

August 18, 2020

Client: 23490-00001

VIA EMAIL

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Re: Religious Accommodation for Beatie Deutsch in Scheduling the Tokyo 2021
Women's Marathon

Dear Dr. Bach and IOC Executive Board Members:

I write on behalf of Beatie Deutsch, Israel's marathon national champion, to request that the Tokyo 2021 Women's Marathon event be held on a day other than a Saturday.¹ Ms. Deutsch is an Orthodox Jewish woman who, due to her religious observance, will be unable to compete if the marathon is held on a Saturday. From sundown on Friday to sundown on Saturday, Ms. Deutsch observes the Jewish Sabbath (the "Shabbat"), a day of rest. During this time, she refrains from running and competing.

Ms. Deutsch's path to the Olympic games has been far from ordinary. Ms. Deutsch ran her first marathon less than five years ago, at the age of 26, after having four children. She ran her second marathon while seven months pregnant with her fifth child. She did not participate in track and field in high school or college. And she only began training with a

¹ The Executive Committee has the authority under the Olympic Charter to direct or override scheduling decisions. *See* Olympic Charter, Rule 61 ("Any dispute relating to [the] application or interpretation [of the decisions of the IOC] may be resolved solely by the IOC Executive Board. . . ."); Host City Contract Operational Requirements, SPT 28 (Sept. 2015) (noting that the IOC has final approval over the competition schedule).

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coach a little over a year ago. As a mother of five, she squeezes in runs while her children bike alongside her. Along the way, she has overcome severe anemia and dealt with Celiac disease. But she is now an elite runner. All the while, she has continuously upheld her religious values, foregoing competitions scheduled on Shabbat and running in a skirt, long sleeves, and hair covering in observance of Jewish modesty laws. And she has used her platform on social media to encourage and support other mother runners and female athletes.

With this background, Ms. Deutsch is in a unique position to be a role model to others, particularly women and athletes of every faith, as her story illustrates that it is never too late to chase one's dreams, and that athletes can do so while balancing motherhood and staying true to their values. Taking steps to enable an athlete such as Ms. Deutsch to participate in the Tokyo 2021 Olympics would further the IOC's mission, as set out in the Olympic Charter (Rule 2), "to encourage and support the promotion of women in sport at all levels" and "to act against any form of discrimination affecting the Olympic Movement."

When deciding to pursue her Olympic goal, Ms. Deutsch first checked to ensure the marathon date would not conflict with Shabbat. Since its inception in 1984, the Women's Marathon has almost always been scheduled on a Sunday and has only once, in 1992, been scheduled on a Saturday. When the 2020 Olympics schedule was announced, the Women's Marathon was originally scheduled for a Sunday, but was later changed to a Saturday, to Ms. Deutsch's disappointment and that of her thousands of fans.

In March of this year, after the Tokyo Olympics were adjourned to the Summer of 2021 due to the COVID-19 pandemic, Ms. Deutsch emailed World Athletics—the organization, working under the IOC's auspices, responsible for scheduling the Tokyo Olympics' track and field events—to request that the Women's Marathon be scheduled for a day other than a Saturday. *See Exhibit A* (email correspondence). As Ms. Deutsch explained:

Now that the Olympics have officially been postponed and every event needs to be rescheduled I am asking to please consider my request and make sure the women's marathon is not scheduled for Saturday. I believe that sport can and should be made accessible to all humans, regardless of religion, background or race. I believe that sports are a powerful tool to unite us as individuals and break down barriers. And I believe that the Olympics is the optimal arena for this, an opportunity for athletes from around the world to compete at the highest level, but more importantly, connect, share and grow from reach other. . . . It would mean so much to me and them to proudly stand on the starting line of the Olympic marathon in 2021.

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Ms. Deutsch's request, however, was denied. World Athletics informed Ms. Deutsch that "once dates and session times are agreed and set, the scheduling of events to cater for religious practices is just not something we can accommodate given the range of religious considerations we would have to take into account across the 2,000 athletes that compete in athletics." In other words, Ms. Deutsch was informed that scheduling adjustments for religious considerations would not be accommodated "once dates and session times are agreed and set." This response, however, ignored the fact that the dates and session times for the 2021 Women's Marathon had not yet been announced. In a recent statement to a reporter, an IOC spokesperson went even further, stating about Ms. Deutsch's request: "While we put athlete considerations first in all decisions, particularly health and welfare, we are unfortunately not able to adjust the schedule to the particular situation of each individual athlete."² It appears the IOC is now taking the position that an athlete's deeply held religious beliefs and practices can *never* be taken into account in scheduling Olympic events.

The IOC's broad rejection of any consideration of an athlete's religious observances and restrictions in scheduling events is unfortunate, and inconsistent with the Olympic spirit. We respectfully urge the Executive Board to reconsider this position and to uphold Olympic values by formally instructing World Athletics and the other organizations engaged in the nuts-and-bolts of scheduling Olympic events to consider and provide accommodations for religious athletes where it is reasonable to do so. We also ask the Executive Board to instruct World Athletics to provide such an accommodation to Ms. Deutsch by holding the Tokyo 2021 Women's Marathon on a day other than a Saturday.

The Olympic Charter lauds the practice of sport as a human right, to be guaranteed "without discrimination of any kind." The Charter further guarantees that "[t]he enjoyment of the rights and freedoms set forth [within] shall be secured without discrimination of any kind," including on the basis of religion. The Charter also establishes that it is the "mission of the IOC" to "act against any form of discrimination affecting the Olympic Movement." These principles are similarly espoused in international human rights law. For example, both the Universal Declaration of Human Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms declare that every individual has the right to freedom of religion, and they similarly prohibit discrimination on the basis of religion.

We understand that numerous considerations impact Olympic scheduling, and we do not suggest that, in every instance, religious observances necessarily would (or should) be determinative. But where an athlete provides the IOC with information as to her or his good

² Emma Cluley, *Respect My Faith So I Can Compete at the Olympics – Bracha Deutsch Pleads for Shot at Tokyo*, TEL. (July 27, 2020), <https://www.telegraph.co.uk/olympics/2020/07/27/respect-faith-can-compete-olympics-bracha-deutsch-pleads-shot/>.

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faith religious observances that may impact scheduling, that information should be taken into consideration and, when feasible, reasonable accommodations should be made. Doing so, and accommodating Ms. Deutsch's scheduling request here in particular, would ensure that the animating principles of the Olympic Charter set out above—which mirror fundamental tenets of international human rights law—are more than empty promises and are instead made a reality in the IOC's actual functioning and practices.

The concept of reasonable accommodations for religious beliefs and observances is a well-established principle under U.S. law, which provides a readily applicable framework for balancing individual rights against countervailing considerations and practicalities. Under U.S. law, religious observances and practices must be reasonably accommodated unless doing so would cause undue hardship to the party from whom an accommodation is sought. The reasonable accommodation framework embodies the same principles of religious freedom and non-discrimination as are espoused by the Olympic Charter and, we submit, is appropriate for the IOC's evaluation athletes' religious observances.

Indeed, the IOC has already endeavored to make reasonable religious accommodations for Olympic athletes in past years. For example, we understand that when the 2012 Summer Olympics coincided with Ramadan, the IOC formed a working group on the issue, special arrangements were made for alternative meal times for Muslim athletes, and endurance events were scheduled early in the day.³ Ms. Deutsch lauds these steps and hopes that in providing a reasonable accommodation to her for the 2021 Women's Marathon, the IOC will continue to move in the right direction for religiously observant athletes of all faiths.

Particularly where, as here, the Women's Marathon has historically occurred on a Sunday, and no tickets are sold for the event, holding the event on a day other than Saturday is an eminently reasonable accommodation unlikely to cause undue hardship. And because the concept of reasonable accommodation provides flexibility in weighing competing interests in the context of a specific request, the IOC would evaluate any future athlete requests for religious accommodation on the specific facts of the individual request, and would not be prevented from staging events on Saturdays, Sundays, or during religious celebrations—even if a request for accommodation is made—should it not be reasonably feasible to schedule them at another time.

³ Razaq Raj & Tahir Rashid, *London 2012 Olympic Games: Challenges Faced by Islamic Olympians Fasting for Ramadan*, 3 MGMT. STUD. 154, 157 (2015); *Interview: IOC Expert Discusses Ramadan and London Olympics*, RADIO FREE EUR. RADIO LIBR. (June 11, 2012), <https://www.rferl.org/a/ioc-expert-discusses-ramadan-and-london-olympic-games/24610594.html>.

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For the foregoing reasons, we respectfully request that the IOC, through the Executive Board, reasonably accommodate Ms. Deutsch's religious beliefs by directing that the Tokyo 2021 Women's Marathon be held on a day other than Saturday.

We are available to address any questions the Executive Board may have, to meet with the Executive Board or its representatives, and to provide any further information that may be of assistance in resolving this critically important issue.

We look forward to hearing from you soon.

Respectfully,



Akiva Shapiro

cc: Genevieve B. Quinn, Esq. (Gibson, Dunn & Crutcher LLP)
Sarah Scharf, Esq. (Gibson, Dunn & Crutcher LLP)