

In cases before the Court of Arbitration for Sport in Lausanne (CAS), between:

Football Union of Russia

and

- (1) Fédération Internationale de Football Association**
- (2) Polish Football Association**
- (3) Swedish Football Association**
- (4) Czech Football Association**
- (5) Football Association of Montenegro**
- (6) Malta Football Association**

- (1) Union of European Football Associations**
- (2) Hellenic Football Federation**
- (3) Belarus Football Federation**
- (4) Danish Football Association**
- (5) Luxembourgish Football Association**
- (6) Austrian Football Association the Malta Football Association**
- (7) Football Association**
- (8) Portuguese Football Federation**
- (9) English Football Association**
- (10) Spanish Football Association**
- (11) Irish Football Association**
- (12) French Football Association**

**APPLICATION FOR LEAVE
TO FILE A BRIEF OF AMICUS CURIAE**

15 March 2022

APPLICATION FOR LEAVE

1. This is an application of the Polish Union of Footballers (Polski Związek Piłkarzy)¹ for leave to file a brief of *amicus curiae* in cases initiated by the appeals of the Football Union of Russia against the decisions of the Fédération Internationale de Football Association (“**FIFA**”) and the Union of European Football Associations (“**UEFA**”) to suspend all Russian teams and clubs from participating in their respective competitions (the “**Appealed Decisions**” or the “**Decisions**”).
2. The cases raise important questions of fundamental player rights. Had it not been for the appealed Decisions, the players - in order to pursue their right to compete in their sport - would have to participate in competitions, which would be used to “sport-wash” grave and ongoing violations of human rights and fundamental principles of international law. This would be an unacceptable violation of the players’ freedom of thought and expression and possibly their other rights (respect for private and family life).
3. The Applicant believes that its expertise will assist the Court in considering this important aspect of the cases concerned. Founded in 1997, the Applicant is the oldest players union in Poland and the Polish member organization of FIFPro in good standing. It aims to promote and protect the rights of players and instil social dialogue and good governance in football.
4. The application is submitted pursuant to Rule 41.4 of the Code of Sports-related Arbitration (Procedural Rules of the Court of Arbitration for Sport). The summary of the intended brief is provided below.

¹ Power of Attorney – Exhibit 1.

SUMMARY OF THE INTENDED AMICUS CURIAE BRIEF

Freedom of thought and expression includes freedom not to promote an undue cause

5. Freedom to hold and express opinions and ideas without undue interference is one of the fundamental human rights. It is enshrined, first and foremost, in article 10 of the European Convention on Human Rights, which stipulates freedom of expression.
6. The main aim of this freedom is to protect against censorship. However, it also protects individuals against compelled speech. It guarantees them that they shall not be compelled to express or otherwise lend support to particular causes they would not otherwise have contributed to. This negative aspect of the freedom of expression is also guaranteed by other rights – first and foremost by the freedom of thought, conscience and religion enshrined in article 9 of the ECHR – which are interfered with if one is compelled to behave in a way which expresses views with which one disagrees, or against which one objects.
7. Just like restricting speech, compelling it can be legal, but only if it is necessary in a democratic society in pursuit of a legitimate aim. E.g. antidiscrimination legislation can mandate conduct expressing respect for and acceptance of certain protected positions, qualities or choices of others, even if it is inconsistent with one's beliefs. However, such compulsion must be for a legitimate aim and must be necessary and proportionate to it.

Freedom of expression applies horizontally - especially to MNEs and international SGBs

8. The usual focus of the freedoms of thought and expression is on obligations of states to respect them, i.e. to not restrict or compel speech illegitimately through legislation or execution of law. However, states also have positive obligations to guarantee the full exercise of these rights for the people under their jurisdiction, free from interference from other private parties. As explained in *Özgür Gündem v. Turkey*:

"Genuine, effective exercise of this freedom [of expression] does not depend merely on the State's duty not to interfere, but may require positive

*measures of protection, even in the sphere of relations between individuals
[...]*²

9. Moreover, certain private entities might be directly obliged to respect human rights of other private actors because of the special position of power which they may enjoy over such actors. This applies in particular to multinational enterprises. According to the OECD Guidelines for Multinational Enterprises, such entities must:

"1. Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.

*2. Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur."*³

10. International sport governing bodies are a special category among MNEs. Applying the obligation to respect human rights directly to them is particularly justified because of their *de facto* similarity to public authorities. As held by the Court of Arbitration for Sport in *British Equestrian Federation v. FEI*:

*"there is an obvious parallel between a public authority and a sports federation, who make their own rules and regulations and reach their own decisions by following a similar process and with a similar impact on those affected"*⁴

11. Hence, as held by CAS in *George Yerolimpos v. World Karate Federation*⁵, sport governing bodies are under direct obligation to respect freedom of expression enshrined in article 10 of the ECHR and cannot restrict it in an undue manner. Hence, they must also refrain from compelling it other than in pursuit of a legitimate purpose:

² *Özgür Gündem v Turkey, Ersöz and ors v Turkey, Merits, App No 23144/93, ECHR 2000-III, [2000] ECHR 104, (2001) 31 EHRR 49, (2001) 31 EHRR 1082, IHRL 2863 (ECHR 2000), 16th March 2000, European Court of Human Rights [ECHR], p. 43.*

³ OECD Guidelines for Multinational Enterprises, chapter IV, Human Rights.

⁴ *British Equestrian Federation v. FEI* [2010] Court of arbitration of sport 2010/A/2058, at para16.

⁵ *George Yerolimpos v. World Karate Federation (WKF)* [2014] Court of arbitration of sport 2014/A/3516.

The problem of “sport-washing”

12. Sport represents and promotes a particular set of ideas – the philosophy of Olympism. *Olympism is a philosophy of life, exalting and combining in a balanced whole the qualities of body, will and mind. Blending sport with culture and education, Olympism seeks to create a way of life based on the joy of effort, the educational value of good example, social responsibility and respect for universal fundamental ethical principles. The goal of Olympism is to place sport at the service of the harmonious development of humankind, with a view to promoting a peaceful society concerned with the preservation of human dignity.*⁶
13. All athletes participating in sport competitions are essentially compelled to not only refrain from contradicting this philosophy by their behaviour, but to manifest it publicly through their conduct as athletes and through their participation in sporting events full of Olympic symbolism. This is ensured by the Olympic Charter and the lower order regulations of international *lex sportiva*. These regulations pursue a legitimate, noble purpose and the mechanisms designed to enforce them, are – by and large – proportionate.
14. But sport can also be abused to promote causes which contradict its philosophy. This occurs in particular when a state, which systematically violates human rights or undermines world peace in a premeditated manner, uses sport to mask these violations from the public eye and maintain or increase its international profile regardless of them. Such practice is commonly referred to as “sport-washing” (or “sportswashing”) – a term popularized by Amnesty International. It consists in the perpetrator state using the goodwill of international sport and the reputation and goodwill of its own athletes, and athletes from other states, to unduly ramp up its image.
15. While no state is perfect and all of them seek to increase their international profile through sport, sport-washing practices should generally be opposed and its most severe cases eradicated entirely. And for the sake of player rights as well. It would not be legitimate to require players to participate in such practices. Compelling players to lend their support to undue causes through participating in “sport-washing” would severely violate their freedom of expression, freedom of thought and conscience, and possibly other rights, too (e.g. right to private and family life – such as e.g. in case of players personally affected by the wrongful act being “sport-washed”).

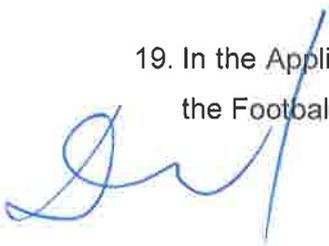
⁶ <https://olympics.com/ioc/faq/olympism-and-the-olympic-movement/what-is-olympism>

16. A proper analysis must be conducted in each case. One of the lynchpins of Olympism is a belief that sport has a transformative quality and can not only help maintain peace and respect for human rights, but also promote it and encourage political leaders to cease human rights violations and act in favour of peace, where it is lacking. Hence, as a matter of principle, conflicted states should not only be allowed, but encouraged to participate in international sport competitions. And it is legitimate for international sport governing bodies to require players to participate in competitions with the representatives of such states, provided that the genuine goal of this would be to fulfil the said function of sport – to promote peace and human rights.

17. However, this must not serve as a licence for cynical abuses of sport, its philosophy and the goodwill and dignity of the athletes. International sport governing bodies, like FIFA and UEFA, have a duty to refrain from, or prevent their member organizations' attempts at sport-washing of the most severe and objectionable conduct by states or corporations, and to protect players from situations in which their pursuit of the right to compete in sport would be conditional on their having to participate in such practices.

18. This certainly applies to situations in which sport would be used by a state engaged in aggressive war to "sport-wash" its continuing internationally wrongful activities. As put by the International Military Tribunal at Nuremberg, "*to initiate a war of aggression... is not only an international crime; it is the supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole.*"⁷ The sport governing bodies of a state which engages in such an act cannot expect players from its own and other countries to dignify and promote it by competing with its representatives in international competitions. Especially if these national SGBs support or enable the internationally wrongful actions of their government.

19. In the Applicant's opinion, this must be taken into account in assessing the appeals of the Football Union of Russia against the Decisions.



Stanisław Drozd
adwokat

For the Applicant

Exhibit: Copy of Power of Attorney with excerpt from the Applicant's record in the relevant register.

⁷ 22 Trial of the Major War Criminals Before the International Military Tribunal, 427 (1948)