
Sports' Autonomy and Good Governance Off target: the (lifted) ban against Kuwait

By Alessandro Oliverio



isportlaw
international sports law firm
Roma (ITA) Lausanne (SUI)

Main Facts

October 16, 2015: FIFA suspended the KFA

October 27, 2015: the IOC suspended the KOC

November 5, 2015: the ISSF Administrative Council suspended the KSF

July 2, 2016: the ISSF General Assembly confirmed the KSF' suspension

July 20, 2016: the KSF filed the appeal before CAS, n.2016/A/4727

December 9, 2016: the CAS Award 2015/A/4241 Kuwait Football Clubs vs FIFA and KFA was rendered

December 16, 2016: the CAS 2016/A/4727 hearing took place

January 18, 2017: the CAS Award 2015/A/4282 Kuwait NFs v IOC was rendered

April 12, 2017: the CAS Award 2016/A/4727 was rendered

Grounds for the KOC and KFA' suspensions

isportlaw

Alleged undue **governmental interference**, i.e. amendments in the Kuwait Sports Law

Amendments: disband of the KOC and the KFA's boards. Appointment of interim-committees

Fundamental Principles of Olympism n.5

Olympic Charter Rules 2.5 – 25 – 27.6

5. Recognising that sport occurs within the framework of society, sports organisations within the Olympic Movement shall have the rights and obligations of autonomy, which include freely establishing and controlling the rules of sport, determining the structure and governance of their organisations, enjoying the right of elections free from any outside influence and the responsibility for ensuring that principles of good governance be applied.

FIFA Statute: Art. 14.i – 15 – 19

19 Independence of member associations and their bodies

1. Each member association shall manage its affairs independently and without undue influence from third parties.

Additional note: the IPC did not suspend the KPOC

The CAS Awards

CAS 2015/A/4241 dismissed the appeal. The KFA remained – and still is – suspended by the FIFA

CAS 2015/A/4282 dismissed the appeal. The KOC remained – and still is – suspended by the IOC

As a result, at the **Rio Olympic Games**, Kuwait athletes competed under the IOC flag



CAS 2016/A/4727 upheld the appeal and the KSF' suspension was lifted

- A) ISSF Constitution Art. 1.3.2 – Membership. *The NOC of the country must be a full member of the IOC*
- B) ISSF Constitution Art. 1.13.5.1 – Suspension. *A member may be suspended if, in the opinion of the Administrative Council, the ISSF is better able to achieve any of its purposes by the suspension of a member*
- C) Rule 26 Olympic Charter. *The mission and the role of the IFs within the Olympic Movement are [...] to contribute to the achievement of the goals set out in the Olympic Charter*
- D) Second suspension of the KOC in five years
- E) The ISSF was “obliged” to suspend the KSF in order to protect the Olympic Movement in Kuwait

1. The KSF was suspended without being heard by the ISSF Administrative Council (**right to be heard**)
 2. No review by the ISSF, whether the KSF was **concretely affected** by undue governmental interference
 3. No investigation by the ISSF, *whether there was some actual conduct by the KSF that was **affecting the purposes** of the ISSF, ex. Art. 1.3.15.1 of the Constitution*
 4. The ISSF was not obliged to suspend the KSF, just because the KOC was suspended twice in five years. Neither the IOC ordered the IFs to suspend the respective NFs
 5. In three previous circumstances where a NOC has been suspended by the IOC, the ISSF has not suspended the relevant NF (**equal treatment**)
 6. The ISSF body provided **misleading information** to the ISSF Members
-

204. Much as the above gives the impression that the ISSF was obliged to suspend the KSF, the Panel notes that the ISSF has in 3 previous circumstances where a NOC has been suspended by the IOC (India, Iran and Kuwait) it has not determined that a suspension of the relevant Member was required. Indeed, it does not appear that the IOC itself demanded such a suspension (as the ISSF EC Letter tends to imply), nor does the IOC allege that by not suspending the Member, the ISSF has breached the Olympic Charter. At least there is no evidence that the IOC complained on these previous 3 occasions or that it has taken action against any other IF that determined not to suspect its NF. Rather, then Panel notes that the IOC wrote to the ISSF on 27 October 2015, stating the following (emphasis added by the Panel):

"We naturally leave it up to each one of your International Federations to consider the situation with their respective National Federations in Kuwait and take any appropriate action, if not done already, for the protection of the Olympic Movement in Kuwait."

205. It does not appear to the Panel that the IOC were directing each IF to suspend each NF at all, more to consider each NF's situation. The ISSF Administrative Council did not appear to carry out any review of the whether there was any danger of the Kuwait Government interfering with its member, rather, it appears to have felt that as this was the second time the KOC had been suspended by the IOC, it would immediately react and support the IOC by suspending the KSF, however, this was not required by the Olympic Charter, nor was it required by the IOC. The GA Meeting was simply asked to confirm the ISSF AC Decision, which it did with the Appealed Decision. The Panel notes that the ISSF (through its executive Committee and its lawyer) provided some misleading information to the ISSF members, as summarised above. The Panel has the impression that since the KOC was suspended twice in the last 5 years, that provided sufficient grounds for the ISSF to suspend the KSF this was used as the reason for the GA Meeting's decision to suspend the KSF.

R.59 CAS Code: CAS Awards are not confidential and shall be published by CAS

CAS did not publish the award (tas-cas.org)

The award is available at playthegame.org

While sports organisations within the Olympic Movement shall have the rights and obligations of autonomy (i.e. **Protection of the Olympic Movement from undue third party interference**), they also have the responsibility for ensuring the principles of **good governance** be applied (Fundamental Principles of Olympism n.5)

All members of the Olympic Movement should adopt, as their minimum standard, the **Basic Universal Principles of Good Governance of the Olympic Movement**, as proposed by the IOC (Extract of the Olympic and Sport Movement Congress in 2009, Recommendation 41)

Olympic Agenda 2020 – Recommendation 27: All organisations belonging to the Olympic Movement to accept and comply with the Basic Universal Principles of Good Governance of the Olympic and Sports Movement

There is no sports' autonomy without good governance, and the autonomy of sports organisations (i.e. private associations) to self-govern shall find its absolute limit in front of (i) fundamental rights and (ii) **high standards of governance**

Th
A
nk
YOU

isportlaw.com
info@isportlaw.com

  @isportlaw

#tpg2017

isportlaw
