



Arbitration CAS ad hoc Division (O.G. Nagano) 98/004-005 Czech Olympic Committee, Swedish Olympic Committee and S. / International Ice Hockey Federation (IIHF), award of 18 February 1998

Panel: Mr. Jacques Baumgartner (Switzerland), President; Prof. Akira Kotera (Japan); Mrs. Maria Zuchowicz (Poland)

Ineligibility of an athlete

Consequences when a non eligible athlete played for a team

- 1. Pursuant to the IIHF By-Laws [Art. 204 (7) (a)], “If the ineligibility of one or more players is proved during a championship then the games played with ineligible players shall be forfeited”. The CAS considers that the rationale of this provision is to sanction the team having played with an ineligible player, and not to sanction, even indirectly, other teams taking part in the competition. The same rationale underlies Article 50 of the Olympic Charter. That provision also sanctions the team “at fault”.**
- 2. As a result of the organization of competition adopted for the Olympic Games, the strict application of the Article 204 (7) (a) would defeat the very purpose of the rule. The forfeiture of the wins of a team would not only sanction that team but also adversely affect others participating in the competition. The competition system used at the Nagano Winter Games, i.e. a ranking by points and further direct elimination through games opposing the strongest and the weakest team of each pool, differs fundamentally from the system provided by the IIHF Rules for championships such as the world championships, which includes a last round of opposing teams with the same ranking in both pools. In this Olympic tournament, which adopts the first system just referred to, the strict application of Article 204 (7) (a), which is intended for the second system, would cause a distortion of the purpose of the rule, with the risk of punishing teams other than the one to which the sanction should be applied.**

The Swedish hockey player S., who participates in the North American National Hockey League (NHL), acquired U.S. citizenship by way of naturalization in 1995. By operation of Swedish law, he lost Swedish citizenship as a result of this acquisition of a foreign citizenship.

S. was selected for the Swedish team and participated in its first three games during the Olympic Winter Games. Sweden won two of these games and lost the other. As a result, Sweden finished second in Division D, and was scheduled to meet Finland, the third qualifier in the other division (Division C), in the quarterfinals according to the following draw:

Czech Republic (C2)	vs	U.S.A. (D3)
Canada (D1)	vs	Kazakhstan (C4)
Russia (C1)	vs	Belarus (D4)
Sweden (D2)	vs	Finland (C3)

The matter of S.'s lack of Swedish citizenship was brought to the attention of the Directorate of the International Ice Hockey Federation ("IIHF"), which, after an extraordinary session in the late evening of 16 February 1998 decided:

- "1) *That the Player should take no further part in the competition*
- 2) *That Sweden would not forfeit the Games in which the player took part*".

At 11:05 hours on 17 February 1998, the Czech Olympic Committee submitted an appeal to the ad hoc Division of the Court of Arbitration for Sport, seeking the invalidation of the second element of the IIHF decision and the forfeiture of Sweden's two wins.

At 12:30 hours the same day, the Swedish Olympic Committee also submitted an appeal, but with a different object: to annul the first element of the IIHF decision. At the hearing, the Swedish Olympic Committee stated that its appeal was also filed on behalf of S.

Pursuant to Article 4 of the Rules for the Resolution of Disputes Arising During the Olympic Games, the President of the ad hoc Division decided that the appeals filed by the Czech and the Swedish Olympic Committee as well as by S. should be consolidated, and that, in consequence, the appeals should be resolved by the same Panel and the parties be heard in a single hearing. The three undersigned arbitrators were appointed from nationalities not represented among the eight hockey quarterfinalist teams.

The Olympic Committees of all eight quarterfinalist teams were invited to participate in the hearing, which was held beginning at 15:00 hours on 17 February 1998.

The following parties appeared before the Panel: the Czech Olympic Committee, the Swedish Olympic Committee, S., the IIHF, the IOC (interested third party), the Russian Olympic Committee (interested third party) and the NHL (interested third party).

LAW

1. These proceedings are governed by the Rules for the Resolution of Disputes Arising During the XVIII Olympic Winter Games in Nagano (the "ad hoc Rules") of CAS enacted by the International Council of Arbitration for Sport (ICAS) on 9 April 1997. They are further governed by Chapter 12 of the Swiss Private International Law Act of 18 December 1987

(“PIL Act”). The PIL Act applies because the seat of the ad hoc Division and of its panels of Arbitrators is established at Lausanne, Switzerland, pursuant to Article 7 of the ad hoc Rules.

2. Under Article 17 of the ad hoc Rules, the Panel must decide this 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”*.
3. At the hearing the representatives of the parties confirmed that they had no objection to the jurisdiction and composition of the panel.
4. According to Article 16 of the ad hoc Rules, the Panel has *“full power to review the facts on which the application is based”*.

Eligibility

5. The first element of the IIHF decision relates to S.’s eligibility. Article 204 of the IIHF By-laws is entitled “Qualification as participant in the IIHF championships.” Subparagraph (3) of this Article 204 provides as follows:

“To be eligible for participation in an IIHF competition each player must prove by an individual passport confirming he is citizen of the country he represents” (sic).

6. Subparagraph 7 (a) of the same Article makes clear that a player *“shall be dismissed from the tournament”* if his ineligibility is *“proved during a championship”*.

7. Article 204 needs to be read in conjunction with Article 205, which provides as follows:

“For Olympic Games the eligibility of players must be as permitted by the IOC and approved by the IIHF”.

8. Rule 46 of the Olympic Charter in turn reads in pertinent part as follows:

“Nationality of Competitors

1. Any competitor in the Olympic Games must be a national of the country of the NOC which is entering him”.

9. In the case of S., the Panel has been presented with an English-language text of Section 7 of the Swedish Citizenship Act, which in relevant part provides as follows:

“Swedish citizenship is lost by any person who acquires foreign citizenship after applying for such citizenship or explicitly consents to receive the same ...”.

10. In his IIHF Player Entry Form to the Olympic Games, signed and dated 10 February 1998, S. affirmed that he was a Swedish citizen and the bearer of a Swedish passport. He told the Panel that he did so in good faith, not knowing of the just-mentioned provision of the Swedish Citizenship Act. On the other hand, the Panel observes that the Player Entry Form recites that the signator declares on his honor that he has *“been informed about the eligibility rule of*

IIHF By-Law Article 204” and that *“I understand the rules specified on the back of this form (players who have changed their citizenship or who are citizens of two or more countries)”*.

The back of the form carries the heading *“To be observed and completed only by players who have changed their citizenship or who have two or more citizenships”*.

11. The Panel notes with surprise that S. neither completed nor signed the declarations called for under this heading.
12. S.’s acquisition of U.S. citizenship is an objective fact, and the Panel is satisfied on the basis of the evidence presented to it that S. lost his Swedish citizenship as of November 1995. The Panel is most surprised by the statement of S. that he discovered this situation only yesterday.
13. The Panel does not consider that this situation constitutes an exceptional circumstance which would justify that the eligibility requirement be set aside. The Panel considers that S. and the Swedish Olympic Committee – which under the By-Law to Rule 49 of the Olympic Charter has the duty of ensuring the compliance of its competitors with the Charter *“under its own responsibility”* – have acted carelessly in the matter of the athlete’s registration. In connection with an athlete who played and lived abroad for many years and who is rarely involved in championships with the national team (not since 1990 or 1991, stated S.) the sports authorities should exercise special care in making sure that the eligibility requirements are met. Admittedly, the situation with respect to NHL players like S. is a relatively new one but this is only an additional reason for paying particular attention to the registration process.
14. Moreover, the Panel cannot follow the Swedish Olympic Committee’s argument that removing S. from the Olympic tournament violates the principle of equal treatment among athletes. This is not a case of dual nationality. This is a situation of a national of one country playing for another country, and constitutes an undisputed instance of ineligibility. No issue of equal rights (as between S. and athletes possessing dual nationality) arises under these circumstances.
15. Since S. is clearly ineligible under both the Olympic Charter and the relevant IIHF rules, the appeal of the Swedish Olympic Committee and of S. must fail.

Forfeiture of games

16. The Czech Olympic Committee invokes subparagraph 7 (a) of the aforementioned Article 204 of the IIHF By-Laws, which provides in relevant part as follows:
“If the ineligibility of one or more players is proved during a championship then the games played with ineligible players shall be forfeited ...”.
17. According to the Czech Olympic Committee, this provision must be applied with the effect that Sweden forfeits its two victories and is relegated to last place in Division D, with the result that the draw be as follows:

Czech Republic (C2)	vs	Belarus (D3)
Canada (D1)	vs	Kazakhstan (C4)
Russia (C1)	vs	Sweden (D4)
United States (D2)	vs	Finland (C3)

18. In deciding to maintain what it referred to as “*the ranking as from the games results*”, the IIHF Directorate invoked Article 43 of the IIHF Statute, which provides inter alia:

“5. All decisions of the directorates, including disciplinary matters concerning the execution of the IIHF championship are final for the present tournament”.

19. The IIHF argues that it did not apply Article 204 (7) (a), because this situation is an extraordinary one not contemplated by that provision. According to the IIHF, it was enacted to deal with situations of dual nationality. The Panel finds this argument unpersuasive. The wording of Article 204 (7) (a) is no way limited.
20. The IIHF further argues that it reached its decision in order not to deprive competing teams of the benefit of their performances to date. For example, by winning Division C Russia earned the right to meet the fourth-place team of Division D. This advantage might become illusory if as the result of the forfeiture of previous games it were caused to play a far more powerful adversary. By a parity of reasoning, it would be unjustifiable for the Czech Republic, having failed to win its division, to be given a weaker opponent as a result of another team’s forfeiture.

The IOC and the Russian Olympic Committee support this position.

21. The Czech Olympic Committee, on the other hand, rejects this argument, and insists that the IIHF Directorate cannot modify or disregard the By-Laws. It points out that only the IIHF Council can amend the Statutes and By-Laws.
22. The IIHF responds that its decision did not purport to modify or disregard either the Statutes or the By-Laws. Rather, it constituted an interpretation of the general rule of forfeiture established by Article 204 (7) (a) to deal with what the IIHF told the Panel was a “unique and extraordinary” situation. Concretely, this refers to the fact that the organisation of the competition in the Olympic Games is different from that of championship events, and that this difference would, if the concept of forfeiture was applied, have the unintended adverse effect on innocent competitors described in paragraph 20 above. Accordingly, the IIHF explained that it applied its rules in the higher interest of fair play and, faced with this unique situation, looked for guidance to the Olympic Charter and specifically to its Article 50, which reads in part:

*“The IOC Executive Board may withdraw accreditation from any person who infringes the Olympic Charter. Furthermore, the competitor or team **at fault** shall be disqualified and lose the benefit of any ranking obtained” (emphasis added).*

23. Moreover, IIHF asserts that the Swedish team should not be sanctioned, because the responsibility of the present situation lay exclusively with the player. The Panel cannot share

this view. In its opinion, as it mentioned above, the Swedish sports authorities acted negligently when entering S. for the Games.

24. Considering the parties' arguments, the Panel finds that the rationale of Article 204 (7) (a) is to sanction the team having played with an ineligible player, and not to sanction, even indirectly, other teams taking part in the competition. The same rationale underlies Article 50 of the Olympic Charter. That provision also sanctions the team "at fault".
25. As a result of the organization of competition, or its "structure" as IIHF's counsel referred to it, adopted for the Olympic Games, the strict application of Article 204 (7) (a) would defeat the very purpose of the rule. The forfeiture of Sweden's wins would not only sanction that team but also adversely affect others participating in the competition, as was set forth in paragraph 20 above.
26. The competition system used at the Nagano Winter Games, i.e. a ranking by points and further direct elimination through games opposing the strongest and the weakest team of each pool, differs fundamentally from the system provided by the IIHF Rules for championships such as the world championships, which includes a last round of opposing teams with the same ranking in both pools. In this Olympic tournament, which adopts the first system just referred to, the strict application of Article 204 (7) (a), which is intended for the second system, would cause a distortion of the purpose of the rule, with the risk of punishing teams other than the one to which the sanction should be applied.
27. One could object that this view disregards the legitimate interest of teams which lost to Sweden in games where Sweden used an ineligible player. The Panel accepts in this regard that the case would be different if an appeal had been brought by Belarus or the U.S. These were the two teams that lost to Sweden. They would have been in a position to say that they were the direct victims of having had to face an opponent using an ineligible player, and that their chances of winning were adversely affected by the violation of the rules. Their interest in bringing an appeal would thus be based on the fact that they are today treated as having lost, with the result that each has to face a higher ranked opponent in the quarterfinal draw than if they had won. In choosing between the victim of non-application of the rule (e.g. Russia) and the victim of its application (e.g. Belarus or the U.S.), it would be difficult to justify a preference for the former.
28. However, not only has neither of these teams sought to appeal the decision, but neither availed itself of the opportunity to participate in the hearing.
29. As for the Czech Olympic Committee, it is singularly ill placed to seek standing to insist on the application of a rule in circumstances where its team has not been the least affected by the infraction, not even having played in Sweden's division. The Czech team in effect wishes to be treated as though it had achieved a better result than it did in the first-round games, while Russia is deprived of the fruits of its victory. The Panel finds this stance offensive to the Olympic ideal of fair play.

30. The Panel thus comes to the conclusion that the Czech Olympic Committee cannot avail itself of Article 204 (7) (a) in the present circumstances. Nor can a pertinent rule be found in the so-called “Technical Booklet” for Ice Hockey at the XVIII Olympic Winter Games, which is silent on this topic. In other words, there is a gap in the applicable regulations with respect to teams finding themselves in the position of the Czechs.
31. To fill this gap, the IIHF rightly resorted to the powers of the Directorate under Article 43 of the IIHF Statutes. Pursuant to Article 43 (1), the directorates are “*temporary executive bodies [...] with the responsibility for conducting the IIHF Championships [which includes Olympic tournaments under Article 203 of the IIHF By-Laws]*”. Each team competing in a given tournament is entitled to have a representative sitting on this temporary body. The Panel was advised that this was indeed the case of the Directorate which took the decision under review. According to Article 43 (5), the Directorate has the power to make final decisions “*including [on] disciplinary matters concerning the execution of the IIHF championship*”.
32. On this basis, the Panel deems it reasonable for IIHF to have deferred to the Directorate to resolve the issue of S.’s ineligibility and its consequences. In doing so, contrary to the argument put forward by the Czech Olympic Committee, the Directorate did not amend the By-Laws and Statutes of the federation, a function reserved to the Council. It simply interpreted the rules to take into account the specific nature of the present situation.
33. The Panel regrets that IIHF failed to recognise the potential difficulties before they materialized and failed to take preventive action by adapting its rules accordingly. This would have avoided the present conflict. Thus, the Panel recommends that IIHF takes prompt action for the future.
34. This being said, the Panel considers that the solution reached by IIHF is in line with the purpose underlying its own rules and the Olympic Charter.

The CAS ad hoc Division rules:

1. The appeal filed by the Swedish Olympic Committee and S. from point 1 of the IIHF decision dated February 17, 1998 is dismissed.
2. The appeal filed by the Czech Olympic Committee from point 2 of the above decision is dismissed.
3. No award of costs is made.
4. The award is final from the present communication.