



**Arbitration CAS 2008/A/1513 Emil Hoch v. Fédération Internationale de Ski (FIS), order of 25 April 2008**

*Cross-country skiing*

*Doping*

*Criteria for the stay of a decision at a preliminary stage of the procedure*

**In order for the CAS to grant a request for a stay of a decision at a preliminary stage of the procedure, the arguments put forward by the appellant should appear to justify setting aside the appealed decision (likelihood of success on the merits). If the appellant has not succeeded in providing likelihood of success on the merits, the request for a stay shall be dismissed without the other conditions for granting the stay needing to be considered.**

In view of articles R47 and R52 of the Code of Sports-related Arbitration (the “Code”), and pursuant to article R37 of the Code, it is for the President of the CAS Appeals Arbitration Division, or his Deputy, to decide on the application for provisional measures, considering that the Panel has not been constituted yet.

Emil Hoch (“the coach” or “the Appellant”) was, at the time of the dispute, coach of the Austrian national cross-country team and support staff at the Winter Olympic Games of Torino 2006 in Italy.

The Fédération Internationale de Ski (FIS or “the Respondent”) is the head federation in the world of ski.

During the night of 18 February 2008, the Italian police searched the premises of the Austrian national cross-country ski relay team and support staff located in Pragelato, Italy.

In the rooms occupied by the Appellant and Markus Gandler, Austrian cross-country ski team director, the Italian police discovered the following items:

- three containers for renal infusion equipment;
- four phials for infusions;
- one plastic container with microcuvettes for the haemoglobinometer;
- one needle with tubes and one intravenous drip testing device;
- two glasses phials containing liquid, Hatriumchlorod 0,9%, with cannulas and needles with bloods;
- two corks for needles with case and four empty cases and four needles with case;

- one plastic container with probable traces of blood;
- five handkerchiefs with probable traces of blood,
- one plastic packet with a white substance;
- twelve pieces of plastic with a red substance and plastic top;
- one glass container;
- one glass container, containing hCG and albumin with plastic top and metal bands;
- one glass container with liquid.

Some further medical equipment was found by the Italian police at the entrance of the Appellant's apartment.

The Appellant left the premises and Torino before daybreak on the morning after the police conducted the search.

After investigation, the IOC Executive Board disqualified the Austrian athletes from the Austrian cross-country relay, along with two biathletes. Furthermore, the IOC Executive Board suspended the Austrian Olympic Committee (AOC) from receiving or applying for any grants or subsidies from the IOC to the amount of \$1 million US *"for its failure to properly monitor and supervise its athletes and support staff"*.

Following the IOC's decision, an inquiry commission was established by the AOC to investigate the conduct of the members of the Austrian national cross-country and biathlon teams. The AOC declared fourteen Austrian athletes and officials ineligible for all future Olympic Games, including the Appellant.

The IOC transferred the matter to the FIS to determine whether any sanctions were appropriate within the scope of its jurisdiction.

By decision of 28 February 2008, the FIS Anti-doping Panel rendered the following decision ("FIS Decision"):

- "1. Regarding the violation of Article 2.6.2 the Respondent, Emil Hoch is declared ineligible from participating directly or indirectly in any capacity in any FIS sanctioned events for a period of two years;*
- 2. regarding the violation of Article 2.8 the Respondent, Emil Hoch is declared ineligible from participating directly or indirectly in any capacity in any FIS sanctioned event for life;*
- 3. Each party shall be responsible for their own legal costs"*.

On 18 March 2008, Emil Hoch filed a statement of appeal with the Court of Arbitration for Sport (CAS) requesting primarily that the sanction imposed on him by the FIS Decision of 28 February 2008 be cancelled.

Within his statement of appeal, the Appellant requests the stay of the execution of the FIS Decision as there is a risk of him losing his job as coach of the national ski federation of Liechtenstein, in the event that the FIS Decision is executed.

In support of his request for a stay, the Appellant puts forward that he would suffer irreparable harm in the event that he loses his job as professional coach of the Liechtenstein Ski Federation, since even in case that the appeal is eventually admitted by the CAS Panel, the financial consequences would have been incurred already.

In addition, the Appellant indicates that he has been a full-time professional coach for years and it is therefore an existential necessity for him to keep his job.

In its letter of 20 March 2008, the CAS fixed a 10-day deadline for the Respondent to provide its comments with regard to the request for provisional measures filed by the Appellant.

By fax letter dated 2 April 2008, the Respondent submitted its observations in connection with the application to suspend the execution of the appealed decision. It requests that the CAS dismiss the Appellant's application, arguing as follows:

*“- the mere fact that ineligibility has consequences in respect of the career of the concerned person is not per se a sufficient motive to suspend the application of a sanction as this is the normal account in the rule providing for the principle of non suspension.*

*- A suspension can only be envisaged in view of particular circumstances/conditions, including one absolutely necessary one: the fact that the appeal would have good prospect to result in a lifting of the ineligibility or at least such a significant reduction that the sanction could expire before the CAS Panel could issue its decision”.*

Accordingly, the Respondent is of the opinion that the aforementioned conditions are not met in the present case. It further insists on the fact that even in the best possible situation for the Appellant, *“there is no reasonable perspective at all for the Appellant to avoid the application of a severe sanction, implying a long term ineligibility period, if not simply a confirmation of the life-long sanction”*. To establish this assertion, it refers to the violations committed by the Appellant of articles 2.6 (possession of doping substances and methods) and 2.8 (participation to doping violations) of the FIS Anti-doping Rules (cf. FIS Decision) and to the decisions which have been issued by two CAS Panels against four Austrian cross-country skiers, proceedings which were initiated by the IOC at the Torino Olympic Games 2006, and in which the Appellant played a central role.

It concludes that *“whatever the arguments the Appellant may bring in support of his plea to reconsider that sanction, one thing is already certain: the CAS Panel can have the comfort that it will dispose of the necessary time to issue a serene decision without running the slightest risk to maintain in the meantime a sanction which would prove to be excessive”*.

## LAW

### CAS Jurisdiction

1. The jurisdiction of CAS results *in casu* from article 13 of the FIS Anti-doping Rules, which provides for an appeal to CAS against any FIS decisions based on violations of the FIS Anti-doping Rules. Furthermore, the jurisdiction of the CAS to decide the present dispute has not been challenged by the parties.
2. It follows that CAS has jurisdiction to decide the present dispute, which shall be submitted to the CAS Appeals Arbitration Division.

### Admissibility

3. In accordance with article 13.5 of the FIS Anti-doping Rules, the time limit to file an appeal to CAS shall be twenty-one (21) days from the date of receipt of the decision by the appealing party. The decision being challenged was sent to the Appellant on the same day and his appeal was filed on 18 March 2008. As a consequence, the appeal appears to be admissible.

### Application for a stay

4. Mr Emil Hoch has applied to stay the execution of the FIS Anti-doping Panel decision dated 28 February 2008. Pursuant to articles R37 and R52 of the Code, such application is treated as a request for provisional and conservatory measures.
5. In accordance with the CAS case law, as a general rule, when deciding whether to stay the execution of the decision appealed from, it is necessary to consider whether the measure is useful to protect the Appellant from irreparable harm, the likelihood of success on the merits of the appeal and whether the interests of the appellant outweigh those of the opposite party. It is necessary to compare the risks incurred by the Appellant in the event of immediate execution of the decision with the disadvantages for the Respondent in being deprived of such execution (balance of interests). The Appellant must make at least a plausible case that the facts relied on by him/it and the rights which he/it seeks to enforce exist and that the material conditions for a legal action are fulfilled (CAS 2000/A/274, published in the Digest of CAS awards II, p. 757; see also CAS 98/200, *ibidem*, pp. 38-41)).
6. In the present procedure, the context of the dispute is closely linked to previous arbitration procedures before the International Olympic Committee (IOC) and then before CAS, namely CAS 2007/A/1286 & CAS 2007/A/1288 & CAS 2007/A/1289, as well as CAS 2007/A/1290, in which the CAS Panels have issued awards. In these procedures, four Austrian cross-country skiers, who participated in the relay of the Olympic Winter Games 2006 in Torino, have been sanctioned for the violation of articles 2.6 and 2.8 of the FIS Anti-doping

Rules, with an exception in respect to that rule for one of those athletes. In view of the elements in the current record of the case, it appears that Mr Emil Hoch was part of the staff that was present with the athletes and located in the same place, Pragelato.

7. In view of the materials found by the Italian police in the Appellant's premises, in Pragelato, during the Torino Olympic Games 2006, and the Appellant's premature departure from Italy early in the morning after the police investigations, it is a very strong likelihood that he was generally involved in the doping practices of the Austrian cross-country and biathlon team.
8. According to the fact that the sanctions imposed on the Appellant by the FIS Anti-doping Panel, as well as the ineligibility periods pronounced by the CAS Panels towards the Austrian cross country relay team, are not minor.
9. At this preliminary stage of the procedure, it does not appear that the arguments put forward by the Appellant would justify setting aside the FIS Decision.
10. Considering the above, and the fact that the Appellant has not succeeded in providing evidence of the likelihood of success on the merits, the Deputy President of the CAS Appeals Arbitration Division concludes that the request for stay of the execution of the FIS decision of 28 February 2008 filed by the Appellant on 18 March 2008 shall be dismissed and the other conditions do not need to be considered.

**The Deputy President of the CAS Appeals Arbitration Division, ruling in camera:**

1. Dismisses the request for a stay of the FIS Anti-doping Panel decision of 28 February 2008 filed on behalf of Mr. Emil Hoch.
2. States that the present order is rendered without costs.