

COURT OF ARBITRATION FOR SPORT (CAS)

Ad hoc Division – XVIII Asian Games in Jakarta Palembang 2018

**CAS AG18/09 Uzbekistan Cycling Federation & Ms Olga Zabelinskaya v.
Olympic Council of Asia (OCA)**

AWARD

in the arbitration between

Uzbekistan Cycling Federation

Ms Olga Zabelinskaya

Applicants

and

Olympic Council of Asia

Respondent

and

National Olympic Committee of Uzbekistan

Interested Party

I. PARTIES

1. The First Applicant is the Uzbekistan Cycling Federation (the “UCF”).
2. The Second Applicant is Ms Olga Zabelinskaya (the “Athlete”).
3. The Respondent is the Olympic Council of Asia (the “OCA”).
4. The Interested Party is the National Olympic Committee of Uzbekistan (the “NOCU”).

II. FACTS

5. The elements set out below are a summary of the main relevant facts as established by the Panel by way of a chronology on the basis of the submissions of the parties. Additional facts may be set out, where relevant, in the legal considerations of the present award.
6. On 8 August 2018, the Union Cycliste Internationale (the “UCI”) sent a letter to the Athlete which relevant part reads as follows:

“After examination of your request as well as the documents submitted, we are able to confirm that your request complies with the requirements set out in the UCI Regulations and may be granted.

As a consequence, your nationality in the sense of [...] the UCI Regulations shall henceforth be registered as Uzbekistan (UZB).

As already mentioned in our previous correspondence, please be aware of the different restrictions which apply in terms of participation and eligibility. Firstly, we kindly remind you of the rules related to the participation in UCI World Championships provided in article 1.1.033 para. B. lit. e of the UCI Regulations. In accordance with said provision, you shall not be entitled to represent Uzbekistan in any UCI World Championships held in 2018 and 2019. Secondly, we kindly advise that you take note of article 1.2.028 of the UCI Regulations which governs participation in national championships. Finally, eligibility rules for participation in the Olympic Games are contained in the Olympic Charter, specifically Article 41 (and Bye-law to Article 41) with regard to nationality. We also invite you to consider eligibility conditions regarding nationality which may apply to other events in accordance with their respective rules and regulations.

For the sake of good order, the present correspondence is equally addressed to the Uzbekistan Cycling Federation and the Russian Cycling Federation who are requested to take any appropriate measures.”

7. By letter dated 20 August 2018, the UCF requested the OCA to “*support National Federation of Uzbekistan in Asian Games 2018 by giving access to [the Athlete] to perform for Uzbekistan national team on road and track in Asian Games in Jakarta.*”
8. According to the Applicants, the OCA orally informed them on 21 August 2018 that the Athlete was not eligible to compete at the XVIII Asian Games under the flag of Uzbekistan.

III. CAS PROCEEDINGS

9. On 23 August 2018 at 13h15 (Jakarta time), the Applicants lodged their application, which was registered as CAS AG 18/09.
10. Pursuant to Article 11 of the CAS Arbitration Rules, the President of the CAS Ad hoc Division, Mr. Michael Lenard, appointed Mr Xianyue (Simon) Bai (China) (President of the Panel), Mr Enrico Pedro Ingles y Mendiola (Philippines) and Mr Jahangir Baglari (I.R. of Iran) as arbitrators to hear the present dispute.
11. On 23 August 2018, the Panel, in view of the urgency of the matter, issued a summons requiring each of the parties and interested parties to attend a hearing on 23 August 2018 at 16h00 (Jakarta time).
12. On 23 August 2018 at 16h00 (Jakarta time), the hearing took place at the CAS Ad hoc Division premises. The following persons attended the hearing: Mr Kozim Urinboykhujayev, representative of the UCF and the Athlete, Mr Farruh Kayumev, representative of the NOCU, Mr Jan Kleiner, Counsel for the Respondent and Mr Haider Farman, Director of the Asian Games. The Athlete attended the hearing via tele-conference. During the hearing, the Counsel for NOCU stated that he was there to support the UCF. The Panel was assisted at the hearing by Mr Antonio de Quesada, counsel to the CAS. At the beginning of the hearing, the parties were invited to state whether they had any objection to the composition of the Panel. The parties did not object.
13. Following the hearing, which concluded at 17h30 (Jakarta time), the representatives for each of the parties confirmed that their respective rights to be heard had been fully respected by the Panel and that they had no issue with respect to the way the CAS procedure or hearing was conducted.

IV. PARTIES' REQUESTS FOR RELIEF

a. *Applicants' Requests for Relief*

14. The Applicants' request for relief is to allow the Athlete to compete at the XVIII Asian Games under the Uzbekistan flag.

b. *Respondent's Requests for Relief*

15. The Respondent's request for relief is to confirm that the Athlete is not eligible to compete at the XVIII Asian Games under the Uzbekistan flag.

c. *Interested Party's position*

16. The Interested Party did not file any specific submission or request for relief but its legal representative indicated at the hearing that the NOCU "supported" the Applicants.

V. JURISDICTION AND ADMISSIBILITY

17. The jurisdiction of the CAS Ad hoc Division arises out of Article 34 of the Constitution of the Olympic Council of Asia.

18. Article 1 of the CAS Arbitration Rules for the Asian Games provides as follows:

"Article 1. Application of the Present Rules and Jurisdiction of the Court of Arbitration for Sport (CAS)

The purpose of these Rules is to provide, in the interests of the athletes and of sport, for the resolution by arbitration of any disputes covered by Article 34 of the Constitution of the Olympic Council of Asia, insofar as any such dispute may arise in the host country of any of the Asian Games (Summer Games, Winter Games, Beach Games and Indoor & Martial Arts Games; hereafter "the Asian Games") within a period commencing 2 days prior to the Opening Ceremony (4 days for the Asian Summer Games) and ending at the beginning of the Closing Ceremony of such Games."

19. The Panel notes that the Parties agree that conversations between the UFC and the OCA were ongoing during the past weeks regarding the participation of the Athlete at the XVIII Asian Games. Furthermore, the Panel notes that the OCA stated that it informed the Applicants about the non-eligibility of the Athlete to participate at the XVIII Asian Games well before the "*period commencing 4 days prior to the Opening Ceremony*" of the XVIII Asian Games. However, in the absence of any concrete evidence of when the Athlete was declared ineligible to participate at the XVIII Asian Games and in view of the fact that the Athlete was initially registered as a participant in the Asian Games (at the time of the

hearing, her name was still published as a participant in road cycling on the official website of the Games), the Panel has no other option than to rely on the Applicants' statement on their application form in accordance to which such decision was taken on 21 August 2018. Therefore, the CAS has jurisdiction to hear the present dispute.

20. Whereas the Respondent has raised no objection with respect to the standing of appeal of the Athlete and the NOCU, the Panel notes that the Respondent raised such objection vis-à-vis the UCF. Regarding this objection, this Panel notes that the question of jurisdiction for this party does not need to be decided in order to resolve this dispute because jurisdiction clearly exists for the Athlete (and the NOCU, as far as this party has declared being "supportive" of the Applicants). In any event, the Panel wishes to emphasize that it agrees with the analysis of this question presented by the Panel in the matter AG 18/01&02&03&04&05&06.

VI. APPLICABLE LAW

21. These proceedings are governed by the CAS Arbitration Rules for the Asian Games. They are further governed by Chapter 12 of the Swiss Private International Law Act of 18 December 1987 ("PIL Act"). The PIL Act applies to this arbitration as the result of the location of the seat of the CAS Ad hoc Division in Lausanne, Switzerland, pursuant to Article 7 of the CAS Arbitration Rules for the Asian Games.
22. Furthermore, pursuant to Article 17 of the CAS Arbitration Rules for the Asian Games, the Panel shall rule on this dispute pursuant to the Constitution of the Olympic Council of Asia, the applicable regulations, the general principles of law and the rules of law whose application the Panel deems appropriate.

VII. MERITS

22. The Panel has to determine whether the Athlete is eligible to compete at the XVIII Asian Games under the Uzbekistan flag.
23. The Panel notes that, at the hearing, the Athlete stated that she was allowed to participate at a UCI 2018 Women's World Tour in Sweden in August 2018 under the Uzbek flag. However, the Panel considers that such participation is irrelevant for the case at hand since the XVIII Asian Games are exclusively governed by the Constitution and Rules of the OCA.
24. By-law to Article 52 of the Constitution and Rules of the OCA reads as follows:
"A competitor who has represented one country in the Olympic Games, OCA Games, continental, regional, and world championships recognized by the

relevant IF, and who has changed his nationality or acquired a new nationality, shall not participate in the OCA Games to represent his new country until three years after such change or acquisition.” (emphasis added by the Panel).

25. In light of this provision, the Panel considers that the Athlete is not eligible to participate at the XVIII Asian Games because (i) she represented Russia at the Olympic Games (being an Olympic medallist), and (ii) her acquisition of Uzbek nationality only took place in July 2018. Therefore, it is clear that the “transitional period” of 3 years after the Athlete’s acquisition of her new nationality for being able to compete at the Asian Games under the Uzbek flag has not yet elapsed.
26. Therefore, the application filed by the UCF and the Athlete shall be dismissed.

DECISION

The Ad hoc Division of the XVIII Asian Games in Jakarta Palembang 2018 of the Court of Arbitration for Sport renders the following decision:

1. The Application filed by the Uzbekistan Cycling Federation (UCF) & Ms Olga Zabelinskaya on 23 August 2018 is dismissed.

Jakarta, 23 August 2018


THE AD HOC DIVISION OF THE COURT OF ARBITRATION FOR SPORT



Xianyue Bai
President of the Panel



Jahangir Baglari
Arbitrator



Enrico Pedro Ingles y Mendiola
Arbitrator