes have become a “routine” practice of global sports in 2022. The speed of making suspension-decisions identical to the IOC Recommendations raised a well-founded question about the existence of legal grounds for suspensions in the regulation of international federations. This research is focused on the types and content of “measures” (“protective”, “preventive”, “sports sanctions”) against Russian athletes, including the IOC proposed “protective” doctrine. As a result, at least three main points were identified. First, the names “protective” and “preventive” are artificial, and all measures are identical in content. Second, at the time the measures were adopted, the statutes of the sports federations did not explicitly provide for either “protective measures” or “preventive measures”. Thirdly, the use of “sports sanctions” as “measures” is not based on the statutes and constitutions of international sports federations.

Keywords: International Olympic Committee, international sports federations, protective measures, preventive measures, sports sanctions, suspensions of athletes, Russian athletes.

1. Introduction

The concept of the European sports management pyramid traditionally does not reflect the position of the International Olympic Committee (hereafter — IOC, Committee). At the same time, the Committee is ipso facto responsible for the global Olympic movement and hosts the largest competition (the Olympic Games). The IOC carries out accreditation of international federations as developing sports in global scale in accord-

ance with Olympic values and principles: “In order to develop and promote the Olympic Movement, the IOC may recognize as International Sports Federations (hereafter — ISF, sports federations, organizers) international non-governmental organizations governing one or several sports at the world level, which extends by reference to those organizations recognized by the ISF as governing such sports at the national level”¹. At this Committee entitled to intervene in normative politics of the ISF: “The statutes, practice, and activities of the ISF within the Olympic Movement must be in conformity with the Olympic Charter, including the adoption and implementation of the World Anti-Doping Code as well as the Olympic Movement Code on the Prevention of Manipulation of competitions. Subject to the foregoing, each ISF maintains its independence and autonomy in the governance of its sport”². Being in the invisible status of the top of the European sports management pyramid, the IOC, with its Recommendations at the end of February 2022, not only influenced the decisions of the organizers for the first time. The Committee opened a completely new page in the global sports history — it was recommended to exclude various subjects of Russian sports from participation in international competitions³.

In Seoul (October 19, 2022) Thomas Bach named the IOC Recommendations simultaneously as “protective measures” and “sanctions”: “...early eight months since the Russian invasion of Ukraine, the reasons for the sanctions and the protective measures issued by the IOC continue to persist”⁴. The combination of obviously different goals, which in the sanctions cannot be identical to some “protective measures”, leaves a feeling of artificiality in the same decisions: either “sanctions” or another “measure”. Note that in the absence of proper competence in relation to any of the subjects of Russian sports, “sanctions” by the IOC could only be applied to the Russian Olympic Committee. Our comments about the lack of proper legal prerequisites in the acts of some sports federations, we have previously presented (Vasilyev, Sheveleva 2022). In his speech, the head of the IOC also gave a rather strange motivation for the Recommendations made⁵.

First, “protective measures” are positioned as if the only correct reaction to various obstacles. The IOC in the above speech acknowledges the impossibility of meeting the Olympic mission of protecting athletes and ensuring their participation in competitions. The issue of the Committee fulfilling its founding goals ipso facto is transferred to the subjects of the sport, who must suffer the inevitable negative consequences. The paradoxical situation, as it seems to us, emphasizes the always existing complex problem of the limited legal status of the IOC, international (and continental, of course) sports federations in national jurisdictions. The Committee and international sports federations have shown a

¹ “Olympic Charter. Chapter 1. Recognition by the IOC; Chapter 3. 25. Recognition of Ifs”. *The International Olympic Committee*. 2020. Accessed March 20, 2023. <https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/General/EN-Olympic-Charter.pdf>.

² Ibid.

³ IOC EB recommends no participation of Russian and Belarusian athletes and officials. 2022. March 20, 2023. <https://olympics.com/ioc/news/ioc-eb-recommends-no-participation-of-russian-and-belarusian-athletes-and-officials>.

⁴ “IOC President calls on National Olympic Committees ‘to choose the path of unity and peace’”. *The International Olympic Committee*. 2022. Accessed March 20, 2023. <https://olympics.com/ioc/news/ioc-president-calls-on-national-olympic-committees-to-choose-the-path-of-unity-and-peace>.

⁵ “State of the Olympic movement. ANOC 2022. Seoul, 19 October 2022”. *The International Olympic Committee*. 2022. Accessed March 20, 2023. <https://stillmed.olympics.com/media/Documents/News/2022/10/ANOC-2022-keynote-address.pdf>.

reluctance to develop solutions to the situation in the face of radical actions by national public authorities.

Secondly, the IOC Recommendations not to allow Russian athletes were named as corresponded to interests of the latter and the sport in general. At the same time, the mention of the threat to the integrity of the competition as the reason for the introduction of measures is based only on the actions of individual states that prevented the performances of Russian sports subjects. A certain dissonance arises: if the principle of integrity was challenged by the politicized actions of some governments, then the discussion by the international federations of the situation with their national members representing the named countries should have become an adequate response.

Having analyzed selectively press releases and statutory documents of international sports federations, we can identify two main approaches to determining the type of “measure” for the implementation of IOC Recommendations. The first option is “protective” measures (for example, “protective measures”, “safety policy”) or “organizational measures”. The second type is “preventive measures”. In terms of content, all these measures are identical — the suspension of Russian sports subjects. However, the application of any of the measures must be provided for by the statute or constitution of the sports federation. At a minimum, the use of a measure to suspend athletes requires the appropriate authority of the executive body of the federation. The statutory documents of the federations basically provide for the open competence of the body exercising current operational management, leaving the right to resolve any and other issues not directly named. However, the statutory document also needs a rule indicating the content of the measure: what right-depriving or right-restricting consequences may occur and for which subjects of sports. Such a requirement is due to the principles of legality and predictability of the norms of the statutory documents and regulations of sports federations⁶. We present below our review of the decisions of individual international federations to suspend Russian sports subjects.

2. Basic research

2.1. Recognition by international federations of suspensions of Russian sports subjects as “safety policy” or “organizational measures”

The Council of the International Ice Hockey Federation (IIHF) calls the goal of suspending Russian sports subjects to ensure safety for all involved persons: “...to enable the IIHF to ensure the safety of IIHF Championships and all participating players, officials, and fans”⁷. The IIHF Council demonstrates an open list of executive authority: “...all du-

⁶ See: Arbitration CAS 2008/A/1545 Andrea Anderson, LaTasha Colander Clark, Jearl Miles-Clark, Torri Edwards, Chryste Gaines, Monique Hennagan, Passion Richardson v. International Olympic Committee (IOC), award of 16 July 2010, Paras. 30–34. Accessed March 20, 2023. <https://jurisprudence.tas-cas.org/Shared%20Documents/1545.pdf>; Arbitration CAS 2014/A/3832 & 3833 Vanessa Vanakorn v. Federation Internationale de Ski (FIS), award of 19 June 2015, Paras. 84–86. Accessed March 20, 2023. <https://jurisprudence.tas-cas.org/Shared%20Documents/3832,%203833.pdf>; Arbitration CAS 2017/A/5086 Mong Joon Chung v. Federation Internationale de Football Association (FIFA), award of 9 February 2018, Para. 149. Accessed March 20, 2023. <https://jurisprudence.tas-cas.org/Shared%20Documents/5086.pdf>.

⁷ “IIHF Council takes definitive action over Russia, Belarus”. *The International Ice Hockey Federation*. 2022. Accessed March 20, 2023. https://www.iihf.com/en/news/32301/iihf_council_announces_decisions_over_russia_belar.

ties and matters arising that are not specifically addressed herein or assigned to other IIHF bodies in the Statutes and Bylaws”⁸. At the same time, the competence of the Council does not include the right to develop and apply any “policy” (in particular, “safety policy”). However, it was the latter that the Disciplinary Board highlighted in its decision, dismissing the Russian Ice Hockey Federation’s appeal: “a. That the decision of the IIHF Council on February 28th was not a sanction but was a safety policy”⁹. Thus, the suspension of the Russian teams was presented not a “protective measure”, but as an implementation of “safety policy”. Note that the disciplinary decision states that “safety policy” is non-discriminatory and proportionate to its purpose¹⁰.

In the summer of 2022, the statutory document of the Federation International Luge (FIL) was updated. Now charter includes Para. 4.5.8, according to which executive committee entitled apply “organizational measures” “...in the following cases, which lie outside the sphere of influence of the FIL... the Executive Board can take appropriate measures to ensure safe, peaceful, integrity and rule-abiding activities, especially at FIL-sanctioned athletic competitions and at meetings of all FIL organs and other FIL bodies, if necessary, in place of the Congress or another competent FIL organ”¹¹. The presented purposes of the measure are not original and are identical to the statements of the head of the IOC, and are to some extent repeated in the decision of the IIHF and other international sports federations: ensuring safety, protecting the integrity of the sport and compliance with the regulations. The provision we have quoted is also accompanied in the statute by two conditions for the application of a coercive measure to the subject of luge: 1) “personal responsibility/support/assistance/participation in the cases”; 2) “the measure is proportionate”. The second of the conditions repeats the argumentation of the disciplinary committee of the International Ice Hockey Federation, which we have previously given.

The Executive Board of the International Biathlon Union (IBU) motivated the decision to suspend Russian athletes by observing the integrity principle and ensuring safety: “...to protect the integrity of IBU competitions and the safety of its participants in sports and non-sports events”¹². IBU Congress at summer 2022 added to the constitution of ISF a new executive authority: “18.1.19 In case of occurrence of events or circumstances of an exceptional nature which are outside of the IBU’s control... the IBU Executive Board may in its absolute discretion decide to impose exceptional protective measures aimed at preserving the safe, peaceful and regular conduct of the IBU’s activities”¹³. The launch of the process of legalization in the statute of the norm on “protective measures” confirms

⁸ “IIHF Statutes and Bylaws. 15.4.4. Council”. *The International Ice Hockey Federation*. 2021. Accessed March 20, 2023. https://blob.iihf.com/iihf-media/iihfmvc/media/downloads/statutes/2021_-_2024_iihf_statutes_and_bylaws.pdf.

⁹ “Disciplinary Board dismisses Russia, Belarus appeals”. *The International Ice Hockey Federation*. 2022. Accessed March 20, 2023. https://www.iihf.com/en/news/37555/disciplinary_board_dismisses_russia_belarus_appeal.

¹⁰ Ibid.

¹¹ “FIL Statutes and Regulations”. *The Internationale Luge Federation*. 2022. Accessed March 20, 2023. <https://www.fil-luge.org/cdn/uploads/statuten-gesamt-englisch-05-09-22.pdf>.

¹² “Russian and Belarussian biathletes banned from IBU events”. *The Biathlon Family*. 2022. Accessed March 20, 2023. <https://www.biathlonworld.com/ru/news/russia-belarus-ban-biathlon/5ZE0Cw161gYi3hjpeXsiAw>.

¹³ “International Biathlon Union Constitution. 18. Powers of the Executive Board”. *The International Biathlon Union*. 2022. Accessed March 20, 2023. https://assets.ctfassets.net/cz0v136hcq0x/2kyflHOP4Bh19GK5o3FiZl/79b93efc73a32cdfb52481c913a6c850/1_Constitution_2022.pdf.

de facto the application of such on March 2, when the subjects of the Russian biathlon were suspended. It is noteworthy that charter union on moment use measures provided two open competencies executive advice: “18.1.17 resolve and determine any matters or disputes for which an alternative resolution mechanism is not provided for in this Constitution; and 18.1.18 decide all matters not reserved to another body”. Both together endow the council with exclusive powers on issues that are not assigned to other bodies of the union and do not have a special resolution procedure.

It is possible to recognize the lack of procedure only if we consider the suspension of Russian athletes as an administrative measure, separate from the process of sports liability. The reference to the lack of a “special procedure” obliged the IBU Executive Board to justify why “protective measures” are not sport sanctions. However, the press release of the Federation does not provide such justification.

2.2. Recognition by international federations of suspensions of Russian sports subjects as “preventive measures”

The International Gymnastics Federation (IGF), in a press release, calls the suspension of Russian sports subjects “preventive measure”, which has the character “exceptional and emergency”. Charter international federations gymnastics provides open scroll powers executive committee: “q) to make necessary decisions in cases where there are no existing rules and to report this at the next meeting of the Council”; “s) to take any necessary action to deal with matters of an urgent nature”¹⁴. Argumentation causes acceptance measures federation gymnastics stands out not only link on the principle of “integrity of sport” and need in protection involved in competition subjects, but and requirement response on any forms violence and sports injustice: “...integrity of Gymnastics, the safety and integrity of members and all athletes and participants, and at fighting against all forms of violence and of sports injustice”¹⁵.

Preventive character of measure was declared by International Weightlifting Federation (IWF): “These exceptional measures were decided and issued in view of the extraordinary circumstances arising in Ukraine. They constitute preventive measures aiming at preserving the integrity of sport, the relationships between our members and between all the participants”¹⁶. Ensuring the safety of all participants is called a federation as a justification for the measure taken: “...aimed at protecting the safety of all participants, including in particular the participants from the two... countries”¹⁷. IWF constitution uses another legal technique for providing executive body operational powers: “...the Executive Board has the following specific duties, functions and powers: ...To make and determine Policies and the terms and conditions of Policies, and to amend, repeal supplement and

¹⁴ “International Gymnastics Federation Statutes. Article 14. Executive Committee. Article 14.4 Functions”. *The International Gymnastics Federation*. 2022. Accessed March 20, 2023. [https://www.gymnastics.sport/publicdir/rules/files/en_Statutes%20Edition%202023%20\(Mark-up\).pdf](https://www.gymnastics.sport/publicdir/rules/files/en_Statutes%20Edition%202023%20(Mark-up).pdf).

¹⁵ “FIG adopts further measures against Russia and Belarus”. *The International Gymnastics Federation*. 2022. Accessed March 20, 2023. <https://www.gymnastics.sport/site/news/displaynews.php?urlNews=3444611>.

¹⁶ “IWF statement”. *The International Weightlifting Federation*. 2022. Accessed March 20, 2023. <https://iwf.sport/2022/03/03/iwf-statement>.

¹⁷ Ibid.

replace Policies in accordance with the Objectives and this Constitution”¹⁸. The executive body has the right to develop a special policy, to formulate its conditions, and to apply it to the subjects of weightlifting. It turns out that the IWF, claiming preventive measures, in fact used against Russian athletes a kind of “safety policy”.

The International Badminton Federation (IBF), in its press release, gives the classic justification for the suspension: respect for the principle of “integrity” and ensuring the safety of “ensuring the safety of all athletes”¹⁹. Identical normative approach is presented in Para. 19.6 of IBF Constitution: administrative organ has the right to “deciding on matters under dispute”, in volume including for goals “to organize , conduct and present world Badminton events to world class standards and ensure other international events meet the appropriate international standards”²⁰. “Appropriate international standards” as a basis for administrative decisions regarding sporting events leaves as much room for arbitrary decision-making as does a reference to the principle of integrity or to the requirement of “safety”.

International cycling union (UCI, Union Cycliste Internationale) same calls measure on suspension Russian commands preventive: “The UCI, which remains a politically neutral organization, laments that the decisions of their government can impact Russian and Belarusian athletes, but it is necessary to be a firm in the defense of the Olympic values. As pointed out this morning... it is a question of taking preventive measures with the objective of ensuring the integrity and security of sporting competitions...”²¹ Expectedly, it was the protection of the principle of integrity that sounded the purpose of the preventive measure: “As pointed out this morning... it is a question of taking preventive measures with the objective of ensuring the integrity and security of sporting competitions...”²² The constitution of this sports federation fixed the open competence of the management committee as an executive body: “1. Without prejudice to Art. 46, the Management Committee shall, in particular: o) ensure that the Constitution is applied and adopt the executive arrangements required for its application”²³.

The “listing” by sports federations of several multidirectional grounds for suspending Russian athletes gives the impression of seeking maximum credibility by artificially combining several concepts.

First, in one of the previous articles we drew attention to the dangerous depth of the concept of “integrity of sport”, which makes it possible to bring almost any variants of

¹⁸ “International Weightlifting Federation Constitution and Rules. Art. 30. Duties, Functions and Powers of the Executive Board”. *The International Weightlifting Federation*. 2022. Accessed March 20, 2023. <https://iwf.sport/wp-content/uploads/downloads/2022/02/Constitution-and-Rules-of-IWF-Adopted-29-August-2021-Modified-30-January-2022-CLEAN.pdf>.

¹⁹ “BWF statement in response to IOC EB Recommendations”. *The Badminton World Federation*. 2022. Accessed March 20, 2023. <https://bwfbadminton.com/news-single/2022/03/01/bwf-statement-in-response-to-ioc-eb-recommendations>.

²⁰ “The Badminton World Federation Constitution. Art. 19. Council roles and responsibilities”. *The Badminton World Federation*. 2022. Accessed March 20, 2023. <https://badminton.org.rs/portal/source/Statut%20BWF.pdf>.

²¹ “UCI takes strong measures in the face of the situation in Ukraine”. *The Union Cycliste Internationale*. 2022. Accessed March 20, 2023. <https://www.uci.org/pressrelease/the-uci-takes-strong-measures-in-the-face-of-the-situation-in-ukraine/6V8FrkqsPbhbeMlc8rgb3t>.

²² Ibid.

²³ “The Union Cycliste Internationale Constitution. Art. 47. Powers”. *The Union Cycliste Internationale*. 2022. Accessed March 20, 2023. https://assets.ctfassets.net/76117gh5x5an/2uOSbE8gAbYJWGZF6Zdb0c/83ce4e80c45d61ff20adcc23b43d382d/2021_UCI_CONSTITUTION___CONGRESS_EN.pdf.

behavior of subjects that are not directly prohibited under non-compliance with the principle (Vasilyev 2022b). Therefore, the federations' reference to the need to ensure integrity without disclosing the content of the principle in a particular case looks artificial.

Secondly, the protection of safety for the subjects participating in the competition is a key goal of any competition organizer. But achieving such a goal by, for example, excluding individual athletes is seen as a search for the "route of least resistance", leveling the risks of one's responsibility for possible conflicts during the competition. The reference to the need for security states that the sports federation reduces its own burden of responsibility. It turns out that the federation did not look for options for the participation of all athletes, but placed the "value" of not incurring its responsibility higher than the personal right of each athlete to participate in the competition according to the current regulation.

Finally, the counter-argument "all forms of violence and of sports injustice" indicates the actual assignment by the sports federation to the Russian subjects of sports of responsibility for the actions of third parties. With this approach, we meet another variant of "strict liability", as close as possible to the football "standard" (Vasilyev 2021). As a consequence between "preventive measure" and "sporting sanction" an equal sign must be put: all signs of a coercive measure as a sports sanction are observed (Vasilyev, Sheveleva, Vetrova 2020).

2.3. Recognition by international federations of suspensions of Russian sports subjects as "sports sanctions"

A press release on the official website of the World Athletics (WA) noted that "World Athletics Council sanctions Russia"²⁴: it was the sanctions that were used by the sports federation. The provisions of the constitution tell us about the sanctions that apply only to the national federations²⁵. The constitution of this sports federation contains a rule on an open list of powers of the council of the organization: "z. resolve and determine any disputes or matters not provided for in this constitution"²⁶. The cited norm formally allows making any decisions in relation to subjects under jurisdiction. According to Art. 13.5, instead of or together with a provisional suspension, a national federation may be subject to sports liability for failing to comply with the obligations of Art. 13.1 or Art. 17 of WA Constitution. Art. 17 of the constitution directs the national federations to apply all rules and regulations, policies and procedures published by the international federation and called binding on the national federations. This norm has nothing to do with the situation with the Russian athletics subjects — the All-Russian Athletics Federation complied with the named regulatory requirements. At Art. 13.1 the attention should be aimed on par. "c": "...the government of the Country or Territory that the Member represents, acts in a manner contrary to any of the Purposes". The norm makes national federations responsible for the actions of governments if they are regarded by the world athletics association as contrary to the statutory goals (presented in Art. 4 of the constitution).

²⁴ "World Athletics Council sanctions Russia and Belarus". *The World Athletics*. 2022. Accessed March 20, 2023. <https://www.worldathletics.org/news/press-releases/world-athletics-council-sanctions-russia-and-belarus>.

²⁵ "World Athletics Constitution. 13. Suspension of Membership and Other Sanctions". *The World Athletics*. 2022. Accessed March 20, 2023. <https://www.worldathletics.org/download/download?filename=7f875f76-8eb2-48ae-a4e7-18b8bf6cfeea.pdf&urlslug=A1%20-%20The%20Constitution>.

²⁶ Ibid.

Doctrinal use of “strict liability” as liability without the issue of guilt for the actions of third parties and almost identical to WADA standard. It leaves some doubts, although it is common in the regulation of international sports federations and organizations²⁷. But the key point we see is the absence in the provisions of Art. 13.5 of the constitution of the world association of athletics is normatively defined (*nulla poena sine lege*) sanctions in the form of suspension of athletes. In any case, the norm “h. impose any other sanctions it considers appropriate”²⁸ in conjunction with strict liability opens up opportunities for abuse of the advice of the WA. In fact, in every decision of the government of a certain state, if desired, one can find a discrepancy with the vague statutory goals of the international sports federation. The consequence will be the application to the respective national federation of any measure of coercion invented for this case as a “sanction”.

The legal nature of the sanction in relation to the suspension of Russian subjects of sports de facto was also recognized by the International Rowing Federation (IRF). The official press release uses “sanctions” in the title²⁹. According to the text, to justify the coercive measures, the standard wording is given about the alleged lack of Ukrainian athletes the opportunity to participate in international competitions: “...strongly supports the recommendations issued by the IOC on February 28. These include recognition that many Ukrainian athletes will be prevented from participating in international competitions...”³⁰ Powers of executive committee include open scroll of issues: “3.4. To make any decisions appropriate to the circumstances in the interests of the sport of rowing; 3.5. To assume all responsibilities which are not expressly attributed to another entity within World Rowing” (Art. 51 “Duties of the Executive Committee”)³¹.

Similar to the constitution of the WA, the constitution of the IRF gives the executive committee the right to apply any sanction to the national member federation in its sole discretion: “1.4. Impose any other sanction it may deem to be appropriate” (Art. 15 “Sanctions, Suspensions and Expulsions”)³². However, the national federations, unlike the regulation of the athletics association, are not responsible for the policies of their states. The basis for any sanctions is only the failure of the national federation to fulfill the obligations enshrined in the charter of the international rowing federation: “If a Member Federation does not fully comply with its obligation” (Art. 13 “Bonds of Member Federations”)³³.

²⁷ See: WADA v. RUSADA and discussion about illegalities responsibility national anti-doping agencies behind actions bodies public Authorities. Arbitration CAS 2020/O/6689 World Anti-Doping Agency (WADA) v. Russian Anti-Doping Agency (RUSADA), award of 17 December 2020, Para. 269 et seq. Accessed March 20, 2023. <https://jurisprudence.tas-cas.org/Shared%20Documents/6689.pdf>.

²⁸ “World Athletics Constitution. 13. Suspension of Membership and Other Sanctions”. *The World Athletics*. 2022. Accessed March 20, 2023. <https://www.worldathletics.org/download/download?filename=7f875f76-8eb2-48ae-a4e7-18b8bf6cefea.pdf&urlslug=A1%20-%20The%20Constitution>.

²⁹ “World rowing confirms sporting sanctions for Russia and Belarus”. *The World Rowing*. 2022. Accessed March 20, 2023. <https://worldrowing.com/2022/03/01/world-rowing-confirms-sporting-sanctions-for-russia-and-belarus>.

³⁰ Ibid.

³¹ “World Rowing Statutes and related bye-laws”. *The World Rowing*. 2022. Accessed March 20, 2023. https://d2cx26qpfwuhvu.cloudfront.net/worldrowing/wp-content/uploads/2021/02/04162055/2020-WR-Statutes_single-column-for-publication_260221_CLEAN.pdf

³² Ibid.

³³ Ibid.

The recognition of the legal nature of sanctions for the suspension of Russian sporting entities, at a minimum, requires a clear connection between the incriminated behaviour and the sanction and calls for a narrow interpretation of the respective provision³⁴. It appears that the international sports federations could not prove the necessary “connection”.

3. Conclusions

In fact, over the past three decades, the principle of integrity has taken place in the status of a high-order doctrine of *lex sportiva* (Vasilyev 2022a). Almost all international federations declared the forced defense of “integrity of competitions”, but refrained from clarifying the content of such a principle. Is global sport ready for the fact that the precedent set will oblige the IOC and international federations to take the side of those who have not suffered from the politicization of sports, but to protect the principle of “integrity of competitions”? It turns out that the highest value is the fact that the competition is held according to the mechanical principle of a simple majority: without representatives of one national federation, or maybe two, three, and so on. It seems that the principle is in conflict with the means used by the IOC — the suspension of Russian sports subjects. All athletes were withdrawn on the basis of a “passport” from sports competitions due to the difficulties caused by the politicized positions of individual national federations and authorities. What is it like a tacit recognition by the IOC and international federations of the primacy of political conjuncture over the equal right of athletes to participate in competitions (*quod non!*)

The International Olympic Committee Recommendations are inconsistent and unfair because they violate the equal treatment principle and are devoid of strategic logic. Instead of finding a solution to a truly dangerous problem that may arise at any time in the future regarding sports subjects on the basis of nationality, the Committee proposes to exclude discriminated athletes from competitions. The discrepancy between cause and effect accompanies not only the position of the IOC, but also the decisions of international sports federations. For example, in the IIHF press release, you can see the controversial logic between the premise and the named measure. On the one hand, “the IIHF is not a political entity and cannot influence the decisions being taken over the war in Ukraine”. On the another hand, “suspension of all Russian National Teams and Clubs from participation in every age category and in all IIHF competitions or events until further notice”³⁵. A similar contradiction can be seen in the speech of the president of the world athletics association to the council (the administrative body of the federation), which made the decision to suspend the Russian subjects of sports. First it is stated that sanctions versus athletes must not applied for actions of their governments: “Anyone who knows me will understand that imposing sanctions on athletes because of the actions of their government goes against the grain. I have railed against the practice of politicians targeting athletes and sport to make political points when other sectors

³⁴ Arbitration CAS 2007/A/1363 TTF Liebherr Ochsenhausen v/ETTU, award of 5 October 2007, Para. 16. Accessed March 20, 2023. <https://jurisprudence.tas-cas.org/Shared%20Documents/1363.pdf>.

³⁵ “IIHF Council takes definitive action over Russia, Belarus”. *The International Ice Hockey Federation*. 2022. Accessed March 20, 2023. https://www.iihf.com/en/news/32301/iihf_council_announces_decisions_over_russia_belar.

continue about their business”³⁶. However output president sports federations absolutely unexpected: “This is different as governments, business and other international organizations have imposed sanctions and measures against Russia across all sectors. Sport has to step up and join these efforts to end this war and restore peace. We cannot and should not sit this one out”³⁷.

The use by international federations for suspensions of sports subjects of the names “safety policy” (“organizational measures”) or “preventive measures” is of no fundamental importance. Both options are based on an open list of powers of the executive bodies, allowing you to administer non-standard issues without restrictions. In such a “horizon of uncertainty”, the guarantee of predictability of negative consequences and protection against them is lost: only in the order of sports responsibility. It seems obvious the difference between the current decision on the management of the federation by the executive body (which does not affect the rights of sports subjects) and the deprivation of athletes of the right to participate in competitions. At the same time, individual federations do not even have in their statutory documents a provision on an open list of competences, which did not prevent them from dismissing Russian sports subjects. For example, according to the constitution of the International Volleyball Federation (IVF), the administrative board does not have open competence and therefore it remains unclear which of the provisions of paras. 2.4.2.1–2.4.2.7³⁸ could be the normative basis for the measure taken. “Safety policy” and “preventive measures” weakly correspond to the principle of proportionality as a correlation between the right restriction and the goal of regulation. Under the goal, of course, should not be considered reasons that are different from the sport itself (politics, for example). Single attempts, as in the case of IIFH, to call proportional “safety policy” demonstrate the reluctance of international sports federations to look for alternative ways to solve the problem and reduce their level of responsibility.

International sports federations have mixed multidirectional arguments: “integrity”, “safety policy”, “fighting against all forms of violence and of sports injustice”, “rule-abiding activities”. Sometimes this was done to make the suspension of Russian athletes seem convincing. Or it was simply the use of “beautiful” and “suggestive” words. But what seems obvious — sports federations will not be able to give unambiguous, shared by all (at least by most of the international federations themselves) definitions for the named doctrines. At the same time, the contentless doctrines as precedents (*de facto stare decisis!*) will be repeatedly used after 2022 and the vicious circle will be surely finished.

References

- Vasilyev, Iliia A. 2021. “The principle of proportionality and strict liability of football clubs for the behavior of fans in UEFA competitions”. *Pravoprimerenie* 3 (5): 232–248. (In Russian)
- Vasilyev, Iliia A. 2022a. “Football Superleague and the principle of the integrity of UEFA competitions”. *Obrazovanie i pravo* 5: 63–71. (In Russian)

³⁶ “World Athletics Council sanctions Russia and Belarus” *World Athletic*. 2022. Accessed March 20, 2023. <https://www.worldathletics.org/news/press-releases/world-athletics-council-sanctions-russia-and-belarus>.

³⁷ *Ibid.*

³⁸ “International Volleyball Federation Constitution. 2.4 The Board of administration”. *Fédération Internationale de Volleyball*. 2022. Accessed March 20, 2023. https://www.fivb.com/-/media/2022/cooperate/fivb/legal/regulations/fivb%202022%20constitution_clean%20version_website_24102022.pdf?la=en&hash=C6B2622367745DCED13B74141EAE4221.

- Vasilyev, Iliia A. 2022b. “The principle of the integrity of sports competitions: In search of certainty”. *Iuridicheskii vestnik samarskogo universiteta* 2 (8): 60–69. (In Russian)
- Vasilyev, Iliia A., Natalia A. Sheveleva. 2022. “Suspensions of Russian sports federations and athletes: Illegal ultima ratio”. *Zakon* 8: 60–70. (In Russian)
- Vasilyev, Iliia A., Natalia A. Sheveleva, Evgenia G. Vetrova. 2020. “Exclusion of a club from participation in the competition for manipulating the result as an administrative measure by UEFA: Legal nature and application features”. *Zakon* 8: 31–43. (In Russian)

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