



**Arbitration CAS 2009/A/1799 Czech Ski Association & Ondrej Horyna v. International Ski Federation (FIS), award of 3 November 2009**

Panel: Mr Lars Halgreen (Denmark), President; Mr Vit Horacek (Czech Republic); Mr John Faylor (Germany)

*Cross-country skiing*

*Status during the period of ineligibility following an anti-doping rule violation*

*Definition of “activity” within the meaning of the anti-doping regulations*

*De facto definition of participation in training activities of a national team*

*Sanction not expressly provided in the regulations*

*Participation of the national team in the violation of the rule*

1. **Participation in training activities with a national team is undoubtedly to be characterised as an “activity”.**
2. **An official invitation to participate in a national team’s training activities is not required to establish whether an athlete has been involved in a training activity. Participation in such an activity must therefore be established on a set of facts which are deemed relevant to describing the real meaning of “participation” in a national training camp, for example choosing to be in the same skiing location, on the same ski slopes, at the same hotel and at the same time as the national team, wearing the same clothing and travelling together with members of the national team in e.g. the ski lifts and in the hotel after the practice sessions.**
3. **Although the FIS Anti-Doping Rules 2007/2008 do not provide expressly for specific consequences of the violation of the ineligibility status, a sanction in the form of adding an additional year of ineligibility to the doping sentence would be a justified consequence of a proven violation of the rule. There is nothing to indicate that a violation of the rules should go unpunished, and the possibility of sanction must be deemed an implied part of the provision. An additional sanction of one year ineligibility falls also within the scope of the WADA Code and within a normal proportionality doctrine. The consequences have now been clarified under the new FIS Anti-Doping Rules 2009 model based on the WADA Code of 2009.**
4. **By not taking clear action, either actively or at the very least passively, against the participation to a training camp of an ineligible athlete, a national team contributes to the violation of the prohibition of participation in a competition or activity during ineligibility.**

The Czech Ski Association (the “Appellant 1”) is the national ski association responsible for organising ski activities in the Czech Republic. The association is affiliated with the International Ski Federation.

Ondrej Horyna (the “Appellant 2”) is an international-level athlete and former member of the Czech Junior National Team in cross-country skiing. He is a member of the club Olfi Car Vela, Trutnov in the Czech Republic.

International Ski Federation (FIS, the “Respondent”) is the association organising skiing on a world-wide basis. The International Ski Federation’s registered office is in Oberhofen, Switzerland.

This case concerns the circumstances, under which Mr. Horyna, while serving a 2 year-sanction for a doping violation, participated in training activities in Ramsau, Austria in October 2008 at the same time as the Czech skiing team was also in training camp in Ramsau. These circumstances were reviewed by the FIS Doping Panel, which ruled that Mr. Horyna thereby had committed another anti-doping rule violation contrary to Art. 10.9 of the FIS Anti-Doping Rules, and he was sanctioned with an additional sanction of one year ineligibility. In addition, the FIS Doping Panel ruled that the Czech Ski Association had violated Art. 14.1 and 14.5 of the FIS Anti-Doping Rules, and further decreed that, pursuant to the provisions of Art. 12, the sum of CHF 10,000 in funding should be withdrawn from the FIS.

On 11 January 2008, the Arbitration Panel of the Czech Olympic Committee rendered its decision that Ondrej Horyna had breached the doping rule set forth in Art. 2.1 of the Directive for Checking and Penalty for Doping in Sport in the Czech Republic dated 30 April 2004. The ineligibility was imposed on him for this breach pursuant to Art. 10.2 of the Directive for a period of 2 years. The sentence commenced from the date of 19 January 2008 and included the period from 25 April 2007 until 24 October 2007. The sentence was to terminate on 18 July 2009. Furthermore, the athlete’s results in the Czech Cup Competition on 7 January 2007 and all his results achieved in subsequent competitions from the said date until 24 April 2007 were nullified pursuant to Art. 10.1 and 10.7 with all consequences including the withdrawal of medals, points and prizes.

In a later arbitration award issued on 17 October 2008, the Arbitration Panel of the Czech Olympic Committee amended the award so that Mr. Ondrej Horyna received a sentence which included the period from 8 January 2007 until 24 April 2007 pursuant to Art. 10.8 of the Directive. The imposed sentence was thus to expire on the date of 1 April 2009. The reason provided for reducing the period of ineligibility was due to a delay in results management not caused by the athlete.

Following the events in Ramsau, Austria in October 2008, a hearing of the FIS Doping Panel was conducted on 9 February 2009 in Val d’Isere, France. Although notified by a letter dated 15 January 2009 of the possibility of an oral hearing, neither the athlete Ondrej Horyna nor the Czech National Ski Association were present at the hearing. Both submitted an explanation in writing pursuant to the FIS Anti-Doping Rules.

The pertinent parts of the FIS Doping Panel’s decision of 11 February 2009 can be summarized as follows:

*“Decision of the FIS doping panel in the matter of the case of Ondrej Horyna.*

*(...)*

12. *On 6 February 2009 the NSA responded to the letter of the chairman of the FIS Doping Panel as follows:*

*“On behalf of the Czech Ski Association we declare no oral hearing neither of NSA or athlete in Val d’Isere.*

*Hereunder are answers of NSA to FIS questions:*

*The NSA CZE is asked in particular to answer to the following questions:*

***Was the athlete using the same course as the national team and training at the same time?***

*After their investigation NSA CZE found out that the athlete Ondrej Horyna had been using the same course in this ski resort as the national team. CSA is not able to arrange separated preparation between the national team, private persons or others sportsmen in Ramsau resort.*

***What steps did the NSA CZE take to investigate and when?***

- *NSA CZE invited O. Horyna on December 1st, 2008 and demanded an explanation from him*
- *Asked the athlete for submitting his reasons for situating his personal trainings into the same period of time as the national team*
- *asked the athlete how he could have known about dates of the national team – training camps*
- *the athlete was reproached for his behaviour and strongly advised not to follow the national team during their preparation.*

*Ondrej Horyna’s explanation: he did not agree of violating of the sanction when he moves in the same place as the team (and also other national teams). He wanted to see and be in contact with the cross-country skiing world and train personally (by his own), according to his decision return to active competition after expiration of his punishment. His travel and accommodation costs were covered by his mother. The hotel which he booked was owned by Czech travel agency and was cheaper than the others. He had knowledge of the training terms and the training camps, because this information was opened to the public and national team is annually preparing in this resort.*

***Did the NSA CZE have prior knowledge that the athlete would be training at the same time and place as the national team?***

*NSA CZE didn’t know the athlete’s personal training programme. As soon as NSA CZE had been given notice about a possibility of his violation of the sanction they immediately noticed Ondrej Horyna to obey FIS Anti-Doping Rules. NSA CZE would like to point out that Ondrej Horyna was continuously informed about warnings from FIS and he has knowledges to respect this rules. We have to explain that CSA have no rights to limited staying and motion of private persons neither in Czech Republic nor abroad”.*

13. On 4th February 2009, the athlete submitted the following explanation to the FIS Office stating:  
*“As an experienced athlete I have decided to go on in competitions after expiration of my punishment. According to this fact I have experiences with training from previous seasons. I’m used to this training preparation which have not changed.  
Along with my personal trainer we have arranged training camps in same ski resort in term before CSA have approved training of the national team in Ramsau. Main reason for this ski resort was financial aspect because set hotel in Ramsau has been owned by Czech travel agency and prices are much better than in others. I would like to explain that I was in this hotel as a private person in training preparation and I was acting like that. I have no intention to follow the Czech national preparation.  
In conclusion of my explanation I would like to say, that snow condition in other ski resorts were in that term very limited, so my decision were supported by this snow situation. I had no chance to train in same term in another ski resort, which is proved by presence of the others national teams”.*
14. As a result of the position taken by the athlete and the NSA, the FIS Doping Panel, consisting of the chairman Justice Patrick Smith, and Panel members Carl Eric Stålberg and Sverre Seeberg, convened a hearing on 9th February 2009 in Val d’Isere (FRA) at the Hotel Christiania. The athlete and the NSA were not present at the hearing nor did they send representatives.

#### **STATEMENT OF GENERAL PRINCIPLES**

15. Article 10.9 of the FIS Anti-Doping Rules reads as follows:  
*“10.9 **Status During Ineligibility.** No Person who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in an Event or activity (other than authorized anti-doping education or rehabilitation programmes) authorized or organized by GIS or any National Ski Association.  
In addition, for any anti-doping rule violation not involving specified substances described in Article 10.3, some or all sport-related financial support or other support-related benefits received by such Person will be withheld by FIS and its National Ski Associations. A Person subject to a period of Ineligibility longer than four years may, after completing four years of the period of Ineligibility, participate in local sport events in a sport other than sports subject to the jurisdictions of FIS and its National Ski Associations, but only so long as the local sport event is not at a level that could otherwise qualify such Person directly or indirectly to compete in (or accumulate points toward) a national championship or International Event”.*
16. Articles 12.1 and 12.2 of the FIS Anti-Doping Rules read as follows:  
*“12.1 The FIS Council has the authority to withhold some or all funding or other non-financial support to National Ski Associations that are not in compliance with these Anti-Doping Rules.  
12.2 National Ski Associations shall be obligated to reimburse FIS for all costs (including but not limited to laboratory fees, hearing expenses and travel) related to a violation of these Anti-Doping Rules committed by an Athlete or Other Person affiliated with that National Ski Association”.*
17. Articles 14.1 and 14.5 of the FIS Anti-Doping Rules read as follows:  
*“14.1 **Incorporation of FIS Anti-Doping Rules.** All national Ski Associations shall comply with these Anti-Doping Rules. These Anti-Doping Rules shall also be incorporated either directly or by reference into each National Ski Associations Rules. Each National Ski Association shall specifically*

*provide that all Athletes, Athlete Support Personnel and Other Persons under the jurisdiction of the National Ski Association shall be bound by the FIS Anti-Doping Rules”.*

**14.5 Recognition of Decisions by FIS and National Ski Associations.** *Any decision of FIS or a National Ski Association regarding a violation of these Anti-Doping Rules shall be recognized by all Ski Associations, which shall take all necessary action to render such results effective”.*

## **DISCUSSION**

18. *The Panel finds that the explanation provided by the athlete is neither credible nor acceptable. The athlete was aware that the Czech national team would be training at Ramsau at the same time that he planned on training there. He was also aware that he would be training on the same course. He acknowledged that his lodging would be at a small Hotel where the national team would be staying. He was seen dressed in the national team uniform conversing with members and trainers of the national team.*
19. *Once a sanction has been imposed for a doping violation and an athlete is sanctioned by being declared ineligible from participating in any activity or event organized by FIS or any National Ski Association, it is the responsibility of the athlete to obey the sanction. It is not acceptable for an athlete, as is the case before the Panel, to train at the same time and place as the national team. To allow such a practice would effectively nullify the sanction and send a message to other athletes that a sanction may be circumvented in a similar fashion.*
20. *National Ski Associations must participate as active partners with FIS in upholding the World Anti-Doping Code in ensuring, to the best of its ability, that any sanctions imposed against its athletes are enforced. It is not acceptable for a NSA to allow a sanctioned athlete to train with its national team. Training in this fashion or participation in an activity organized by a NSA is prohibited by article 10.9 of the FIS ADR.*

## **DISPOSITION**

21. *It is the finding of this Panel that the Athlete Ondrej Horyna (CZE) has committed an anti-doping rule violation contrary to article 10.9 of the FIS Anti-Doping Rules.*
22. *The Panel imposes an additional sanction to that imposed by the Arbitration Commission of the Czech Olympic Committee dated 5th November 2008, of 12 months and declares that he is not eligible to compete or participate in any capacity in any event or activity organized by FIS or any NSA until 1st April 2010.*
23. *With respect to the NSA, the Panel finds that the NSA has contravened articles 14.1 and 14.5 of the FIS Anti-Doping Rules and, pursuant to the provisions of article 12, the sum of CHF 10.000,00 in funding from the FIS shall be withheld.*

24. *The Panel has determined that no costs are to be awarded in these circumstances.*

*Dated 11th February 2009*

*Signed by                   Patrick Smith, Chairman  
                                  Carl Eric Stalberg  
                                  Sverre Seeberg”.*

The decision was delivered to the Appellant 1 by email on 17 February 2009 and by mail on 18 February 2009. It is not clear, when Appellant 2 received the decision.

On 10 March 2009 the Appellants filed a joint Statement of Appeal with the Court of Arbitration For Sport (CAS). It challenged the decision of the FIS Doping Panel and submitted the following request for relief:

*“The Appellants request that the Decision and sanctions imposed by the FIS Doping Panel be nullified”.*

On 19 March 2009, the Appellants filed an Appeal Brief. The Appellants’ submissions in the Statement of Appeal and Appeal Brief in essence, may be summarized as follows:

- With reference to Art. 10.9 of the FIS Anti-Doping Rules 2007/2008, Appellant 2 denies having committed an anti-doping rule violation, arguing that he has not participated “in an event or activity” within the meaning of the said paragraph. It is clear from the facts and other evidence that Appellant 2 did not participate in any event, competition or other activity authorized or organised by FIS or any national ski association, nor can it be said that he has participated in an activity since such activity logically must have been authorized or organised by FIS or any national ski association. Both the Appellants argue that a training camp of the national team does not fulfil the required elements and does not fall under this category.
- Even if the training camp of the national team was to be considered “an activity” within a very broad construction of Art. 10.9, Appellant 2 argues that he did not take part in the training camp of the Czech National Team during the training session in Ramsau in October 2008.
- Furthermore, Appellant 1 argues that the alleged violation of Art. 14.1 and 14.5 of the FIS Anti-Doping Rules cannot be supported by any facts or other evidence, as it has not been proven that Appellant 1 allowed Appellant 2 to train with the national team, and it has not been proven that Appellant 2 did actually participate in any training activity with the Czech National Team in Ramsau.
- Finally, Appellant 1 claims that the FIS Doping Panel is not competent and has no authority to impose financial sanctions on Appellant 1 pursuant to the provisions of Art. 12 of the FIS Anti-Doping Rules. The wording of Art. 12.1 clearly states that it is only the FIS Council and not the FIS Doping Panel which has the authority to decide on financial sanctions against any national skiing association.

The Respondent filed an answer on 24 April 2009, which, in essence, may be summarized as follows:

- The Respondent maintains that the wording “event or activity” makes it clear that the prohibition extends beyond competition activities. Further, the wording identifies the only activities which are authorized, namely anti-doping education and rehabilitation programmes. This underscores that all other activities organised by a national skiing association fall under the prohibition. The fact that Appellant 2 was effectively training on the same course, in the same clothing, at the same time currently with other team members, staying at the same hotel, which was rented out by the team, clearly supports the conclusion made by the FIS Doping Panel that Appellant 2 had participated de facto in an “activity” during his period of ineligibility.
- As for the consequences of the doping rule violation, the Respondent claims that although Art. 10.9 of the FIS Anti-Doping Rules 2007/2008 does not provide expressly for specific consequences of the violation of the ineligibility status, the logical consequences to be drawn from a violation must be that the sanction has to be extended, since otherwise the athlete is, in fact, not effectively incurring it. The situation was clarified under the new FIS Anti-Doping Rules 2009 model under the WADA Code 2009. However, according to the Respondent, the new rules only clarify the logical consequences of violation of the ineligibility status, i.e. the fact that results cannot be valid and, secondly, the fact that the ineligibility must be rendered effective.
- The Respondent argues that it is not likely that Appellant 1 learned of the Appellant 2’s presence only in Ramsau after having been made aware hereof by FIS. The trainers, employees and officials of Appellant 1 actively must have allowed Appellant 2 to participate in training and therefore also actively contributed to the violation.
- With respect to the issue about the withdrawing of funding and jurisdiction, the Respondent noted that the appeal does not challenge the amount of CHF 10,000 as such. However, the Respondent claims that FIS Doping Panel had jurisdiction to issue a decision regarding withdrawal of funding, even though Art. 12.1 FIS Anti-Doping Rule refers formally to the FIS Council. This follows from the expressly clarified provision in Art. 8.1.8 of the 2009 FIS Anti-Doping Rules which states that once the Doping Panel is in charge of issuing a decision in regard to violation, its jurisdiction extends to all “persons”, who may have contributed to the violation. As this, according to the Respondent, reflects a rule of procedural nature, it is of immediate application and therefore applies to all proceedings conducted after 1 January 2009, which was the effective date of the new rules (cf. Art. 18.7).

In addition to the arguments and submissions the Respondent has also produced a number of emails from e.g. members of the Norwegian anti-doping authority, which were the first to report the presence of Appellant 2 in Ramsau together with the Czech National Team. Pictures of Appellant 2 wearing the clothing of the Czech National Team in the cable car in Ramsau were also attached.

In June 2009, the CAS Panel held a telephone conference and the Panel instructed the CAS Office to issue a number of questions, which the parties were invited to answer.

The answers of the Appellants were given on 19 June 2009. They were the following:

*Question: How did the Athlete book his accommodation in the Hotel Pensione Alpenkrone, in Ramsau during his stay in October 2008? Did the Athlete have any collaboration for this purpose with the national team, or any member of the national team?*

*Answer: The Athlete had been accommodated in the Hotel Pensione Alpenkrone in Ramsau in many previous years. He knew the owner of the hotel, who is Czech, from his previous stays and found a free room by making telephone calls to the hotel. He made the payment through the Czech travel agency Cestovni kancelar VLNA, cz, s.r.o. that had rented the Hotel Alpenkrone. The receipt issued by this travel agency on 9 October 2008 confirming that Ondrej Horyna paid EUR 385 for accommodation and meals in the period from 1 October 2008 to 12 October 2008 was attached to my letter dated 13 May 2009 and sent to the Court of Arbitration for Sport. The Athlete did not have any collaboration for this purpose with the Czech Ski Association, the national team or any member of the national team.*

*Question: How could the Athlete book a room in the above-mentioned hotel, which was supposedly rented to only one customer?*

*Answer: The Hotel Alpenkrone was rented not only to the Czech national team, but also to several individuals, one of whom was the Athlete. The Athlete also saw in the hotel several members of other national teams, e.g. from Poland.*

*Question: Why did the Athlete train in Ramsau at that particular date, namely from 4 to 12 October 2008?*

*Answer: The Athlete visits Ramsau and stays in the hotel every year at approximately the same period of time. This is a well-known ski resort and in that period of time it is the best place for ski athletes to train on the skis after their summer preparation. In addition to that, the Hotel Alpenkrone is favoured by Czech athletes because it is not expensive and its owner is Czech.*

*Question: Why did the Athlete choose the specific place?*

*Answer: Please see point 3 above. Also, there are not so many places in close vicinity to the Czech Republic where ski runners can train in the beginning of October.*

*Question: Did the Athlete talk with the athletes of the Czech national team? With the trainers, coaches of the Czech national team? Where did he take his meals?*

*Answer: Yes, the Athlete talked with the athletes of the Czech national team, with the trainers and coaches during his stay in Ramsau. They have known one another for several years and some of them are friends. He took his meals in the restaurant in the hotel. He paid for his meals and accommodation to the Czech travel agency (please see the answer under point 1 above). The restaurant was used also by members of some other national teams, e.g. from Poland.*

*Question: How and where were his training structured? Who supervised his trainings and gave him advice?*

*Answer: The Athlete had agreed with his personal trainer to go to Ramsau and train there several months in advance. His trainings were planned and structured in advance by his personal trainer whom he consulted while training in Ramsau. The Athlete trained on his own and did not participate in the training programme of the Czech national team with other athletes.*

*Question: How many kilometres of courses (cross-country slopes) were prepared by the ski resort Ramsau and placed at disposal of the athletes to train? Were these slopes open to the general public? If not, where did the Athlete train?*

*Answer: There are two cross-country courses, one is 10 kilometres and the other is 5 kilometres long. These courses are open for both the athletes and the general public for an unlimited period of time every day till 5 pm.*

*Question: Was the whole national team, i.e. long-distance and sprint specialist present?*

*Answer: The whole national team, i.e. long-distance and sprint specialist, were present.*

*Question: What is the Athlete's speciality, classic style or skating? Which style did he and the members of the national team mostly train during that stay?*

*Answer: The Athlete is not specialized in any style. He, as well as most of the members of the Czech national team, do (does?) both the classic style and skating. The Athlete trained in both styles during his stay in Ramsau.*

*Question: Is a suspended athlete supposed to give back his/her clothes during the suspension time?*

*Answer: The Athlete had been a member of the Czech junior and senior national team for several years. During his time of suspension, he was never asked to give back his national team clothes. A suspended athlete is not supposed to return his/her clothes to the Czech Ski Association during his/her suspension time.*

*Question: Why did the Athlete not wear any neutral training clothes (without mention of sponsor or name of the national team) during his stay in Ramsau?*

*Answer: The Athlete always used his old national team clothes for training. He does not have any clothes other than those from the Czech Ski Association. Moreover, it would be quite expensive for him to buy new clothes of the same quality.*

*Question: How do the FIS define the notion of "activity" mentioned in article 10.9 of the FIS Anti-Doping Rules? How is this notion understood by the Czech Ski Association?*

*Answer: The Czech Ski Association, first of all, refers to articles 5.5 and 5.6 of the Appeal Brief dated 19 March 2009 and reiterates that the Athlete did not take part in the training camp of the Czech national team in Ramsau in October 2008.*

*The notion of activity mentioned in article 10.9 of the FIS Anti-Doping Rules is not defined as opposed to the definition of the Event or the definition of the "competition" in Appendix 1 to the FIS Anti-Doping Rules. If training camps of the national team fall under the notion of "activity", then the key issue is ascertaining the meaning of "participate". We hold the opinion that participation in any activity under article 10.9 of the FIS Anti-Doping Rules means that the NSA organizes such an activity, e.g. training camp, for an athlete completely, including accommodation, meals, trainers, coaches, etc., at the cost and expense of the NSA. An athlete trains alongside other athletes of the national team under the supervision of the national team's trainers and coaches. An athlete nominated and invited to participate in such an activity is fully supported and is not requested to pay anything from his own pocket.*

*As nothing of the above happened in the case of Ondrej Horyna, he did not "participate" in a prohibited activity under the FIS Anti-Doping Rules for 2007/2008".*

The Respondent provided comments to the Panel's questions in its letter to the CAS dated 16 June 2009. In that letter, the Respondent states as follows:

*"We refer to your communication dated June 10, 2009 and the questions of the Panel.*

*As we understand them, the only question addressed to FIS is the last one regarding determination of the notion of "activity" pursuant to art. 10.9 of the FIS Anti-Doping Rules (FADR).*

*In this respect, we observe that art. 10.9 FADR is replicating the wording of art. 10.9 of the WADC (2003).*

*The concept of activity under art. 10.9 WADC is a very broad one and is certainly not limited to competition activities or similar. This results already from the fact that the wording singles out specifically rehabilitation programs and activities permitted as exception.*

*The Comments to art. 10.9 WADC (2003) clarifies expressly that the intent of the rule is that an athlete under an ineligibility sanction shall not participate in any activity of a Signatory or a Signatory's member organisation. As first example of an activity which is not permitted, the Comments mention "practicing with a national team".*

*The same wording and concept of "activity" is used in art. 10.10 of the WADC (2009).*

*As first example, the Comments to art. 10.10.1 WADC (2009) mention "participation to training camps".*

*It can be noted that Comments to WADC are not only logically relevant when it comes to interpretation of the FADR rules when such rules have an identical content. Art. 18.5 FADR provides expressly that they may serve as reference for that purpose.*

*In conclusion, "activity" covers any participation to any activity of i.a. a National Ski Association (as Signatory's Member) except specifically and understandably rehabilitation programs.*

*Training with the national team is of course covered and in fact belongs to the most obvious core of the activities which are meant to be prohibited.*

*One last and repeated observation: participation to training is not recorded in any formal way. If, when an athlete is "caught in the act", it would be sufficient to claim that he or she was not training with the national team but was "alongside" the same by mere "coincidence", this would make a mockery of the obligation not to participate to training. The least which can be requested from the athlete and from the concerned organization is to make sure that an athlete under ineligibility effectively stays away from team training".*

On 23 September 2009 the CAS Office issued an Order of Procedure on behalf of the Panel, which was signed and returned by all parties. In the Order the Panel declared that a hearing in this matter would not be necessary.

## LAW

### CAS Jurisdiction

1. The jurisdiction of CAS, which is not disputed by the parties, derives from Art. 13.2.1 of the FIS Anti-Doping Rules 2007/2008 with respect to Appellant 2. The Appellant 2 is an international level athlete. In accordance with Art. 13.4 of the Anti-Doping Rules, "*decisions by FIS pursuant to Art. 12 may be appealed exclusively to CAS by the National Ski Association*", who in this case is the Appellant 1.
2. It also follows from Art. R47 of the Code of sport-related Arbitration (the "Code"). It is further confirmed by the Order of Procedure duly signed by the parties.
3. Consequently, CAS has jurisdiction to decide the present dispute.

4. Under Art. R57 of the Code, the Panel has the full power to review the facts and the law.

### **Applicable Law**

5. In accordance with Art. R58 of the Code, the Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such choice, according to the law of the country in which the federation, association or sport-related body, which has issued the challenged decision, is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.
6. In the present case, the Panel shall decide this dispute according to the applicable regulations in the FIS Anti-Doping Rules 2007/2008 and 2009. Subsidiarily, Swiss law shall apply, as the International Ski Federation is domiciled in Switzerland.

### **Admissibility**

7. It follows from the appeal and Art. 13.5 of the FIS Anti-Doping Rules 2007/2008 that the appeal is admissible, which is also undisputed by the Respondent.

### **Main Issues**

8. The main issues to be resolved by the Panel are the following:
  - A. Did Appellant 2 violate Art. 10.9 of the FIS Anti-Doping Rules while training in Ramsau, Austria in October 2008 under the said circumstances of this case?
  - B. If so, did the FIS Doping Panel have the authority to sanction him with one additional year of eligibility according to the pertinent rules in force at the time of the incident?
  - C. In case question A) and B) can be answered positively, did Appellant 1 participate in the violation, and if so, was the FIS Doping Panel entitled to withhold a sum of CHF 10,000 in funding from the FIS in accordance with Art. 14.1 and 14.5 of the FIS Anti-Doping Rules?
- A. Did Appellant 2 violate Art. 10.9 of the FIS Anti-Doping Rules while training in Ramsau, Austria in October 2008 under the said circumstances of this case?*
9. Based on the overall evidence and statements made in this case involving the circumstances of Appellant 2's training activities in Ramsau in October 2008, the Panel will start by qualifying the significant elements relevant to establish whether or not Appellant 2 has been involved "in an event or activity" in violation of Art. 10.9 of the FIS Anti-Doping Rules during his period of ineligibility.

10. First of all, the Panel will, for the record, however, conclude that participation in training activities with a national team is undoubtedly to be characterised as “an activity” within the meaning of Art. 10.9 of the FIS Anti-Doping Rules. As pointed out by the Respondent, the language of this provision should be interpreted in light of Art. 10.10.1 WADC. As the first example of an activity which is not permitted, the Comments mention practicing with a national team. The question then remains, what does it take for an athlete *de facto* to participate in the training activities of a national team?
11. Based on the written submissions and evidence given by the parties, the Panel does not find that Appellant 2 had in any official way been invited to participate in the Czech National team’s training activities in Ramsau in October 2008. The Panel is of the opinion that none of the evidence supports such finding, nor that Appellant 1 had paid any of the Appellant 2’s costs in this respect. However, the Panel holds that such an official invitation is not required to establish whether an athlete has been involved in a training activity in violation of the provisions of Art. 10.9 of the FIS Anti-Doping Rules. The risk of a quite obvious circumvention of the rules would not allow for such interpretation.
12. Participation in an activity such as a training camp with a national team must therefore be established on a set of facts which are deemed relevant to describing the real meaning of “participation” in a national training camp. The Panel finds that the following facts speak in favour of Appellant 2 having participated in the Czech National Skiing Team’s training camp, i.e., an illegal activity during his period of illegibility:
  - (i) The fact that Appellant 2 chose to be in the same skiing location and at the same hotel and at the same time as the Czech National Team. This fact, in itself, creates a very strong presumption that the Appellant 2 had a strong intention to follow the Czech National Team’s preparation. The Panel does not believe that the explanation rendered regarding the financial aspects of the hotel accommodations nor the skiing conditions in Europe at the time of the season can weaken or diminish the strong foundation of the above presumption.
  - (ii) The fact that Appellant 2 chose to train on the same ski slopes as the national team, wearing the same clothing as the national team and travelling together with members of the national team in e.g. the ski lifts and in the hotel after the practice sessions also strongly supports the above presumption. This fact once again underscores the overall impression that Appellant 2 *de facto* has been a part of the Czech National Team’s training activities, as it becomes incredibly difficult to distinguish Appellant 2 as an athlete training on his own, if he chooses to dress like his former team mates from the national team, train with them in the same terrain, travel with them in the same ski lifts and talk with them in the same hotel after practice. He would in any normal sense of the term appear to be part of the team. The Panel believes that, had the athlete wanted to distinguish himself from the national team, he could have chosen to stay at another hotel, maybe even at another time or place, but definitely he could have chosen to train with a uniform other than the Czech National Team’s, and he could have chosen not to be in contact with his former team mates, officials or trainers to avoid any misunderstandings.

- (iii) Although the Panel finds that the evidence submitted supports the facts that Appellant 2 had booked and paid for the hotel accommodation and travel expenses on his own, and that he had not received direct training or treatment from any trainers or staff of the Czech National Team while being in Ramsau, the Panel is of the opinion that, weighing the various elements against each other, that Appellant 2 did indeed participate in the Czech National Team's training activities in Ramsau in October 2008, thereby being involved in an illegal activity in violation of Art. 10.9 of the FIS Anti-Doping Rules.
- B. *If so, did the FIS Doping Panel have the authority to sanction him with one additional year of ineligibility according to the pertinent rules in force at the time of the incident?*
13. The Panel notes that Art. 10.9 of the FIS Anti-Doping Rules 2007/2008 does not provide expressly for specific consequences of the violation of the ineligibility status, nor a specific rule on how the sanctions, if possible, should be enforced, not even in regard of disqualification. This fact has led the Appellants to claim that no legal consequences can be drawn in this matter, even though the Panel would find that Appellant 1 had violated Art. 10.9.
14. Although it is unfortunate that the legal consequences derived from Art. 10.9 of the FIS Anti-Doping Rules 2007/2008 are not specifically clear, it is the opinion of this Panel that a sanction in the form of adding an additional year of ineligibility to the doping sentence would be a justified consequence of a proven violation of the rule. There is nothing to indicate that a violation of the rules should go unpunished, and the possibility of sanction must be deemed an implied part of the provision. An additional sanction of one year ineligibility falls also within the scope of the WADA Code and within a normal proportionality doctrine. The Panel also notes that the rules have later been clarified under the new FIS Anti-Doping Rules 2009 model based on the WADA Code of 2009. In this set of rules, the consequences are now expressly provided both with respect to cancellation of results and an extension of a sanction period. However, the Panel believes that this clarification should not be interpreted as a new rule which should be applied implicitly under the regime of the FIS Anti-Doping Rules 2007/2008. Thus the Panel holds that the FIS Doping Panel had the authority to sanction Appellant 2 with one additional year of ineligibility and holds that the sanction period is fair and proportionate.
- C. *Did Appellant 1 participate in the violation, and if so, was the FIS Doping Panel entitled to withhold a sum of CHF 10,000 in funding from the FIS in accordance with Art. 14.1 and 14.5 of the FIS Anti-Doping Rules?*
15. The Panel holds that the question whether a sanction may be applied on Appellant 1 first and foremost depends on whether Appellant 2 can actually be deemed to have violated Art. 10.9 of the FIS Anti-Doping Rule and, in addition hereto, whether Appellant 1 may be said to have participated, actively or passively, in this violation.
16. Based on the evidence of this case, it is the prevailing opinion of the Panel that trainers and officials around the Czech National Team must have known that Appellant 2 was, in fact,

training alongside his former team mates from the national team. He stayed at the same hotel, he trained at the same ski terrain, he travelled in the same ski lifts, he wore the national uniform, he took meals with his former team mates in the same hotel after practice. All of these circumstances would clearly in the view of the Panel have been enough for a responsible team management to realise that Appellant 2 was in fact participating in the training camp notwithstanding his status of ineligibility.

17. Therefore, the Panel holds that Appellant 1, by not taking any clear action against Appellant 2, either actively or at the very least passively, has accepted Appellant 2 as part of the training camp thereby contributing to the violation of Art. 10.9 of the FIS Anti-Doping Rules.
18. With respect to the FIS Doping Panel's authority to withdraw funds from Appellant 1 as consequence of the non-compliance with the FIS Anti-Doping Rules, the Panel notes that the Appellant 1 does not in itself challenge the amount of CHF 10,000, only the Doping Panel's jurisdiction.
19. It is true that the pertinent Art. 12.1 of the FIS Anti-Doping Rules formally refers to the FIS Council as the instance having jurisdiction to issue a decision in this respect. However, the Panel believes that this rule is not a material rule, but only reflects a rule of procedure which is important with respect to the question of jurisdiction. The rules were changed in the 2009 version of the FIS Anti-Doping Rules. Art. 8.1.8 extends the Doping Panel's jurisdiction to all persons which may have contributed to the violation. Since these rules came into force on 1 January 2009 irrespective of the fact that the merits of the case concerned an incident before 1 January 2009, the Panel rules that the FIS Doping Panel in its decision dated 11 February 2009 had jurisdiction to withdraw funds from Appellant 1 in accordance with Art. 14.1 and 14.5 of the FIS Anti-Doping Rules.

**The Court of Arbitration for Sport rules:**

1. The appeal filed by Czech Ski Association and Mr. Ondrej Horyna on 10 March 2009 against the decision issued on 11 February 2009 by the FIS Doping Panel, is dismissed.
2. The challenged decision is confirmed.
- (...)
5. All other motions or prayers for relief are dismissed.