

Elena CONGOST, Paralympic marathon runner, and Mia CAROL BRUGUERA, her guide, take the International Paralympic Committee (IPC) to court in Paris

Elena CONGOST - a Spanish national - is a world-class athlete who suffers from degenerative visual impairment.

Her international honours include silver in the 1,500m at the London 2012 Paralympic Games and gold at the Rio de Janeiro 2016 Paralympic Games.

After the Rio Games, Elena CONGOST interrupted her international career to become the mother of four children.

From 2022, she has been juggling this family life - intense to say the least - with a return to training with a view to being able to take part in the marathon for the visually impaired at the Paris 2024 Paralympic Games.

One of the special features of the marathon for the visually impaired is that – for some athletes - it is run as a "duo", with the athlete assisted by a "guide", to whom he or she is attached by a tether (the athlete and the guide each holding one end of the tether).

Elena CONGOST's guide was Mia CAROL BRUGUERA, a Spanish national man.

Elena CONGOST and Mia CAROL BRUGUERA finished the marathon in third place, taking the bronze medal.

The fourth-placed athlete, Misato MICHISHITA from Japan, finished more than 3 minutes behind Elena CONGOST and Mia CAROL BRUGUERA.

However, a few minutes later, Elena CONGOST and Mia CAROL BRUGUERA were informed that, following a complaint from the Japanese athlete's team, the organisers (i.e. the IPC) had decided to disqualify them for having let go (for

a fraction of a second) of the tether linking her to her guide (which is prohibited by "rule 7" of the IPC's "Rules and Regulations World Para Athletics"). The bronze medal went to the Japanese athlete and her guide.

This decision and the rule underlying it are at the heart of the present dispute.

The context is as follows:

- From around the 39^{ème} kms mark, Mia CAROL BRUGUERA was affected by cramps and, as a result, Elena CONGOST slowed her pace to allow her guide to finish the race.
- With around ten metres to go, Mia CAROL BRUGUERA lost her balance and struggled to catch up, suffering from a more intense attack of cramp.
- In a pure reflex of fraternity and assistance, Elena CONGOST (who, it should be remembered, is visually impaired...) reacted by reaching out to grab her guide's forearm, although she could not be sure exactly how much danger he was in (was it cramp or something more serious?).

It seems that - in doing so - Elena CONGOST lets her end of the tether slip for a fraction of a second.

This incident clearly slowed down the two athletes who, for one or two seconds, stopped running and walked.

- Elena CONGOST and Mia CAROL BRUGUERA, each holding their end of the tether, ran the last few metres of the race and crossed the finish line.
- Elena CONGOST and Mia CAROL BRUGUERA completed the marathon in 3 hours 00 minutes and 48 seconds.

On 25 September 2024, the counsels for Elena CONGOST and her guide sent a letter to IPC, inviting it to reconsider this absurd decision amicably:

"Everyone understands that the rule prohibiting releasing the tether is - in principle - justified, since its aim is to prevent fraud that would allow an athlete to gain a few seconds or a few metres over a competitor who would, for his part, be complying with the rules. But, at the same time, everyone also understands that, in this case, the situation is completely different: there was no fraud but assistance to a person potentially in danger; releasing the tether did not save Elena Congost time but, on the contrary, made her lose time; as the athlete who finished 4th finished approximately 3 minutes after Elena Congost, the fact that Elena Congost released the tether to assist her guide did not harm any other competitor.

We need to briefly recall some basic principles of European Union law and some fundamental elements of the case law of the CJEU:

- Under EU law, Elena Congost is a provider of transnational services, whose freedom is protected by Article 56 TFEU (see in particular the "Deliège" and "Meca Medina" CJEU rulings).

- Your organisations may only interfere with this freedom if such interference is absolutely necessary and proportionate to the pursuit of a legitimate objective (the proper organisation of the competition, and therefore the fight against sports fraud).

- In this case, this rule did not prevent sporting fraud but - on the contrary - created a sporting injustice and therefore generated an unjustified infringement of the freedom to provide services exercised by Ms Congost.

- In this case, therefore, the obstacle created by this rule infringes Article 56 TFEU.

- Under EU law, Elena Congost has the right to seek compensation for the damage suffered before any state court of a Member State of the European Union with material and territorial jurisdiction (and therefore not necessarily before the arbitration bodies designated by the applicable sporting regulations).

But we have no doubt that, in this case, there will be no need for law or legal proceedings of any kind: your sense of sporting justice and fairness will undoubtedly lead you to adopt the only fair (and legally correct) decision, namely to award Ms Elena Congost the medal she deserves.

On 29 October 2024, Paul FITZGERALD, IPC Head of World Para Athletics, replied as follows:

"While we recognise the intent behind Elena Congost's actions, the application of the rule was consistent with the Rules, and the decision to disqualify her was based on a clear violation of those Rules. We appreciate the values of solidarity and sportsmanship displayed by Ms. Congost and understand the significance of her performance, however, to maintain the integrity of the competition, the Rules must be applied consistently for all athletes and for this reason we must uphold the decision regarding disqualification".

In view of the foregoing, and given that their repeated appeals to common sense and to a sense of justice have gone unheeded, Elena CONGOST and Mia CAROL BRUGUERA have had no choice but to take IPC to the Paris Court of First Instance today to seek compensation for the damage they have suffered, including the award of the bronze medals they have been awarded.

The two claimants maintain that IPC's decision is wrongful in that it infringes EU public policy provisions (in particular the freedom to provide services).

Over and above these essential legal principles, a few simple examples illustrate the absurdity and unfairness of this rule, bearing in mind that - in this marathon for the visually impaired - there are athletes who are able to compete on their own and others, such as Elena CONGOST, whose degree of disability requires them to be accompanied by a guide:

- when his shoelace comes undone, the athlete competing alone will be able to retie it easily; on the other hand, this task will be extremely difficult if one of his hands is tied with a tether...
- Along the marathon route, the organiser provides toilets for the athletes. An athlete running alone can go to the toilet if he or she has a physiological need to do so. An athlete accompanied by a guide will have the choice of dropping the tether to go to the toilets and therefore being disqualified... or asking his/her guide to accompany him...

These examples show that, applied in an absolute manner (as an objective in itself and not simply as a means of achieving the two genuinely legitimate objectives of guaranteeing the safety of the athlete and preventing sporting fraud), the disputed rule has the effect of penalising the athletes most severely affected by disability!

The plaintiffs do not understand why IPC, an organisation pursuing noble objectives, is unable to correct itself when it makes a mistake (which is human) and why - in this case - it is necessary to take legal action.

In order to provide claimants with all the legal assistance they require and thus guarantee equality of arms between the parties, the following law firms have decided to join forces "*pro bono*": VIGO (Paris), ROCA JUNYENT (Barcelona), MEO Law (Munich), DUPONT-HISSEL (Belgium).