25. Valorisation addendum for: Nationality requirements in Olympic sports

25.1. Olympic sports and nationality requirements in the societal and economic context

Sports are an important aspect of everyday life for many people around the globe, regardless whether they practice a sport themselves, are involved in the organisation of a club or just enjoy watching it. In addition, sports are amongst the topics almost everyone has an opinion on, whether it concerns coaching, the composition of a team or a decision made by a referee, umpire or judge. Sports do not only have an integrating aspect, bringing together people from different countries or societies, but also have become a universal language.

Sports and sporting activities are organised on different levels with the local sports clubs forming valuable parts of their respective communities. The clubs help to bring people together and provide possibilities for young people to form valuable parts of their local communities and society as a whole. Especially troubled youths have been taught the values of fairness, respect and teamwork by their sport’s continuous emphasis on fair play both on and off the field.

Besides amateur sports and their contribution to society, there are the professional sports, which are multi-million businesses. Yet, unlike some other multi-national corporations, the professional clubs are businesses about which people are extremely passionate. Competitive leagues and other sporting competitions generate a lot of money for all stakeholders, ranging from the sponsoring companies, whose logos are printed on the athletes’ jerseys, to TV rights and specialised TV channels and to the sporting clubs and athletes themselves. World Championships for each sport and the Olympic Games at which bring together the best athletes of all sports, are highly profitable for all businesses involved. This profitability has however has a negative impact on some sports and the organisers of the tournaments. After all, this flourishing industry is unfortunately not, as recent allegations of both doping and corruption have shown, immune to controversies and scandals and may thus sometimes be detrimental to the aforementioned value of fairness.

Nationality has always been an essential topic and has been brought to the forefront of political debates in recent times in the context of the refugee crisis. Recent developments have been occurring on two sides of the spectrum: on the one hand, some countries are now selling their passports and the travel rights that come with them, while on the other hand asylum seekers from war torn countries are desperately trying to reach safety abroad. In both cases, the issue of which passport one holds and which country one might be allowed to enter, as well as where one might be allowed to stay or settle, is of paramount importance.

This dissertation focussed on the overlap between nationality laws and sports. For representative sporting teams, especially the legal issue for which country an athlete may compete for arises. Whereas this question seems to be straightforward at first
glance, there are several aspects, which have resulted in a more complicated picture such as dual nationality and the tendency of wealthier countries to offer their passports to promising athletes. While on the one hand flexibility is needed to adapt to new circumstances, on the other hand there has been a ‘muscle drain’ with talented athletes leaving their countries of origin, causing problems for their national teams and the development of the sport in these countries.

With the current refugee crisis, the issue of refugee and stateless athletes has further gained importance. The IOC has started to tackle the problem for the 2016 Games in Rio by allowing refugees to compete under the IOC flag, which will be the first time such a measure was taken. In view of modern conflicts, these problems are likely going to increase in frequency and hence a solution that goes beyond one international competition should be reached.

25.2. The importance of Olympic sports and their nationality requirements for different audiences

Many people care a lot about sports and especially the Olympic Games and as such this dissertation will be of interest to many people and may be used for many purposes, which may be broadly characterized as practical, academic and general.

As sports are interesting to many people, the general public – or at least all those with a liking for sports – might find the book at hand interesting to read and especially fans of one particular sport might enjoy the individual sports chapters.

With regard to academic impact, this dissertation was written mainly two aims; firstly to provide other researchers and students with a first insight into the current position of athletes and the nationality requirements they may be faced with at the Olympics and other international competitions; and secondly to lay a foundation for further research. Such further research and the monitoring of developments will be needed as the chapters 5 to 15 can only provide a picture of today’s situation and give a brief analysis of the past 10 or 15 years. With the contemporary rules acting as a basis, future trends and developments can be analysed and evaluated in the context.

As this dissertation also has practical impact on the in the relatively narrow field of sports law and nationality law, the sporting federations and athletes themselves or athlete representatives are certainly a core part of the target audience. For sporting federations the comparison between their own eligibility criteria and those used by similar sports may help to identify best practices. Especially Chapter 15 can serve as basis for discussions, as common grounds and similarities are underlined therein and critical reflections of the aspects missing from the various federations are provided. Moreover, the relation between eligibility criteria and standards of international nationality laws is of paramount importance for the federations when deciding on new rules or when amending the old ones to better deal with newly arisen circumstances.

In addition, athlete representatives as well as athletes may find the overview of the current situation helpful to assess the rules they may be faced with when deciding to compete for another country. This might be especially the case for young or junior athletes wishing to decide for which country to embark on an international career.
They might also find the underlying legal principles, which are frequently addressed when critically assessing the nationality requirements, helpful when building their case in problematic situations.

25.3. The innovative character of this dissertation's approach

As not much had been written so far about the topic of eligibility criteria in Olympic sports this dissertation is innovative in several ways.

Firstly, this is the first time the comparative method has been used on this scale on all Olympic sports. Prior to this dissertation, neither federations nor scholars could see the similarities, differences as well as overall trends in such a comprehensive manner. Until now, most research was either focussed on one particular sport, which was then thoroughly examined, or took a more general approach without going into extensive detail. However, it was only in the context of all Olympic sports that certain problems became apparent, such as the general lack of rules for refugee or stateless athletes at the level of the individual federations. Furthermore, with the help of the new overview best practices can be identified.

Secondly, eligibility codes had not been systematically scrutinized with regard to standards of international nationality law. Based on nationality law, this dissertation has first formulated several touchstone principles that should be respected by all entities dealing with nationality law. Furthermore, several desiderata for eligibility rules based on nationality for the sporting context were established, which had not been done before. Hence, the resulting analysis of all the problems and the consequent proposals for solutions are entirely new.

Thirdly, the solutions advocated in the dissertation at hand largely relied on the principles of nationality law. It was possible to bring forward the first real alternative to both the current status quo and the advocated ‘sporting nationality’ forward while taking legal concepts such as the genuine link into consideration.

25.4. The practical applicability of the research results

The practical implications and applicability of this research are threefold. Most importantly, the draft article, which is brought forward in Chapter 17 and which is in accordance with nationality law, marks the first article encompassing all issues brought forward by the individual sports. This article, or a slight variation thereof, should not only be incorporated by the sporting federations in their rulebooks, but could also find its way into the more overarching IOC eligibility code. That way several problems, such as the inadequate way in which stateless athletes or refugee athletes are addressed or the problems of waiving or reducing residence and waiting, could be solved.

Furthermore, through corresponding with several sporting federations, a discussion of the eligibility criteria has already been sparked. In some instances, pointing out the differences between the rules currently applicable and the principles of nationally law, has already given rise to the federations critically reflecting on their eligibility codes.
With the help of the comparative aspects of this dissertation, sporting federations might find it easier to work together and to agree on common grounds in the future.

Finally, besides furthering the research in the field of sports law, this dissertation has provided the field of nationality law with some examples how nationality laws are employed by non-state entities and which problems might arise in these cases. While athletes wishing to change their country of representation are a relatively small part of the world’s population, the issues they are faced with, e.g. refugee status or passports offered to them, mirror problems that affect many. Moreover, the established touchstone principles and desiderata may prove important in other contexts, since they are applicable to all issues of nationality law and to all cases in which a person’s nationality may be used as an eligibility criterion.

25.5. Implementing the research results
In order to further the implementation of the findings, this dissertation will be sent not only to the relevant sporting federations, some of which are already eagerly awaiting the research results, but also to the IOC. This way the organisations most concerned with eligibility criteria in Olympic sports will be able to review and adapt their current eligibility criteria accordingly. The costs for such an implementation largely depend on the extent that current rules differ from the suggested solution and on the process necessary to change the federation’s rule book.

Furthermore, copies will be distributed to international legal scholars and law schools offering sports law programmes as well as to sport universities or colleges. This dissertation shall also be published by Wolf Legal Publishers and thus reach a wider distribution. As the publisher will promote the book at relevant conferences and to research institutes, a great number of interested scholars will have access to the research results. Thus, there is a high number of scholars potentially using this dissertation as a stepping-stone for their own research. The costs for the initial distribution is comparatively low, as only the posting will require additional funds.