Drive to Survive

Why the Privileges of a Russian F1 Driver are not a Good Reason to Lift EU Sanctions

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The Russian full-scale invasion of Ukraine on 24 February 2022 impacted not only Ukrainian society, economy, and the daily lives of many Ukrainian citizens. It also affected sports in a lasting way. The most painful consequences were felt by many Ukrainian athletes who lost their lives, homes, training facilities, and opportunities, or the possibility to perform in international contests. However, many Sports Governing Bodies (SGBs) and competition organisers issued also decisions limiting the participation of Russian (and frequently also Belarussian) athletes in sport-events taking place after the invasion. Among them the FIA (the governing body for motorsports), which decided on 1 March 2022 to limit (but not exclude) the participation of drivers of Russian or Belarussian origin (and license holders) in the international/zone competitions taking place also in Europe. In parallel, the EU imposed sanctions on "persons and entities supporting and benefiting from the Government of the Russian Federation as well as persons and entities providing a substantial source of revenue to it, and natural or legal persons associated with listed persons and entities".

On 9 March 2022, the Council of the EU included Nikita Mazepin, the Russian Formula 1 driver competing in the 2021 season, on the list of sanctioned people. Almost one year later, on 1 March 2023, this measure was suspended by the Order of the President of the General Court as an interim measure in the appellation proceedings against the Council decision initiated by Mazepin. In this blog post, I argue that the President of the General Court made a mistake in the factual assessment of the position of Nikita and took a too lenient approach to his request.

The entanglement of sports in the Russian system of oppression

In a previous article I wrote for Verfassungsblog, I examined the fallacy of the idea that sports and mega sporting events are politically neutral. One example of an instrumental treatment of sports is Russia, which has exploited sports events for official propaganda to strengthen the authoritarian rule of the regime, boost the President's popularity and assert its geopolitical ambitions on the world stage. This behavior, widely described as "sportswashing", has led to numerous scandals, as the Russian regime has reportadely engaged in corruption, state-organized doping schemes, and restrictions of civil liberties. All these actions were directly related to hosting major sporting events, such as the Winter Olympic Games 2014, or the football World Cup 2018. But also the annual Formula 1 race taking place in Sochi between 2014 and 2021. Russian sportswashing is also evident in the timing of military aggression on Georgia and Ukraine (annexation of South Ossetia and Abkhazia in 2008, occupation of Crimea in 2014, and the full-scale invasion of Ukraine in 2022) which coincided with the Olympic Games and massively violated the 'Olympic Truce'. Simultaneously, in the years leading up to the Russian invasion, an increasing number of Russian economic entities became involved in the sponsoring of high-profile sports events (for example Gazprom has been a sponsor of several football clubs and UEFA with strong visibility during international club and national competitions). Since the Russian government and the economic elite are closely connected, these actions should also be seen as part of Russia's specific public sport policy that aims to link sporting events with

Russian entities and thus boost their status and power. And ultimately the power of Wladimir Putin.

The impact of war on the participation of Russian athletes in international sporting events

However, for many SGBs, it took until the 24th of February 2022 to take serious action against Russia's aggression and misbehavior. No uniform solution has been adopted, although the International Olympic Committee (IOC) issued recommendations. FIA, the motorsport federation, decided to ban all events taking place in Russia or Belarus (involving Formula 1 races scheduled for 2022), ban all reference to the Russian and Belarussian national symbols (colours, flags, anthem), ban all national teams of Russia and Belarus, and grant individual drivers, competitors, and officials the right to participate only in individual and neutral capacity provided they commit and adhere to the 'FIA's principles of peace and political neutrality'. These measures, based on the concept of group responsibility, were not a novelty, as many Russian athletes had to compete under a 'neutral' flag even before the 24th of February following the decision of the World Anti-Doping Agency and Court of Arbitration for Sport to punish the Russian Olympic Committee for organised doping infringements.

In this context, the example of Nikita Mazepin and his short career in Formula 1 is very instructive. Nikita, a son of oligarch Dimitri Mazepin, became one of 20 Formula 1 drivers in 2021 after several years spent in the 'junior' competitions. He was moderately successful in his junior years (his best result was second in the GP3 category in 2018) – many other drivers from the junior series who were more talented did not make it to Formula 1. High costs of participation, the difficult financial situation of many F1 teams, and big competition for seats mean that money becomes a very relevant factor of success. As Dimitri Mazepin, father of Nikita and a private friend of Wladimir Putin and owner of Uralchem – a large company involved in the chemical sector – was very determined to get his son into Formula 1, he concluded the sponsorship agreement with one of the backmarkers teams, the American-based Haas team (after he failed to buy one of the existing teams). Uralkali (a subsidiary of Uralchem) took over as the main sponsor of the team. The livery of the car and team outfits were changed to look like the Russian flag with its white-blue-red colors. Uralkali also became the title sponsor of the Russian Grand Prix held in Sochi (a venue of frequent visits by Wladimir Putin). Nikita raced under a neutral flag in the 2021 season and scored no points in 22 races. He finished 21st (last place) in the final standings. Before the start of the 2022 season, on 5 March 2022, Haas terminated the contract of Mazepin, as well as the sponsorship agreement with Uralkali, and changed its colour scheme. As mentioned above, on 9 March 2022, Nikita and his father were added to the list of people sanctioned by the Council of the EU. His discontent with these decisions has been expressed in the media and also by appealing against the sanctions imposed by the Council of the EU.

The curious case of Mr. Mazepin: what the President of the General Court decided

In the order issued on the 1st of March 2023 in Case T-743/22 R the President of the General Court applied the interim measures and, without deciding on the final outcome of the main appellation proceedings, suspended the sanctions imposed by the Council of the EU on Nikita Mazepin. The exact wording of the order indicates the specific range of the suspension and the result thereof may be reinterpreted as "the sanctions imposed on Nikita should not lead to the annihilation of his career as a racing driver in the EU". This is a very controversial verdict. It is worth reminding that the interim measures within the remit of the proceedings in front of the General Court may be imposed against the acts of the institutions of the European Union if they meet both conditions of being prima facie justified (in fact and law) and being urgent to avoid 'serious and irreparable harm' to the interests of the concerned party. The standard of proof is lower than in main proceedings, as these conditions have to merely appear 'not unfounded' (and not evidenced).

Prima facie mistakes

In this context, the part of the order related to the *prima facie* assessment of the factual and legal situation of Nikita Mazepin shows a diligent legal assessment, but done without considering the whole context of the Russian policy of using sports for political purposes. The President of the General Court focused on the reasons for including Nikita Mazepin in the sanctions list which indicate his relation with father Dimitri, sponsoring of the Haas F1 Team by Uralchem (original wording), and association with "a leading businessperson (his father) involved in economic sectors providing a substantial source of revenue to the Government of the Russian Federation, which is responsible for annexation of Crimea and the destabilisation of Ukraine". The President examined whether the Council made a *prima facie* error of assessment in considering that there was enough evidence to sanction Mazepin. The result of this assessment led the President to the conclusion that the Council did not sufficiently substantiate the fact that Mazepin could not become a Formula 1 driver without the financial support of his father and that the sponsorship agreement was against the financial interest of Uralkali and so the F1 seat was an unfair advantage for Nikita from his father. The verdict of the President of the General Court neglects the history of Nikita's results in the 2021 season and the characteristics of Nikita as a driver shown even in the documentary TV series. He was a very mistake-prone and unsuccessful driver. Therefore, his presence in F1 races has been far from 'on the merit' and was based on the monetary contribution of his sponsor, and not his point contribution to the team score (the number of points at the end of a season decides how much prize money is paid to the teams). Hence, this part of the argumentation of the President of the General Court does not stand against the fact-checking available to anyone with access to the Wikipedia result page or a Netflix account.

Furthermore, the President of the General Court questioned the reasoning to maintain sanctions against Nikita Mazepin, given the factual basis of his inclusion on the list referred to the past events (apart from his relation to his father, which accordingly with the established case-law cannot constitute the sole ground for restrictions). According to the President of the General Court, the Council had not produced sufficient evidence that Nikita still gains from his father's power and money, except for 'some' advantages, such as fame, financial stability, and the possibility of being recruited as a driver in various high-level motorsport championships. My interpretation of this argumentation is that the President of the General Court underestimated the effort needed to achieve such benefits and the privilege of Nikita to have them guaranteed by the former sponsorship of Uralkali. Even if Nikita's relationship with Dimitri Mazepin is not as close as it used to be, it was his friendship with Wladimir Putin that allowed the young Russian to participate in all the junior series and obtain (buy) a Formula 1 seat, which is an invaluable experience in comparison to less-wealthy and less-privileged, but more talented drivers (not to mention those originating from war-affected parts of Ukraine). However, the President of the General Court determined the condition of *prima facie* justification as fulfilled (not unfounded) and further analysed the urgency of the measure.

Urgency in rescuing racing career

The definition of urgency that has been used was based on the ratio of ensuring that the final decision would be fully effective and that it should prevent serious and irreparable damage. What irreparable damage could Nikita Mazepin face? According to the President: losing a chance to sign a contract as the racing driver in Formula 1 or another prestigious racing series (Deutsche Tourenwagen Masters or Formula 2) for the season 2023 and possibly 2024 (depending on how long the court proceedings take). The President of the General Court held that being banned from entering the EU and having his financial assets frozen would seriously harm the career as a young F1 driver, as he might have to stop racing in the EU for three years. It would be "extremely difficult – if not impossible" to come back to F1 after that and cause him non-financial damage. Two points on this argumentation: first, it is not true, and second, the non-financial ('non-pecu-

niary') nature of the damage is questionable. First, there is recent evidence that coming back to F1 after three years is possible – Nikita Mazepin's former team, the Haas F1 Team, hired Nico Hulkenberg for the 2023 season, a German driver who last competed in the F1 for the full season in 2019. Fernando Alonso, former 2-time World Champion, had a similar break between the seasons 2018 and 2021. And Robert Kubica participated in the 2019 season 8 (!) years after his last full campaign and after sustaining a severe injury. The joint element for all of these drivers was their talent (rather than money) that brought them back to F1. This brings me to the second point – by no means the damage to Nikita Mazepin is non-pecuniary. Sanctions of the EU made it impossible for him to fulfil his childhood ambition, extravagant hobby, and potentially even his racing passion. However, it is impossible to neglect the fact that the opportunity to participate in F1 races is related to financial benefits and is one of the best paid sporting activities available for people in the age of Nikita Mazepin. Even if, strictly speaking, the *possibility* to negotiate a contract is not the financial claim, the inclusion of Mazepin among the people with the *opportunity* to do so is based on the financial wealth of his father. Hence constitute a form of economic benefit and privilege – in my opinion of a very pecuniary nature.

Balancing conflicting interests in favor of privilege

This controversial perspective is even further elaborated by the President of the General Court in the part of the order related to balancing the interests – Nikita Mazepin's private interests (the chance to continue his F1 career without his father's money) and the public interests represented by the Council's decision (protect EU security and stability and stop the aggression against Ukraine) In this context, the President of the General Court observes that the application of interim measures would not amount to a threat to the EU's pursuit of the objectives, in particular, peaceful objectives at the price of irreparable material and non-material damage. To this end, the President of the General Court observed that Nikita Mazepin has not been involved in any Russian business, maintained a neutral position on the war, raced under a neutral flag during the 2021 season, and "merely asks that he be given the opportunity to pursue his career as a Formula 1 racing driver".

I strongly disagree with the President of the General Court's view: Firstly – being a sportsman with such a powerful financial support as Mazepin's, coming from one of Putin's closest economic friends, makes one part of Russian business and even political oppression. Motorsport is not a cheap sport, it is a sport that needs a lot of money in the junior years and the majoirty of society cannot afford it. Secondly, the way Russia uses sports in its official propaganda is not politically neutral – so the silence of Russian athletes about Russia's actions in Ukraine is not the same as being neutral politically; it is equal to silent support and personal consent to be used as part of the state-driven sport-based propaganda. Thirdly, Nikita raced under the neutral flag for reasons unrelated to the war situation (as mentioned above, it resulted from the suspension of the ROC by the IOC following the doping scandal), albeit in a Russian-colored flag and with clear references to the Putin regime (at one occasion he wore a helmet in infamous St. George Ribbon color scheme). Fourthly, as observed above, the request to be given the opportunity to pursue a Formula 1 career is not something *basic*– it is something *extra* (at any stage it was not suggested racing is the main source of income for Nikita or constitutes economic necessity to him). In my opinion, the current situation related to the war in Ukraine and the peaceful objectives pursued by the Council of the EU outweigh any *extra* benefits that could be granted to any Russian sportsmen in the EU.

The EU sports policy has to be more than simple words

Therefore my assessment of the discussed Order of the President of the General Court is that the order is controversial, to say the least, and lacks fact-based verification. However, in broader terms, it might be perceived as an example of the tragic dilemma between group and individual responsibility, as well as the difficulty to weigh private against public interests in the context of participating in elite sports. And as

sportswashing is an integral part of the public sports policy of the Russian Federation, the truth is that the measures targeted at individuals might not always be successful.

What approach should then be adopted in the EU? I would argue for an approach that is rooted in the values of the EU enshrined in Article 2 of TEU combined with the sport policy objectives expressed in Art. 165 TFEU. According to this article, Union action shall be aimed at 'developing the European dimension in sport' – it should do so by promoting the EU values as an inherent part of the sporting competition in the EU. Therefore, the rule of law principles, the proportionality test, and legitimate objectives constituting justification grounds have to be observed, as the EU stands for its values. But at the same time, access to these competitions should be conditional upon adherence to the values of peace, recognition of human dignity, freedom, and democracy. To me, these principles put the EU sports policy clearly on a collision course with Russian sports policy. Therefore, the balance between respecting the individual rights of Russian athletes and preserving the integrity of the EU will be increasingly difficult to find. However, in the context of Nikita Mazepin, it seems to have shifted too much towards maintaining his privileged position.

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