

Organisation of international and national championships – complex legal issues and liability risks for the organiser

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[1] The Summer Olympics in Athens have recently come to an end, and in June this year Euro 2004 was held in Portugal. Sports fans are already looking forward to new large sporting events that are not too far off, for example the Winter Olympics in Torino, and the 2006 FIFA World Cup in Germany. From the Swiss point of view, the focus is somewhat more distant, on the year 2008 when Switzerland together with Austria will be joint hosts of the next final round of the European Football Championship. Furthermore, in the year 2009 the Ice Hockey World Championship will be held in Switzerland. There is also a possibility of the Winter Olympics of 2014 being awarded to Switzerland. Apart from the above, there is a multitude of other large international events as well as national championships and competitions which are regularly held in Switzerland. These include, for example, the Zürich Track and Field Athletics Meeting, the Swiss Indoors of the best tennis players, the rowing regatta on lake Rotsee, and the Zürich Ironman Triathlon, to name but a few.

[2] A common factor in all these events is that awarding them is not only a great honour to the host, but staging such a competition or championship is associated with very substantial organisational, logistical and legal expenditure. The organiser has to shoulder great responsibility. This presentation sets out some legal aspects in the context of organising a sports event. It does not attempt to present a comprehensive picture but instead to provide some specific insights. The following explanations are basically applicable to national or international championships or competitions of any size, and are thus also important in the context of smaller sports events.

Complex responsibilities

[3] From a legal point of view, organising and staging a competition or championship usually requires a complex system of contractual provisions. This results from the necessity to cooperate with a multitude of different partners and to cover oneself, as far as is possible and tenable, against contractual and non-contractual risks.

[4] From the point of view of the host, the organisation agreement is at the centre of this complex system. This presentation therefore concentrates on the subject of the organisation agreement, while other important commercial agreements, such as for example marketing and television agreements, will not be discussed in detail.

[5] In the context of an organisation agreement, first of all the question arises as to who is in fact the host. The crucial question that must be asked is who has been awarded the right and the obligation to organise and stage the given competition or championship (such as for example the European Football Championship, the Ice Hockey World Championship or the Olympic Games). It is important to remember that when a large sports event is awarded to Switzerland, as a rule, it is not the Confederation or individual cantons or towns that are nominated as the organiser(s). Instead, most of the time the host is an association (e.g. the Swiss Football Association or the Swiss Ice Hockey Association) or some organisation committee appointed by such an association. An organisation committee may have a legal personality of its own. Sometimes the organising association and the international association together are designated as co-organisers. Within the scope of this presentation it is not possible to provide a generally-applicable rule as

to who is the organiser. An answer to this question not only depends on the rights which are derived from the organiser capacity but also on the concrete circumstances of the case, such as for example the by-laws of the international association and the specific details of the organisational structure and responsibilities.

[6] The organising association has to enter into agreements with a large number of organisations which have to be tied into the entire organisation structure. As mentioned above, the relationship between the host and the international association (e.g. UEFA, IIHF, IOC) under whose patronage the event is staged is in the foreground. The mutual rights and obligations regarding the organisation and staging of the event, to the extent that they are not prescribed by the articles and other by-laws (consequently by the provisions concerning the law of associations which apply to the respective international association), have been specified in the organisation agreement already mentioned. For example, such an agreement regulates the following:

- the technical conditions and safety measures which have to be fulfilled and provided by the host;
- the number and dates of competitions or games;
- the commercial issues (e.g. distribution of income from ticket sales);
- issues relating to the exploitation of rights (in particular sponsoring or marketing and exploitation of television rights);
- organisational aspects and questions relating to the monitoring and control of preparatory tasks;
- tax aspects;
- duration of the contract, and premature termination of the contract;
- force majeure and postponement or cancellation of the event; and
- aspects of insurance law.

[7] At the other end of the organisational chain are the spectators, who want to follow the events in the stadiums (or in some other event location) live. With each individual spectator or ticket purchaser a separate contract is entered into which essentially grants the spectator the right to attend a particular game or competition. Further aspects of the contract, such as security, advertising (in particular a prohibition of ambush marketing) and liability still have to be specified.

[8] As already indicated, further contractual relationships are entered into with sponsors, advertising partners and television companies as well as any specialised marketing companies that may have been enlisted. If the agreements with these parties are not concluded by the host but instead by the higher (international) association, the organising association is obliged to ensure that the rights which the international association has granted to sponsors and television companies are indeed maintained. The international association must thus oblige the host to ensure that these rights are upheld. This may for example mean that only the official advertising partners are authorised to advertise in the stadiums, and that only the official television company is permitted to film and broadcast the competitions. Also of importance in this context are the agreements with stadium owners or operators; they are to be obliged to provide stadiums free of any advertising.

Serious consequences of organisational problems

[9] Together with the organisation agreement, all the necessary agreements are to be joined to form a consistent system which is free of contradictions, with the objectives of fulfilling the obligations of the host, ensuring proper organisation and staging of the event, ensuring the safety of all parties involved, and minimising the risks to the host and the international association.

[10] If the host encounters difficulties in the preparation and organisation of the event, this can have far-reaching consequences. Under Swiss law, an organisation agreement can, with good reason, be deemed a work contract or a contract predominantly with elements similar to a work contract. The host has to assume responsibility for a specified measurable performance success, namely staging all the games or competitions within the agreed framework. In return for this, the host is usually entitled to a

certain compensation or consideration, for example in the form of income from ticket sales. The applicability of the law relating to work contracts means that – provided this has not been defined otherwise in the organisation agreement or in the applicable by-laws – the international association can take away from the organising association the holding of an event if the organiser fails to start preparatory work on time, delays carrying out such work, or is behind schedule to such an extent that belated completion is to be expected. In this situation the law refers to premature rescission of a contract. Such a rescission by the international association would result in the host having to pay back any consideration already received, and, if applicable, having to pay compensation for loss. Under Swiss law, such legal consequences would have been quite imaginable in principle had the infrastructure for the Summer Olympics 2004 in Athens indeed not been in place in time for the event.

[11] If an organising association fails in its organisation, the financial consequences would be far-reaching – above all because the costs incurred and any additional compensation for loss would have to be borne. As a result of rescission of a contract by the international association, all the entitlements for counter-performance would cease to apply, as would the right to stage the event. Similarly grave consequences would result were the event to be cancelled or transferred to another country as a result of force majeure (for example a natural disaster or an act of terrorism). Unless otherwise provided for by the organisation agreement or by the by-laws of the international association, in this case the general provision of the Swiss Code of Obligations would apply. According to this provision, in the case of subsequent impossibility of performing (which would have to be assumed in such a case), the international association's claim for performance by the association which stages the event expires. On the other hand, the association which stages the event would have to reimburse any consideration already received and the association which stages the event would lose any claim for future counter-performance.

The need for rigorous risk management

[12] Any host is therefore well advised to incorporate the above-mentioned issues in a comprehensive risk analysis at a very early stage in its bid for hosting a large sports event. It is equally important for the host to monitor performance on an ongoing basis and to monitor the milestones specified in the organisation agreement and/or specified internally. Moreover, it will have to be ascertained to what extent and at what financial terms and conditions the organising association can obtain insurance cover. Insurance cover against the financial risks associated with hosting an event (in particular cancellation or liability) is highly recommendable, even though in the case of very large events involving global broadcasting a host taking out a policy in the insurance market might come up against certain limits as far as the insurable amount is concerned.
