



**Arbitration CAS ad hoc Division (O.G. Salt Lake City) 02/001 Prusis & Latvian Olympic Committee (LOC) / International Olympic Committee (IOC), award of 5 February 2002**

Panel: Prof. Massimo Coccia (Italy), President; Mr. Peter Leaver QC (England); Mr. Olli Rauste (Finland)

*Bobsleigh*

*Jurisdiction to rule on doping offences*

*Eligibility of an athlete for the OG*

- 1. It is a matter for the relevant International Federation to decide how it deals with doping offences which come within its jurisdiction and what sanctions to impose. If it were otherwise, the International Federation's autonomy would be illusory.**
- 2. In the absence of a clear provision in the Olympic Charter and in the Rules of the relevant International Federation entitling the IOC to intervene in the disciplinary proceedings taken by that International Federation, an athlete has a legitimate expectation 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. If it were otherwise, there would be a real risk of double jeopardy.**

Sandis Prusis is a 34-year old Latvian athlete on the Latvian 2-man and 4-man bobsleigh team. Mr. Prusis is the pilot and captain of the Latvian team, and has been participating in the sport of bobsleigh for the last 18 years. In the XVIII Olympic Winter Games in Nagano 1998, Mr. Prusis carried the flag for Latvia.

On 9 November 2001 Mr. Prusis was tested by the World Anti Doping Agency (WADA) out of competition in Park City, Utah. On 28 November 2001 WADA notified the FIBT that the sample of Mr. Prusis tested positive for the banned substance nandrolone, with a concentration exceeding 25 ng/ml.

On 29 November 2001 the FIBT notified Mr. Prusis and the Latvian Bobsleigh Federation (LBF) of the positive test result of the "A" sample.

On 10 December 2001 the LBF and the Latvian Antidoping Commission (LAC) and Mr. Prusis notified the FIBT that they were requesting analysis by the Antidoping Centre in Moscow of the food supplement "Methoxy Whey" for possible contamination with prohibited substances, as Mr. Prusis asserted that the banned substance must have been contained in food supplements that were reported at the time of the test.

On 12 December 2001 the LBF President Jeugenijs Kisiels notified the FIBT that Mr. Prusis was provided with the food supplement "Methoxy Whey" by Dr. Romans Osipenko who had told him that the product did not contain any prohibited substances. The LBF President requested the FIBT to consider the athlete as "unintentionally guilty" and to impose a sanction in accordance with Article 3 of Chapter II of the Olympic Movement Antidoping Code ("OMAC").

On 20 December 2001 the Antidoping Centre in Moscow notified the LBF that the substance submitted for analysis and the urine of the tested person contained relevant quantities of nandrolone metabolites.

On 21 January 2002 the Executive Committee of the FIBT, after reviewing the reports, analysis and recommendations of the FIBT Medical Commission, and upon consideration of the evidence, documents and applicable regulations, decided by majority to suspend Mr. Prusis from competition for three (3) months, effective retroactively from 9 November 2001. The suspension was thus to end on 9 February 2002, only six days before the first bobsleigh event at the XIX Winter Olympic Games.

In addition, Mr. Prusis was deprived of all points gained by taking part in FIBT races during his suspension, and although eligible to compete in the 2002 Winter Olympic Games, Mr. Prusis was to be placed in the final group for the draw and race position, as if he had accumulated no points.

The FIBT stated that, in imposing the sanction of three months suspension as from 9 November 2001, it was applying Chapter II, art. 3.1.b).iii) of the OMAC and that, based upon the specific, exceptional circumstances of the case, that sanction was a "fair and just decision".

On 22 January 2002 the LOC asked the Organizing Committee for the XIX Olympic Winter Games in Salt Lake City (SLOC) whether an athlete suspended until 9 February 2002 could be accredited and admitted to the Olympic Village before the end of the suspension term.

On 23 January 2002 a SLOC officer confirmed that such an athlete could be accredited and reside in the Olympic Village even before the end of the suspension period.

On 27 January 2002, the delegation registration meeting was carried out at SLOC and the representatives of the Latvian Team submitted all the necessary documents and applications, including that of Mr. Prusis.

On 31 January 2002 Mr. Prusis, together with other Latvian bobsleigh athletes, arrived in Salt Lake City, carried out the activation of his Olympic Identity and Accreditation Card and entered the Olympic Village.

On 1 February 2002 the IOC Executive Board, without any prior notice to Mr. Prusis or the LOC, issued the following decision:

*"Considering Rule 49.1 of the Olympic Charter;*

*The IOC Executive Board, having become aware of all circumstances surrounding the inscription of the Latvian bobsleigh athlete, Sandis Prusis,*

*DECIDES:*

- 1. That the inscription of the athlete Sandis Prusis for the XIX Olympic Winter Games in Salt Lake City is not accepted.*
- 2. This decision takes effect immediately."*

Subsequently, the IOC withdrew Mr. Prusis' Olympic Identity and Accreditation Card and requested him to leave the Olympic Village by 10 a.m. on 3 February 2002.

At 9 a.m. on 3 February 2002 Mr. Prusis and the LOC filed an application before the CAS Ad hoc Division of the Olympic Winter Games in Salt Lake City, requesting the CAS

- 1. to overturn the decision of the IOC Executive Board, and*
- 2. to proclaim that Mr. Prusis is eligible to participate in the XIX Olympic Winter Games in Salt Lake City.*

The applicants also requested an immediate stay of execution of the IOC Executive Board decision with respect to withdrawal of Mr. Prusis' accreditation and his eviction from the Olympic Village.

On 3 February 2002, the President of the CAS ad hoc Division appointed as arbitrators Prof. Massimo Coccia (Italy), President of the Panel, Mr. Peter Leaver QC (England) and Mr. Olli Rauste (Finland).

The parties were summoned to appear for a preliminary hearing at 3 p.m. on 3 February 2002, for the sole purpose of dealing with the request for preliminary relief. During the hearing the IOC stated that Mr. Prusis could retain his accreditation and be permitted to reside in the Olympic Village until the final determination of the Application.

On 4 February 2002, Mr. Prusis and the LOC filed a supplemental brief and the IOC filed its written response. At 8 p.m. on 4 February 2002 a hearing took place at which the representatives of Mr. Prusis, the LOC and the IOC were present. The FIBT was notified of the hearing but was unable to attend. However, the legal consultant for the FIBT, Mr. David Kurtz, was allowed to present a statement and respond to questions over the telephone during the hearing.

**LAW**

1. These proceedings are governed by the CAS Arbitration Rules for the XIX Olympic Winter Games in Salt Lake City (the "CAS ad hoc Rules") enacted by the International Council of Arbitration for Sport ("ICAS") on 10 April 2001. They are further governed by Chapter 12 of the Swiss Private International Law Act of 18 December 1987 ("PIL Act"). The PIL Act applies to this arbitration as a result of the express choice of law contained in art. 17 of the

CAS ad hoc Rules and as the result of the choice of Lausanne, Switzerland as the seat of the ad hoc Division and of its panels of Arbitrators, pursuant to art. 7 of the CAS ad hoc Rules.

2. The jurisdiction of the CAS ad hoc Division arises out of the entry form signed by each and every participant in the Olympic Games as well as out of Rule 74 of the Olympic Charter.
3. Under art. 17 of the CAS ad hoc Rules, the Panel must decide the dispute "pursuant to the Olympic Charter, the applicable regulations, general principles of law and the rules of law, the application of which it deems appropriate".
4. According to art. 16 of the CAS ad hoc Rules, the Panel has "full power to establish the facts on which the application is based".
5. Art. 18 of the CAS ad hoc Rules requires the Panel to give a decision within 24 hours of the lodging of the application, subject to exceptional extension by the President of the CAS ad hoc Division if the circumstances so require. Such extension was granted because the Applicants had requested, and the Respondent had consented, that the hearing take place the day following the filing of the application.
6. In support of its decision the IOC relies principally upon the provisions of Rule 49 of the Olympic Charter. The IOC submits that it alone has the right to accept or reject entries into the Olympic Games, and that the decision as to whether to accept or reject an entry is a purely administrative decision. The IOC further submits that its right in relation to entries is fundamentally different to the right to take measures or impose sanctions for which provision is made in Rule 25 of the Olympic Charter. Thus, the IOC says that there is no necessity under Rule 49 for it to inform the athlete of its intention to refuse entry or of its reasons for refusal, or to give the athlete an opportunity to make representations.
7. Neither in its written pleading nor in its oral submission did the IOC attempt to hide the fact that it found the decision of the FIBT in Mr. Prusis' case unacceptable, and that that decision formed the background to its decision to refuse Mr. Prusis' entry to the Olympic Games. That fact and the IOC's decision raise two important issues for this Panel to decide. The first issue concerns the relationship between the IOC and the International Federations, and the second issue concerns the legitimate expectations of an athlete who has been punished by the relevant International Federation, and who has served his punishment.
8. Rules 29 and 30 of the Olympic Charter provide respectively for the recognition and role of the International Federations. The second paragraph of Rule 29 of the Olympic Charter is in the following terms:

*"As far as the role of the IFs within the Olympic Movement is concerned, their statutes, practice and activities must be in conformity with the Olympic Charter. Subject to the foregoing, each IF maintains its independence and autonomy in the administration of its sport."*

9. The importance of the independence and autonomy of International Federations in the administration of their sports, including the fight against doping, was emphasized in the well-known advisory opinion of 5 January 1995, CAS 94/128 UCI / CONI (M. Reeb (ed.), Recueil des sentences du TAS / Digest of CAS Awards 1986-1998, Berne 1998, 477 et seq.), in which the CAS Panel stated inter alia:

*“At all events, the IFs possess the principal competence with regard to establishing rules in the fight against doping, which appears to be the best solution, given the necessity of ensuring the application of identical standards wherever the competitions relating to a specific sport are taking place. Uncertainty concerning the applicable rules with regard to doping is harmful to judicial security. For all that the Panel, like the IOC itself, does not lose sight of the importance of respecting the independence and autonomy of the IFs in the administration of their sport” (at 504).*

10. In the Panel’s opinion, this statement means that, unless the IOC proves that an International Federation has violated the Olympic Charter (in which case the IOC may impose sanctions on the International Federation), the IOC cannot take any action with regard to a specific sport which could be regarded as prejudicial to the independence and autonomy of the International Federation administering that sport.
11. Once the autonomy of the International Federations is recognised, the background to the IOC’s decision assumes greater significance. With what appears to the Panel to be considerable justification, the IOC takes the view that the sanction imposed by the FIBT was improper, and was simply a device to enable Mr. Prusis to participate in the Olympic Games. Indeed, the FIBT stated as much in its decision. During the course of the hearing before the Panel, Mr Kurtz was asked to explain the FIBT’s decision, which appeared to be in direct conflict with the FIBT’s own Doping Control Regulations. Those Regulations provide for a mandatory “two year period of ineligibility in the case of a first-time contravention of the rules.” Mr Kurtz was unable to explain which provision of the FIBT’s Doping Control Regulations entitled the FIBT to depart from the stated mandatory sanction. It is hardly surprising, therefore, that the IOC feels aggrieved by the FIBT’s decision, which appears to be in direct conflict with the IOC’s and WADA’s anti-doping campaign.
12. But however aggrieved the IOC may feel, the issue which the Panel has to decide is whether the IOC was entitled to refuse Mr. Prusis’ entry to the Olympic Games once the punishment imposed by the FIBT had been completed. The IOC adopts a simple and straightforward approach. It contends that it has control over entry to the Olympic Games, and that it is entitled to refuse entry to an athlete if it so wishes. It accepts that the right to control entry is not unfettered, and that Rule 74 of the Olympic Charter entitles Mr. Prusis to appeal its decision to refuse him entry. But the IOC says that in the same way that it does not seek to influence entry into competitions organised by the International Federations so there should be no fetter on its decision in relation to its competition – the Olympic Games.
13. In the Panel’s opinion, if autonomy is to have any real meaning that meaning must be that it is a matter for the relevant International Federation to decide how it deals with doping offences which come within its jurisdiction and what sanctions to impose. If it were otherwise, the

International Federation's autonomy would be illusory. The IOC is not without power if it disapproves of an International Federation's conduct. Pursuant to Rule 25.2.1.2 of the Olympic Charter, the IOC can withdraw a sport, a discipline or an event from the programme of the Olympic Games, or it can even withdraw recognition from that International Federation.

14. On the basis, therefore, that the FIBT is autonomous in relation to its sport, it is necessary to consider the second issue concerning the expectations of an athlete who has already been punished by the International Federation which controls his sport. As will be readily recognised, this issue is closely interlinked with the autonomy issue.
15. In the absence of a clear provision in the Olympic Charter and in the Rules of the relevant International Federation entitling the IOC to intervene in the disciplinary proceedings taken by that International Federation, it is the Panel's opinion that an athlete has a legitimate expectation 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. If it were otherwise, there would be a real risk of double jeopardy, as this case has illustrated. As became clear from statements made by the IOC's representatives during the hearing, the effect of refusing Mr. Prusis entry was to impose a further sanction on him for the same offence. The Panel was told that it was the role of the IOC to "come to a certain common treatment between the different sports" and that "three months compared to the normal two years or even life ban in some sports was not acceptable".
16. What this case has highlighted is the absence of any legal mechanism for the IOC to intervene in the circumstances to which we have referred above. It is, of course, a matter for the IOC to consider whether it wishes to amend the Olympic Charter in order to have the right to intervene. In making that decision, the IOC will consider the impact that such a right would have on the autonomy of the International Federations. The Panel's preliminary view is that if the appeal were to an independent body there would be no derogation from that autonomy. In the Panel's opinion, it would be a highly desirable legislative development in the fight against doping if the IOC and/or WADA could appeal to an independent body against the anti-doping decisions adopted by International Federations. Such a system would be similar to that which is already in place in the relationship between some International Federations and their member national federations - for instance, this is the case with the Union Cycliste Internationale (UCI), which may appeal to the CAS against "wrong" decisions made by national cycling federations - and would go some way to providing harmonisation between the International Federations as to the sanctions imposed for doping offences.
17. In the Panel's opinion, it was not legitimate for the IOC to rely on Rule 49 of the Olympic Charter to justify its decision. We have already stated our view on the possibility of double jeopardy that may arise if the IOC seeks to impose a further sanction over and above that imposed by the International Federation. There are additional reasons for concluding that the decision could not stand. Those reasons can be shortly stated.

18. First, the Panel does not accept the IOC's submission that the decision was purely administrative. In the Panel's opinion a decision that impacts upon the legitimate expectation of an athlete that his entry would be accepted is much more than a purely administrative decision. The case is *a fortiori* when there is a risk of double jeopardy.
19. Secondly, and consequent upon the first reason, it is the Panel's opinion that an athlete is entitled to know what allegation or case is being made against him, and that he should be given an opportunity to make representations. The Panel accepts that the IOC only found out about the FIBT's decision late on the 29th January 2002. However, even at that late stage it would have been possible for a hearing to take place, and, if necessary, an appeal made to the CAS. It is by no means certain that such a procedure would have cured the other defects to which we have referred above, but at the very least such a process would have satisfied some of the concerns felt by the Panel.
20. Furthermore, the Panel takes the view that such a procedure would have been consistent with that laid down in Rule 25.2 - 25.4 of the Olympic Charter, which provides that if temporary or permanent ineligibility or exclusion from the Olympic Games is being considered there is a right to be acquainted with the charges and to appear personally or to submit a defence in writing. The Panel takes comfort from the fact that its opinion on this issue is consistent with the opinion rendered by the Atlanta ad hoc Division of CAS on a similar issue (award of 1 August 1996, OG 96/005, in M. Reeb (ed.), *Recueil des sentences du TAS / Digest of CAS Awards 1986-1998*, Berne 1998, 397 at 400-401).
21. Notwithstanding the fact that we are allowing this appeal, the Panel wishes to make clear that it has considerable sympathy with the IOC's position. The decision of the FIBT strikes at the very heart of the IOC's anti-doping campaign. Lest it be thought that this criticism of the FIBT is unfair, the Panel would wish to make it clear that the FIBT was named, and could have taken an active role, in the proceedings, and in fact participated through Mr Kurtz, as has been described above. In the absence of any provision in its Doping Control Regulations justifying a departure from the mandatory two year penalty for a first offence (and Mr Kurtz was unable to point the Panel to such a provision), the Panel has no doubt that the IOC was entitled to feel aggrieved, and justifiably wished to ensure that the FIBT paid more than lip service to its anti-doping campaign. However, as the Panel has held, that was a matter for the IOC to resolve with the FIBT.
22. Many will consider Mr. Prusis to be extremely fortunate to be the beneficiary of the FIBT's improper conduct and of the lacuna in the Olympic Charter which at present precludes the IOC from intervening and appealing the sanction imposed by an International Federation. The Panel is of the opinion that the FIBT ignored a number of CAS Awards in which it has been made clear that the "nutritional supplement defence" cannot be seriously invoked by athletes in the light of the many warnings by the IOC, WADA and the scientific community, and of the many instances of positive testing after use of such supplements. However, under the current rules, this failure by the FIBT does not empower the IOC to review the FIBT's decision. This is, in fact, the essence of what the IOC Executive Board attempted to do by

excluding Mr. Prusis from the Winter Olympic Games. However, it is not within the Panel's remit to make any order other than in relation to the appealed decision.

**The CAS Ad hoc Division rules:**

1. The application is allowed.
2. The decision of the IOC Executive Board dated 1 February 2002 that it would not accept Mr. Sandis Prusis' inscription for the XIX Olympic Winter Games in Salt Lake City is set aside.
3. Mr. Sandis Prusis is eligible to participate in the XIX Olympic Winter Games in Salt Lake City.