

# Kuwait: still in the Olympic wilderness

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June – July 2018

The suspension of an athlete or nation from participating in the Olympic Games is commonly considered to be the ultimate sporting sanction. Whilst the suspension of Russia from PyeongChang 2018 (and its reinstatement immediately afterwards) grabbed headlines, Kuwait remains subject to a ban imposed by the International Olympic Committee (“IOC”) in 2015.

Kuwait’s National Olympic Committee (“NOC”) is no stranger to Olympic exile, having been suspended by the IOC in 1986. More recently, Kuwait was warned by the IOC in 2007 that its sports legislation permitted governmental interference in the internal functioning of its NOC and other sporting federations, in violation of the Olympic Charter. When Kuwait did not address this issue by the IOC’s deadline of 31 December 2009, its NOC was suspended. This ban was lifted shortly before London 2012.

Further sports legislation was enacted in early 2015, however, that conferred upon the Kuwaiti Sports Ministry the power to assume control of national sporting bodies, as well the ability to control financial matters. Consequently, Kuwait’s NOC was disbanded by the Kuwaiti Sport Ministry, purportedly due to financial irregularities, as were nine other national federations. Interim committees were established to take over their administration, headed by figures widely reported to be loyal to the Kuwaiti Sports Ministry. The IOC took the view that Kuwait had failed to ameliorate the position by the IOC’s deadline of 27 October 2015; and, its NOC was suspended again. This came shortly after FIFA had imposed its own suspension on Kuwait’s football association (“KFA”), having failed to meet FIFA’s 15 October 2015 deadline for corrective action. Sixteen further international sports federations subsequently followed suit.

## **Subsequent Developments**

In response to its censure by the international sporting community, Kuwait went on the offensive. In June 2016, the Kuwait government appealed the IOC suspension in the Swiss Civil Courts and claimed \$1 billion compensation for losses flowing from the alleged unjust imposition of a suspension in the absence of an appropriate investigation. The appeal and compensation claim were dismissed in August 2016 and Kuwait was ordered to pay \$11,500 towards the IOC’s legal costs. Also in June 2016, the Court of Arbitration for Sport (“CAS”) rejected an appeal brought by a number of Kuwaiti football clubs (including the Kuwaiti Premier League champions, Kuwait Sporting Club) against the FIFA suspension.

In addition to legal proceedings, Kuwait has made frequent unsuccessful appeals to the IOC (and FIFA) for its suspension to be lifted. Numerous meetings have also taken place between Kuwaiti officials and the IOC, most notably that mediated by the United Nations in January 2016, at which the parties appeared to have reached an agreement in principle that Kuwait reportedly reneged upon at a later date.

On 12 December 2016, Kuwait’s newly-elected parliament voted by a majority of over two thirds to amend the relevant sports legislation to facilitate re-admission to international sport. This vote unfortunately came too late for Kuwait to take part in the AFC Asian Cup Qualification final round, given that the deadline imposed by the Asian Football Conference (“AFC”) for the KFA to be

readmitted to FIFA membership was 18 December 2016.

In early 2017 the IOC are reported to have sent a letter to the Kuwaiti Sports Ministry setting three conditions for Kuwait's re-acceptance into the Olympic Movement:

1. all relevant sport legislation must be amended in order to comply with the Olympic Charter;
2. all board member changes imposed upon Kuwait's NOC and other sporting bodies must be revoked; and
3. all ongoing domestic and international cases against the IOC and other international sporting bodies must be dropped.

On 4 December 2017, Kuwait finally bowed to mounting domestic and international pressure by enacting new sports legislation purporting to replace all previous such laws and thus prevent governmental interference with Kuwaiti sporting bodies.

FIFA lifted its ban on 6 December 2017. However, despite subsequent meetings taking place between Kuwaiti officials and the IOC, the Olympic ban remains in place.

### **The wider context of governmental interference**

Sporting bodies are hard-wired to protect their autonomy to govern and regulate their sport, as enshrined in the Olympic Charter. A distinct body of law, *lex sportiva*, has developed over time to underpin the doctrine that sporting bodies are best placed to understand the unique circumstances of sport and manage them in a way that maximises wider societal benefits. The Olympic Charter promotes collaboration between sporting bodies and government, but prohibits interference. This begs the question as to where the line is between benign and undue governmental influence. Reasonable conditions attached to the receipt of public funds by sporting bodies for grassroots investment is an obvious example of the former, whereas a government retaining unfettered power to disband national sporting federations is an obvious example of the latter. However, there are a myriad of circumstances falling in between.

Kuwait is not alone in finding itself on the wrong side of the IOC due to governmental interference in sport:

- In July 2007, Panama was suspended by the IOC for governmental interference in the running of its NOC. The ban was lifted in April 2008 in time for the nation to compete at Beijing 2008. It was threatened with a further suspension in January 2011 when the Panamanian President demanded the resignation of NOC committee members, but this was averted when the issue was resolved to the IOC's satisfaction.
- In January 2011, Ghana's NOC was suspended by the IOC for failing to amend its sports law to prevent the Ghanaian government from making presidential appointments to its NOC and numerous national sporting federations. The ban was lifted in October 2011 when a new sports law was enacted to prevent political interference, allowing the nation to compete at London 2012.
- In June 2011, the IOC warned the Indian Sports Ministry that compelling national sporting federations to adopt mandatory eligibility requirements for officials constituted undue governmental interference. When the Indian government ignored this warning and the Olympic Association separately elected officials accused of corruption, the Indian NOC was suspended by the IOC for non-compliance with the Olympic Charter in December 2012. Somewhat uniquely, the IOC lifted this ban four days into Sochi 2014 when new officials were elected, causing the Indian flag to be belatedly raised in the Olympic Village.
- In 2015, Sri Lanka was warned by the IOC that it faced suspension if it did not revise proposed sports legislation that barred high-ranking officials from standing for re-election by the end of that year. This governmental interference was cited as a major reason for Sri Lanka being stripped of

its hosting rights of the 2017 Asian Youth Games.

- In August 2016, Kenya's Sports Ministry disbanded its NOC and transferred its duties to Sports Kenya, in response to alleged mismanagement of Team Kenya at Rio 2016 by senior NOC officials. In March 2017, the IOC cut funding and threatened suspension of the newly-formed NOC when it refused to accept IOC-requested governance reforms.
- Recent reports suggest that Saudi Arabia is coming under increased scrutiny from the IOC and FIFA in connection with a growing trend of appointments for government-backed appointees to the Kingdom's national sports federations. A suspension from international sport would impact the Kingdom's successful national and club football teams and may also affect its progressive economic reforms, of which sport – and in particular the privatisation of its top-tier football clubs – is a central component, owing to sport's increasingly valuable geo-political status in the GCC region.

The IOC is, therefore, not afraid to adopt a robust approach if it considers that the Olympic Charter is being undermined by undue governmental interference. One particular area it has sought to control is the fall-out when relations between national governments and NOCs breakdown. In this regard the IOC has a number of weapons at its disposal, including proactive engagement with the parties, interim funding cuts, the threat of a suspension, and ultimately the imposition of a suspension. The political unpopularity of presiding over a nation suspended from the Olympics more often than not prompts governments to take the necessary remedial action.

## Commentary

The fact that the IOC has not yet followed FIFA's lead in lifting its ban on Kuwait is an intriguing epilogue to this rather messy affair. The reasons for this are not clear, however it may be because Kuwait has not yet complied with the pre-conditions for re-acceptance (outlined above) to the IOC's satisfaction. It may also be symptomatic of the deterioration in the relationship between Kuwait and the IOC. A string of previous broken promises and the instigation of a \$1 billion lawsuit may have eroded the IOC's trust in Kuwait delivering meaningful and lasting change this time around.

What is certain is that the impact on Kuwaiti sport has been marked. Kuwaiti athletes were unable to represent their country at the 2010 Summer Youth Olympics, Rio 2016, and PyeongChang 2018; having to compete instead as neutral athletes under the Olympic flag. Indeed, Kuwait was denied its first ever Olympic gold medal when Kuwaiti shooter Fehaid Al-Deehani claimed the dubious honour at Rio 2016 of becoming the first athlete to win a gold medal as an Independent Olympic Athlete. Similarly, Kuwaiti football teams and clubs have been barred from international competitions (including the World Cup 2018 qualifiers and the AFC Asian Cup 2019) and the national team's FIFA ranking has plummeted to 160 (having been as high as 24 in 1998). To add insult to injury, all IOC and FIFA financial development assistance has been stopped during the periods of suspension, which has severely affected the finances of Kuwaiti sport. Even more tragic is the impact on Kuwait's grassroots participants and youth, who have cruelly been denied sporting heroes to aspire to and sporting goals to aim for, as well as their training programmes and facilities being starved of cash from the IOC and FIFA. Many talk of Kuwait's 'lost generation' of talent and feel that lasting damage has been done.

It is difficult not to draw comparisons with Russia's 85 day IOC suspension for systemic manipulation of anti-doping rules which the IOC President Thomas Bach described as "an unprecedented attack on the integrity of the Olympic games and sport". There is little doubting that a Russian team appeared at PyeongChang 2018 in all but name (and arguably in name, being 'Olympic Athletes from Russia', as compared to Kuwait's 'Independent Olympic Athletes'), with its 168 athletes (only 64 less than at Sochi 2014) being cheered on by fans wearing Russian kit, waving Russian flags and singing the Russian anthem. Kuwait's continuing IOC suspension, which

in contrast to the Russian suspension does not implicate any individual athletes, does seem to disproportionately punish Kuwaiti athletes for what has been termed a power struggle between Kuwait's ruling elite.

Now that certain roadblocks to reinstatement have been removed (as outlined above), it seems likely that the IOC ban will be lifted; however it remains to be seen when this will be and what further steps Kuwait will need to take to achieve it.

NB: Please note a version of this article was first published on lawinsport.com on 15 June 2018 (<https://www.lawinsport.com/topics/articles/item/governmental-interference-in-global-sport-why-kuwait-is-still-in-the-olympic-wilderness>).

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