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GOVERNANCE DYSFUNCTION IN WORLD SPORT

Issues Raised by the Conflict in Ukraine

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Introduction

The start of the paramilitary conflict in Ukraine unexpectedly became another important point for assessing the legal status, the depth of management dysfunctions, and politicization of the activities of the International Sports Federations (ISFs) and the International Olympic Committee (IOC). Within one week, IOC President – Thomas Bach – condemned the Russian authorities' actions in Ukraine and recommended the International Sports Federations to cancel or postpone all international tournaments that were to be in Russia and Belarus and to deprive Russian and Belarusian winners and prizewinners of the right to perform the national anthems and raise the national flags on the pedestal. Mostly the reaction to these recommendations was predictable but still unambiguous.

IOC Recommendations and Timeline of the Consequences

Putting aside the emotional background of the statements, almost all the ISFs supported the point of view and suggestions of Thomas Bach. Still there were some exceptions. For example, the International Aquatic Federation (FINA) and the International Judo Federation (IJF) refused to impede international starts for Russian athletes despite the backdrop of general anxiety. The International Football Federation (FIFA) at the 72nd Congress unexpectedly decided to make the Russian language one of the six official languages of FIFA. After that, the Executive Committee of the World Olympians Association (WOA) issued a condemnation of the ISF sanctions against Russian and Belarusian athletes, stating that “the fundamental principles of Olympism, set out in paragraphs 4 and 6 of the Olympic Charter, must always be respected, and that the right of Olympians

and Athletes, as individuals to participate in sports activities should be supported and encouraged”.

Following the officials’ statements, news of legal decisions began to arrive. On 11 April, the International Luge Federation (FIL) Arbitration Court stated that the decision to not allow Russian athletes to compete was legally unacceptable. The FIL executive committee declared they would try to circumvent the decision of the court about removing the Russians.

The European Table Tennis Union (ETTU) also did not expect that the ETTU Board of Appeal would rule on the discriminatory exclusion of the Russian clubs Fakel-Gazprom and UGMK from participation in the semi-final and final of the Champions League’s last season.

CAS has registered ten appeal cases of Russian organizations and individuals against decisions to suspend Russian athletes from participating in international competitions. Appeals were filed by the Russian Olympic Committee, the Russian Football Union, the Russian Skating Union, the Russian Figure Skating Federation, the Russian Biathlon Union, the Russian Rowing Federation, the Russian Rugby Union, the Russian Artistic Gymnastics Federation, Olympic champion in short track Semyon Elistratov, world champion speed skating champion Angelina Golikova, Olympic medallists in figure skating Evgenia Tarasova and Vladimir Morozov, Olympic champions in artistic gymnastics Angelina Melnikova and Nikita Nagorny, double mini-trampo world champion Mikhail Zalomin, judge in artistic gymnastics Vitaly Ivanchuk, and member of the executive committee of the Jumping Federation on the Russian trampoline Irina Karavaeva. At this rate, we will see the Olympic Games between lawyers very soon.

Outline of the Problem

Modern sport is a phenomenon with many meanings and definitions in historical, sociological, philosophical, economic, legal, and other aspects. Desmond Morris (Morris, 1981), 40 years ago, described sports as “a cultural-ritual form of sublimation of baser instincts” and even “a substitute for radical political activity”. Modern sport has become much more attractive, but, speaking about its development, all the same “base instincts” and “political activity” are being replicated – the concentration of resources, the transfer trade in slave athletes, manipulations to achieve results, doping, etc. Sport eludes an unambiguous definition and causes three hardly compatible aspects of perception: semantic ambiguity, ambivalence of values, paradox of goals (Bourg, 2016).

As a result of this kind of age-old evolution, the structure of World Sports Governance has lined up, like the Solar System, around the International Olympic Committee (the sun), with the International Sports Federations – the main copyright holders for all sports – rotating in the orbits. Some of the ISFs (planets) form the programme of the Olympic Games. Therefore, they are located closer to the sun and receive a larger supply of energy, while others are

content with the formal recognition of the IOC and exist as conditional comets, asteroids, and nebulae, occasionally relying on the favour of a heavenly body. The level of relations between the subjects of international sports, their mutual influence, and legal regulation become the key problem of management in such configuration.

To further discuss dysfunctions in the operation of the ISFs, some clarifications ought to be made regarding the main element of the system – the IOC. Firstly, let us turn our attention to the factor of financial independence. The IOC (the sun) is an independent nonprofit international organization that feeds its batteries not from galactic energy, but, to a greater extent, from American business. The IOC quickly responded to the American victory in the Cold War (Altukhov & Nauright, 2018) at the end of the 20th century and reformatted the business model of the Olympic movement during the reign of Juan Antonio Samaranch to the rails of a capitalist economy. The idea of developing the humanitarian values of Olympism and promoting peace is a thing of the past. Profits, efficiency, revenues, and contracts have become new benchmarks for Samaranch and his followers Jacques Rogge and Thomas Bach, who, in fact, grew into the hostages of American politics. The persuasion and influence of Richard Pound and his American business partners led to the signing of an incredible agreement, USOC-IOC, in 1990 (15). USOC receives 12.75% of the funds obtained by the IOC from the television contracts' sale, plus 20% of the funds transferred to American sponsors in the IOC. Consequently, the IOC voluntarily agreed to be dependent on US sponsors and television.

After 19 years, the Assembly of the Association of Summer Olympic International Federations at the SportAccord Forum, held in Colorado Springs (the USA), in 2009, demanded the termination of this agreement, and in May 2012, a new USOC-IOC agreement was signed, endorsing the new rules for the distribution of funds from American companies to the IOC, estimated for 20 years – from 2020 to 2040. Under this agreement, the USOC's share of TV revenue is reduced to 7%, and 10% of revenue is transferred from the IOC sponsorship programme to the USOC (16). Generally speaking, USOC funding from the IOC has not changed considerably due to the increase in the cost of TV contracts, while the dependence of the IOC management structure and the entire Olympic Movement on American stakeholders has remained the key element of the business model.

The second aspect is political independence. History knows several precedents when athletes from Germany, Austria-Hungary, the Ottoman Empire, the Bulgarian kingdom, Japan, South Africa, Yugoslavia, and Afghanistan were suspended from Olympic starts. But the IOC has never suspended the US athletes for the US military actions in Afghanistan, Yugoslavia, Iraq, or Syria, since the United States created a legal basis for its actions in advance in the form of UN resolutions. An additional reason for questioning the legitimacy of the ISFs' decisions was the fact that the citizens of a country that is a member of the UN Security Council were removed from professional activity.

Case Analysis

Russian and Belarusian sports found themselves in isolation. In the directives and recommendations, the IOC refers to the consensus reached on the resolution of the UN General Assembly of 2 December 2021, “Promoting peace and building a happier life on the planet through sport and the embodiment of the Olympic ideals”, which approved the Olympic truce. Later, IOC President Thomas Bach tried to explain his policy as a desire to preserve the integrity of the sport. According to him, athletes from other countries do not want to participate in competitions along with Russian and Belarusian athletes. In addition, he worries about the safety of the Russian and Belarusian athletes.

In fact, this call by Bach has returned us all to political and ethnic segregation, when people are artificially divided into first and second grades depending on their citizenship, violating the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination (1965). Athletes from Russia and Belarus no longer have equal rights with other athletes. The prohibitions prescribe neutral status for them, neutral equipment and neutral flags and anthems. These athletes are deprived of their self-identity and isolated from the global sports community as inferior humans or dangerous animals. Formally speaking, the IOC did not violate anything at all – they only recommended the implementation of sanctions on Russia and Belarus, and the decision was made by the International Federations.

All the ISFs were created to regulate the calendar, enforce the rules and organize international sport competitions. Over time, their powers have expanded by spreading their activities and acquiring political influence (to varying degrees for each federation) at the global level. In this context, the International Sports Federations can legitimately be seen as subjects of international sports policy regimes (Houlihan, 2009).

International Sports Federations are essentially established by self-governing private norms (Casini, 2015), and position themselves as families. Leo Tolstoy noted that “all happy families are alike, each unhappy family is unhappy in its own way” (Tolstoy, 2020). The redoing of the business model of the Olympic movement according to the canons of the American market has led to changes in the business processes of the ISF, when, along with positive processes and growth in income, all the vices of humanity poured into sports – drug use, doping, match-fixing, fraud, violence, and corruption. Endless scandals, investigations, arrests, and trials began. Most sports federations were not ready for such misfortunes. The principles of management’s autonomy and activity’s self-regulation turned out to be insufficient for global decision-making.

In international regime theory, Stephen Krasner’s classic definition conceptualizes regimes as “the implicit or explicit principles, norms, rules, and decision-making procedures around which the expectations of actors in a given area of international relations converge” (Krasner, 1982). The activities of the ISF are not only classified as international or continental, but also, they are directly

related to the interpenetration of international law, national legislation, and the soft law of sports regulations. Sports management scholars argue that ISF governance structures that have gained a monopoly on the regulation of sports and competition at the international level are not able to deal effectively with these challenges (Henry & Lee, 2004; Pieth, 2014).

The conflict of form and content emerged against the background of the scaling of the ISFs' activities and the inability to regulate these activities in any way. Presumably the concern of the IOC regarding the effectiveness of the ISFs' management and the subsequent implementation of the principles of good governance in the ISFs was related to this. In 2009, the "Basic Universal Principles for the Good Governance of the Olympic and Sports Movement" (PGG) proposed by the IOC and in 2016 the "Key Governance Principles and Key Indicators" (KGP) proposed by the General Assembly of ASOIF, including 28 Summer Olympic ISFs (ASOIF, 2016a), were adopted. Later KGP was supported by seven Winter Olympic ISFs.

The taken measures did not achieve the desired effect. The main reason was the lack of legal status in the relationship between the IOC and the ISFs and direct subordination. There was no regulator or supervisory body for the ISF before – there is none now. The IOC's powers to recognize the status of ISFs from among the organizations applying for this (Rule 25 of the charter) are sufficient for the dominance of the IOC among the subjects of world sports and the legal protection of the interests of the Olympic movement at the global level.

The ISFs, in turn, oversee their autonomy and include self-regulation when there is a risk of governmental interference or reputational costs from the actors of civil society (Isailovic & Pattberg, 2016; Vogel, 2006). Additionally, there are no cases in history where any ISF has benefitted from the compliance of other ISFs. Consequently, the ISFs have no incentive to delegate enforcement powers to the IOC or anyone else to ensure good governance (Abbott & Snidal, 2000). Thus, a situation emerges where there are clearly not enough mechanisms and tools within the system for strategic development in the context of a crisis in the growth of individual entities. External regulators may well include public oversight or governmental sanctions to secure control (Geeraert, 2018).

Conclusion

The rise of the Olympic movement around the world, the growing economic performance of the IOC, the high popularity, and recognition of the symbols of Olympism among the globe's population gradually led to a crisis in the entire system. This looks intriguing. We observe a lack of hierarchy in the structure of international regimes. The changing world order right in front of us highlights the helplessness and vulnerability of the outdated business model of the Olympic movement and the monopolies of ISFs trying their best to survive.

The introduction of compliance for the ISFs has a barely noticeable effect, as there is no completely independent external mechanism for monitoring

compliance with the requirements, imposing sanctions, and their implementation. Various types of sports federations have individual compliance mechanisms. Compliance can be achieved through co-regulation, where the governance and persuasion mechanisms of the ISFs are complemented by sanctions from the public or civil society.

The main lesson of the globalization of sports is that the social models of the United States and Europe, recognized as “reference” ones, are not applicable globally. The conflict went beyond economic contradictions. Under these conditions, the priority is not investment or the creation of new markets (sources of value) – it is the new images and meanings of life.

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