

ATHLETES CITIZENSHIP ISSUE IN PUBLIC INTERNATIONAL LAW

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Abstract

International Sports has not been spared the effects of globalization, and among these is the migration of athletes from one country to another. Lately nationality of athletes has become a major issue for professional sports and the principles on which it is based. The problem arose from the lack of a clear and consistent rules on sporting nationality for athletes representing a country in international competition. For a long time, the mere possession of nationality was sufficient to check this link to a particular state. This thesis, outlines how the rules for each sport varies quite considerably, from sports that allow a high degree of flexibility and movement for Olympics to sports that have somewhat restrictive regulations such as football or very restrictive like tennis. It also emphasizes the advantages and disadvantages of quick naturalization and provides some ideas for how this issue can be handled.

Keywords: sport nationality, international public law, sports law, athletes citizenship

1. Introduction

1.1. Introduction

Citizenship can be defined as "the legal bond between a person and a state." This definition is, *inter alia*, having regard to Article 2 (a) of the European Convention on Nationality (1997). Article 2 (a) immediately adds the words "and does not indicate the person's ethnic origin." In other words, citizenship is a legal concept and not a sociological concept or ethnicity.

Sport nationality (or: Citizenship in sport), is a complex matter with various manifestations. The main issue to be addressed in this thesis is how the so-called national teams representing the country in international competitions (Olympics, World and regional Championships and other international sporting events) are composed on the basis of a legal citizenship or their members are "special sports people" which means that an athlete is allowed to participate in the national team without meeting additional criteria of citizenship as a regular person should. The same question also concerns individual athletes representing the country in international competitions.

There are also national laws which contain specific rules for athletes who will represent the country, so it cannot be said that the term sports citizenship jurisdiction rests solely in organized sport.

In the context of the problems that were created by what may be called accelerated naturalization, changes to citizenship were becoming increasingly frequent in sports, for a number of reasons resulting in particular from "the desire to assert itself on the international stage in some countries and / or

willingness of athletes to benefit from the best material conditions possible¹".

The rules for obtaining citizenship varies considerably from one country to another, which created an inequality sometimes unjustified from an athlete to another.

International sports authorities have been overwhelmed by this marginal phenomenon once it became suddenly a major problem in a large number of sports. They have to analyse each case to prioritize the most urgent ones first, while trying to maintain a certain level of fairness sports. However, the time has come to find comprehensive solutions as unique as valid for long term as where the Kalou Case (2006), an appropriate benchmark on this issue.

Discrimination on grounds of nationality is prohibited under EU law, which establishes the right of every citizen of the Union to move and reside freely within Member States. Also, EU legislation seeks to eliminate any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.

Equal treatment also concerns citizens of States which have signed agreements with the EU that contain non-discrimination clauses, and who are legally employed in the territory of Member States (" non-EU nationals ").

2. Problema cetățeniei persoanelor care participă la competițiile olimpice și sportive internaționale

Sport performance has not been spared by the effects of globalization, and among these is the migration of athletes from one country to another.

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¹ Accelerated naturalisation was the core issue in the Scientific Conference on Citizenship in sports. The importance of this conference was widely illustrated by participating in panel terminating the IOC President, Jacques Rogge, senior representatives of four international sports federations (e.g., basketball, ice hockey, skating and skiing).

Lately athletes citizenship has become a major issue for professional sports and the principles on which it is based. The problem arose from the lack of a clear and consistent rules on citizenship for sportsmen representing a country in international competitions.

Contrary to anti-doping regulations, matters regarding athletes citizenship has not reached a consensus on these regulations and is quite difficult to harmonize the laws of each member country of the IOC.

For a long time the mere possession of nationality was sufficient to check this link to a particular state. Since the 1990s, however, this criterion has been questioned, especially because each state has its own legislation relating to the granting of citizenship, resulting in inevitable inequalities. Thus there were cases in which citizenship was granted very easily, in a very short period of time, while other cases waited for years.

Given these differences, each international federation and each organizer of multi-sport competitions, including IOC adopted its own rules regarding the nationality of athletes, each with their own objectives to ensure continuity of their competitions, but also to avoid issues related to mobility and migration and to stop athletes migrating on financial considerations.

Despite the lack of harmonization, most international federations agree that citizenship is the primary state criterion used to judge the eligibility of athletes. This, however, is far from being the only consideration, and therefore, does not ensure the eligibility of athletes. For example, football players in the United Kingdom are all British citizens, but cannot claim to be eligible in each of the four federations 'national' located in the country.

Depending on the country they want to represent and the sport, athletes must follow certain rules, primarily rules are taken into account by the receiving State and the international federations governing more or less the matter. It is important to note that International Federations rules are consistent with the rules dictated by the International Olympic Committee and on participation in international competitions.

Regarding national legislation athletes can be employed as ordinary citizens and follow regular procedures for obtaining citizenship or hold a special status of athletes guaranteed by the national federation and follow special procedures for awarding citizenship if they are covered in that State.

In general the change of nationality for an athlete comes from a desire to participate in the Olympics which, unlike some national competitions and international competitions require the athlete to hold citizenship of the state they represent.

There are two types of migration of athletes who may have both benefits and disadvantages for both the host country and for athletes.

- The case of an athlete of a country poor or less developed economically but well developed in terms of

sporting performance migrating to an economically developed country but not so important in terms of sport performance.

- The case of an athlete from a developed country migrate to a less developed country in terms of sporting performance.

In the first case, the examples belong mostly from former Soviet bloc countries or in Africa, athletes generally migrating to countries such as U.S., Germany or France. The main reason being the lack of financial and sometimes representation in international sport concerned of the receiving country.

So this behaviour should be viewed from two perspectives, that of the receiving country and the athlete that is migrating.

Olympics and other international sports events are an opportunity for countries to show their supremacy peacefully, so they developed the practice of borrowing athletes from countries with tradition in a particular sport in those with no tradition and notable results; or individual performance of the athlete facilitates its access in a country wishing to become notable in that sport.

The advantages arise if the receiving country wants to develop a sport with tradition and borrows one or more senior athletes with notable performances in international competitions and the Olympic Games. Thus the athlete can guarantee a place on the Olympic podium which entails advertising, sponsorship and new practitioners or followers of the respective sports. For athletes in the host state the presence of a technically superior athlete with classifications among the first places in the Olympics is a standard to achieve and facilitate easier access to the Olympics by eliminating qualifications (e.g. for specific sports. Skating).

Disadvantages arise when instead of trying to develop that sport states often resort to borrowing elites from other countries.

For athletes advantages are usually financial, migrating to countries in which they are offered the best conditions for practicing sports. But while there are practices to discourage this type of migration such as regulations of the international federations and also national federations that impede an athlete to participate in international competitions for a number of years, during which the athlete lose touch with international standards in the performance.

In the second case the migration phenomenon generally occurs in athletes from countries where competition and standards are very high that they do not meet requirements and standards necessary to represent the country of origin in international competitions, so they migrate to countries in which the standards and competition is weaker to qualify for spots allocated to them in international competitions and Olympic Games. Most often they choose to train further in the home.

The disadvantages are similar to those in the first case but with effects more serious for athletes and sports development in the host country, because in most

cases, resources are limited and they come to the athlete of the developed country and not for the development and promotion of sport.

2.1. Special rules stated by states

When international law refers to citizenship, this reference should be understood as a reference to the general legal nationality of a state acquired under a purchase reason offered by State Citizenship Act. It is, for example, enacted by Article 15 of the Universal Declaration of Human Rights which states that everyone has the right to a nationality and that no one shall be arbitrarily deprived of his nationality nor to be denied the right to change his nationality. In addition to this general legal citizenship indicating formal legal bond between a person and a State Member, a state may, for special purposes, introduce a so-called "functional citizenship". If for some purposes functional citizenship is introduced reasons for the acquisition and loss of this specific citizens must be defined in detail.

According to De Groot the answer to the question if sports needs to develop a functional autonomous citizenship was desirable. In principle, the answer was negative. The rules for acquisition and loss of functional citizenship are a very complicated task, if someone does not want to use for example just a single criterion as birthplace for his functional nationality. Even criterion that is considered as a national of the country of habitual residence needs considerable further elaboration, because the definition of residence differs from country to country. However, there was a reason attractive for the development of a functional citizenship, that would come very close to a separate sports nationality, but it was in fact a notion independent, so it was not necessary to regulate the reasons for the acquisition and loss detail.

To determine whether a person qualifies to represent a country in international sports competitions is used as a basic requirement of citizenship is the general of that state, but added requirements, further ensuring that citizenship is the manifestation of a genuine link between the state and the athlete concerned.

De Groot notes that in the international community of states there is an enormous variety of reasons and grounds for loss of citizenship acquisition. An indirect consequence of this for sports was unequal competition for states and shocking inequalities between athletes. There were also inequalities caused by differing attitudes of states regarding rapid naturalization. De Groot was of the opinion that, in all cases where a genuine link is missing, an additional residence requirement would be reasonable. The next question was, of course, what would be the required period of additional stay. He argued that the required

period of habitual residence should be shorter than the smallest residence requirement for regular naturalization, which was three years.

If at the time of naturalization this condition was not fulfilled, a naturalized athlete should be eligible to represent his new country after two years they had lived on its territory (the period of stay directly before and after naturalization may be added). It should not be necessary for two years if the athlete had previously naturalized a continuous and uninterrupted residence of five years in that country.

Such a continuous period of residence in the past guaranteed the existence of a genuine link between the country and the newly acquired citizenship athlete. In these circumstances, there is no need to require an uninterrupted habitual residence two years before and / or after the time of naturalization. This rule of five years of residence was realistic imposed, given that young athletes have received frequent part of their education, sport and made a part of their sports careers in a country other than that in which they were born and maybe raised to a certain age².

2.1.1. Citizenship changes and disputes

One of the most famous cases of change of citizenship for the Olympics was Zola Budd, a South African runner who emigrated to the UK because there was a ban on Olympics apartheid in South Africa. Budd was eligible for British citizenship because her grandfather was born in Britain but British citizens accused the government of accelerated citizenship for her³.

Other notable examples include runner Bernard Lagat of Kenya, who became US citizen in 2004. The Constitution of Kenya asked to give up Kenyan citizenship when becoming a citizen of another nation. Lagat competed for Kenya at the 2004 Athens Olympics, even though he has become a citizen of the United States. According to the Kenyan government, he was not a citizen, endangering the silver medal. Lagat said he began the process of citizenship in late 2003 and did not expect to become a US citizen until after the Athens Games⁴.

Basketball player Becky Hammon was not considered for the Olympic team of the United States, but wanted to play in the Olympics, so she emigrated to Russia, where she already played in an internal league during the offseason of WNBA. Hamon received criticism from some Americans, including US national team coach, even being called unpatriotic⁵.

Athletes born abroad contributed to the number of Olympic medals won by the United States since 2000 in a modest trend but increasing blurring national boundaries of the competition.

² De Groot 2006, pp. 3-4, 8.

³ Rory Carroll (24 February 2003). "What Zola Budd did next". *The Guardian*. London. Retrieved 27 November 2011.

⁴ Lagat a runner without a country". *Cool Running* 2011.

⁵ "Olympics opportunity too much for Hammon to pass up – Olympics". *ESPN*. 5 June 2008.

USA are a magnet for attracting veteran athletes to switch citizenship, according to analysis by The New York Times. Since 1992, about 50 athletes who competed in international events to their home countries (including 10 for China) have become citizens of the United States and Olympians, winning eight medals for the US. This practice has implications for American athletes who are excluded from precious Olympic areas and was also a reason for conflict between competing nations.

The International Olympic Committee requires a waiting period of three years, for an athlete who change their citizenship, although it will grant a waiver if the athlete is native and national federations give their consent.

Two American citizens have received permission from IOC: Equestrian Phillip P. Dutton, who won two gold medals for Australia; and canoeist Heather Corrie, who is also a British citizen. (Statistics The Times did not include people with dual citizenship or athletes who immigrated as children.)

On the other hand, among American athletes there were voices that questioned the way government officials to expedite the eligibility of foreign athletes on acquiring US citizenship, which entails and their ability to represent the United States at the Olympics. Thus increasing the difficulty of national qualifications for the Olympic team.

Few of the immigrants said they had chosen exclusively the US to continue their athletic career. Opportunity, freedom and education are defining the main reasons thereof.

Foreign high performance athletes advantage of EB-1 visa, the visa given to people with extraordinary abilities. This meant for renowned scientists, artists and athletes moving fast toward the front of the line for permanent residency. The US government has issued 2749 visas for foreign wives and their children in the fiscal year ended September 30, 2007, and statistics do not indicate the number of athletes who have benefited from this target.

An athlete who marries a US citizen can apply for citizenship for at least three years after obtaining permanent residency green cards, otherwise requiring a minimum of five years.

Since 2000 seven Olympic medals have been won by five immigrants who chose to represent the United States at the Olympics. They are of course considered elite in their countries and even criticized the decision to change nationality such as gymnast Annia Hatch from Cuba and synchronized swimmer Anna A. Kozlova from Russia, the United States brought by two Olympic medals each in 2004; Magnus Liljedahl a Swedish tennis player Monica Seles and two other medals in Yugoslavia in 2000 in Sydney, Australia; also Tanith Belbin and ice dancer from Canada at the 2006 Winter Olympics in Turin, Italy.

In the Netherlands, the situation was such that under Dutch law (Article 10), the implementing provisions of this law include special rules apply also for top athletes. According to the so-called rules of elite athletes achieving an exception is justified when it turns out that accelerated naturalization serve " a cultural interest to Netherlands ", which included also an interest in Dutch sports, which might happen with the representation of the Netherlands by participating in international sports competitions and games.

There is also a circular detailed of the Ministry of Health, Welfare and Sport, on 9 April 1999 to organizations of national sports regarding this matter. These guidelines determined the level of sports performance minimum needed to be eligible for accelerated naturalization.

Preferably, the athlete in question should also be role model for young people or formatting a campaign of fair play. During the proceedings, the witness indicated nationality law applicability for top athletes manifest regulations that allow accelerated naturalization notwithstanding the standard requirements.

The court ordered the minister to reassess its decision and improve the rationale behind it, following which the Minister appealed to the State Council as the highest court.

2.2. Special rules dictated by the International Olympic Committee regarding citizenship

ART.41 Nationality of Competitors

1. Any competitor in the Olympic Games must be a national of the country of the NOC which is entering such competitor.

2. All matters relating to the determination of the country which a competitor may represent in the Olympic Games shall be resolved by the IOC Executive Board⁶.

Art. 41 of the Olympic Charter requires that an athlete be a citizen of the country for which they compete. If an athlete has dual citizenship, it can compete for either country as long as three years have passed since the athlete competed for the former country. However, if the NOC⁷ and the international federations involved agree, then the IOC Executive Board may reduce or waive this period. This waiting period exists only for athletes who competed previously for one nation and want to compete for another. IOC is concerned only about citizenship issues related to cases in which individual nations have granted citizenship to athletes⁸.

⁶ "Olympic Charter" (PDF). Lausanne, Switzerland: International Olympic Committee. July 2011. Retrieved 27 July 2012.

⁷ National Olympic Committee.

⁸ Jump up, Shachar 2011, pp. 2114–2116.

3. International federations regulations on citizenship athletes

One of the biggest challenges for the international federations is to determine when an athlete's situation requires a change to the eligibility criteria or not, ethically. As such, we must distinguish between athletes that have developed sports skills, after being naturalized and athletes who were naturalized because of their sporting skills. This issue is not easily legislated to take into consideration and differentiate these two cases. The first group was almost always penalized, leaving the door open of the second group to take advantage of the system.

The most controversial issues relate to athletes who are forbidden to change nationality, like in most team sports. Participants representing several of the largest international federation, at the Congress of Sports Citizenship held from 10 to 11 November 2005, concluded that the ban is indeed illegal. These prohibitive rules are still in effect in many international sports federations.

Another aspect of sport citizenship is worth examining the quotas set for the number of naturalized athletes allowed to participate in a national team. This means that some international federations would limit the number of athletes who have changed their nationality to their representative teams. This practice may conflict with the Court of Justice of the European Community, which prohibits discrimination linked to the time of acquiring the nationality of one of its Member States.

Overlapping rules governing citizenship is a challenge to the international federations. This means that athletes must undergo in parallel home state regulations, rules and regulations of international federations, multi-sports competition organizers, such as CIO. Unfortunately, these rules do not always coincide. The following would occur: athletes who have changed citizenship are eligible to represent their new country in accordance with international federations, but paradoxically, are not eligible to participate in the Olympics. The reverse is also possible. This lack of harmonization can give athletes the feeling of the victim and in the future could lead them to pursue legal action to be considered eligible to compete.

By their regulations, international federations seeks uniformity, regularity and equality, in order to protect the interests of their competitions. But this does not authorize the international federations to take measures to achieve them. International federations and multi-sports competition organizers must balance the interests and values of their legitimate rights of athletes. Each change of citizenship does not necessarily contradict the spirit of sport.

3.1. International Handball Federation (IHF)

International Handball Federation regulates the issue of changing citizenship in The Players Eligibility Code published on 8 July 2014 in accordance with art. 41 of the Olympic Charter.

Chapter VI, relating to athletes citizenship who are part of the national team, regulates the conditions that are required to be part of the national team, namely:

ART. 6 National Players

6.1 National team players shall meet the following conditions:

a)Citizenship of the country concerned. b)They shall not have played in any national team of another country in the three years preceding their first appearance in the national team in an official match. Official matches are considered to be: the qualifying matches for a continental championship, matches in a continental championship, qualifying matches for IHF World Championships and Olympic Games, matches in IHF World Championships and Olympic Games⁹

Eligibility Code also regulates the situation of players with two or more nationality, enabling them to choose the country whose national team to represent.

6.2 Player eligibility in case of multiple nationalities

A player who holds more than one nationality and who complies with 6.1., is eligible to officially represent one of those countries if:

a) he was born in the territory of the federation concerned or b) his biological mother or biological father were born in the territory of the federation concerned or c) he has been living in the territory of the federation concerned for more than 24 months in any period of his life.

The latter regulation enables the professional players who play very often for teams from countries other than their native country, to naturalise much easier in terms of legislation of the international federation, evithat the rules state he wishes to naturalise hold supremacy.

An interesting article is art. 6.3 limiting changing of citizenship at once, this article is interesting because it does not limit the express change nationality but limits the number of federations which can be ascribed to an athlete, creating a special body to resolve the situation where a federation is dissolved.

6.3 Change eligibility to play for a National Federation

It is only permitted to change the National Federation and thus to obtain eligibility to play for a new national team one time. In case of dissolution of an existing federation or a constitution of a new one, the IHF shall create a separate body to examine the cases should disputes over eligibility arise.

Another important aspect covered by IHF in chapter V of the Players Eligibility Code art.5.1-5.4 is the procedure whereby a player can be transferred from one national federation to another. This transfer is

⁹ Players Eligibility Code, IHF 8 July 2014.

attested by International Transfer Certificate approved by IHF, requiring written approval of both federations involved and date of last participation as a player for the national team, the federation confirmation in writing where the athlete played.

3.2. International Football Federation (FIFA)

FIFA published on 18 June 2008 a statement addressed states federations explaining how to apply the rules concerning the eligibility for players who want to represent a country other than the one they are currently representing or for players who already own two citizenships¹⁰.

Art.15 Principle

1. Any person holding a permanent nationality that is not dependent on residence in a certain country is eligible to play for the representative teams of the Association of that country. 2. With the exception of the conditions specified in article 18 below, any Player who has already participated in a match (either in full or in part) in an official competition of any category or any type of football for one Association may not play an international match for a representative team of another Association.

Unlike IHF rules, FIFA clearly defines the type of citizenship that player must hold to represent a particular state. The expression used in the text of the law is permanent nationality, which means that nationality should not be subject to a certain residence time the athlete should reside in that State.

Article 15, paragraph 2 defines the framework norm that allows exceptions for situations presented in art. 18 is important to note that the strict nature of this rule limits the right of players to represent another national team if they were part of a particular team representatives, regardless of the age or type of football played. To clarify the content of these regulations it should be noted that they relate to international competitions between teams representing federations states for example EURO, World Cup or Olympics, where teams representing Member States and not some clubs.

FIFA further regulation is more stringent than the IHF making it tougher for players eligibility requirements than other international sports. E.g:

Art.16 Nationality entitling players to represent more than one Association

1. A Player who, under the terms of art. 15, is eligible to represent more than one Association on account of his nationality, may play in an international match for one of these Associations only if, in addition to having the relevant nationality, he fulfils at least one of the following conditions: (a) He was born on the territory of the relevant Association; (b) His biological mother or biological father was born on the territory of the relevant Association; (c) His grandmother or grandfather was born on the territory of the relevant Association; (d) He has lived continuously on the

territory of the relevant Association for at least two years. 2. Regardless of par. 1 above, Associations sharing a common nationality may make an agreement under which item (d) of par. 1 of this article is deleted completely or amended to specify a longer time limit. Such agreements shall be lodged with and approved by the Executive Committee.

Regulations retain the same note as the IHF and does not cover national member federations but their subordinate.

Rules art. 17 refers to the acquisition of new citizenship for athletes conditions of this article are similar to Article 16, with one exception regarding the period of time that the athlete must be resident in that state. This time period has been extended to 5 years and the athlete must be at least 18 years old after the passage of time .

Art.17 Acquisition of a new nationality

Any Player who refers to art.15 par. 1 to assume a new nationality and who has not played international football in accordance with art. 15 par. 2 shall be eligible to play for the new representative team only if he fulfils one of the following conditions:

(a) He was born on the territory of the relevant Association; (b) His biological mother or biological father was born on the territory of the relevant Association; (c) His grandmother or grandfather was born on the territory of the relevant Association; (d) He has lived continuously for at least five years after reaching the age of 18 on the territory of the relevant Association. .

Implementing the rules of FIFA statutes contain regulations concerning the exchange federation represented in the article 18.

Art.18 Change of Association

1. If a Player has more than one nationality, or if a Player acquires a new nationality, or if a Player is eligible to play for several representative teams due to nationality, he may, only once, request to change the Association for which he is eligible to play international matches to the Association of another country of which he holds nationality, subject to the following conditions:

(a) He has not played a match (either in full or in part) in an official competition at "A" international level for his current Association, and at the time of his first full or partial appearance in an international match in an official competition for his current Association, he already had the nationality of the representative team for which he wishes to play.

(b) He is not permitted to play for his new Association in any competition in which he has already played for his previous Association.

2. If a Player who has been fielded by his Association in an international match in accordance with art.15 par. 2 permanently loses the nationality of that country without his consent or against his will due to a decision by a government authority, he may request

¹⁰ Players and Officials Code of FIFA.

permission to play for another Association whose nationality he already has or has acquired. 3. Any Player who has the right to change Associations in accordance with par. 1 and 2 above shall submit a written, substantiated request to the FIFA general secretariat. The Players' Status Committee shall decide on the request. The procedure will be in accordance with the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber. Once the Player has filed his request, he is not eligible to play for any representative team until his request has been processed.

The above rules clearly illustrate that the procedure is followed in case of change of citizenship, as can be seen from the text shown above rules imposing restrictive conditions are quite difficult to change by state representative. Even if the ban to change his nationality more than once was declared illegal by the Conference on Athletes Citizenship 2015, this rule still appears within the regulations of the International Federations.

Legal texts are generally addressed to federations because the latter are deemed responsible for the eligibility of athletes they represent.

3.3. International Basketball Federation (FIBA)

Statute of the International Basketball Federation includes regulations related to fair play, how to organize national federations, rules on the status of professional players (in team sports, they have a different status from amateur players) but also rules relating to athletes citizenship that are part of national teams.

General Principles contain a unique rule that defines different rules for certain areas delineated and defined by the General Council of FIBA¹¹.

Art.12 General principles

If necessary for reasons of mandatory international law, the Zones are authorised to draw up specific regulations applicable to club competitions within the Zone in question. Such regulations are subject to the prior approval of the FIBA Central Board prior to their implementation.

Art.13 Players with Two or More Nationalities

Any player with two legal nationalities or more, by birth or by naturalisation, may choose at any age the national team for which he wishes to play. Any such choice must be made in a written declaration to FIBA. This provision applies also to any player having acquired legal nationality by birth, or having the right to acquire a second nationality at birth, but who does not lay claim to this right until a given time in the future¹².

Unlike FIFA regulations and IHF, FIBA limits the number of people who have acquired citizenship of naturalized or by any other means by the age of 16.

Art.21. a. A national team participating in a Competition of FIBA may have only one player on its team who has acquired the legal nationality of that country by naturalisation or by any other means after having reached the age of sixteen (16). This provision applies also to any player having the right to acquire a second nationality at birth but who did not lay claim to this right until after having reached the age of sixteen (16).

b. For purposes of letter (a) above and in the event of doubts, any player claiming to have acquired a legal nationality before having reached the age of sixteen (16), without presenting the respective passport with a date of issue before the player's sixteenth birthday, requires a decision by the Secretary General confirming that he does not fall under the restriction of letter (a) above. In taking this decision the Secretary General shall take into account the following criteria:

-the number of years during which the player has lived in the country, for the national team of which he wishes to play;

-the number of seasons during which the player has participated in domestic competitions in the country of the national team for which he wishes to play;

-any other criteria capable of establishing a significant link between the player and the country, for the national team of which he wishes to play.

FIBA defines an age by which a player can exercise the right to acquire a new nationality by imposing a restriction contrary to international law, we can assume that this limitation has emerged through evolution in the performance of athletes at early age .

Another distinction in terms of age is contained in the regulations of art. 22-23.

Art. 22 A player who has played in a main official competition (see article 2-1) of FIBA before reaching his seventeenth (17) birthday may play for a national team of another country if both national member federations agree; in the absence of an agreement the Secretary General decides.

Art.23 A player who has played in a main official competition of FIBA (see article 2-1) after having reached his seventeenth (17) birthday may not play for a national team of another country. However, in exceptional circumstances the Secretary General may authorise such a player to play for the national team of his country of origin if he is ineligible to play for such country according to this article 3-23 and if this is in the interest of the development of basketball in this country. An administrative fee as stipulated in article 3-305 and decided by the Secretary General is payable to FIBA

Exceptional circumstances which require the authorization of the Secretary-General may arise lawsuits based on discrimination, because there is no uniform rule on such emergencies.

¹¹ Eligibility and nationality status of players FIBA.

¹² Note: for exceptions see articles 3-20 and 3-21 of the FIBA Book 3.

3.4. International Skating Union (ISU)

Unlike the regulations contained in the statutes TEAMS team sports, individual sports enjoy lighter regulation. This lightness appeared likely to facilitate access to international competitions athlete. Novelty appears the need for an authentication certificate issued by ISU under certain conditions¹³.

A. Clearance Certificate is required for Skaters in the following circumstances:

(i) any Skater (with the exception of Synchronized Skaters) who is not a citizen of the ISU Member's country, whom the ISU Member intends to enter in ISU Championships, other ISU Events and/or International Competitions in the coming season,

(ii) any Skater (with the exception of Synchronized Skaters) who is a citizen of the ISU Member's country and who has in the past represented another ISU Member in ISU Championships, other ISU Events and/or in International Competitions, whom the ISU Member intends to enter in ISU Championships, other ISU Events and/or International Competitions in the coming season.

B. For Skaters not yet in the possession of a Clearance Certificate, the respective ISU Member must submit to the ISU Secretariat by July 1 of each year an application for a Clearance Certificate, together with the documentary evidence and the completed Questionnaire as per sections B and E below.

In exceptional cases, when the requirements for obtaining a Clearance Certificate are fulfilled only after July 1, (e.g. grant of a new citizenship, completion of the 12 months residence period (see Rule 109 paragraph 2. a)), completion of the 12 months waiting period according to Rule 109 paragraph 2, receipt of a release from a former ISU Member according to Rule 109 paragraph 2. c)), the application may be submitted to the ISU Secretariat after July 1, but not later than thirty (30) days before the first day of the event in which the ISU Member desires to enter the Skater.

The application for partners of Pairs and Ice Dance couples may be submitted at any time, but not later than thirty (30) days before the first day of the event in which the ISU Member desires to enter the Skater

It seems that the International Skating Union believes that this agreement plus a suspension of one year is sufficient to change the state represented. So the regulations are laxer than in team sports, such participation is not limited to another state, there is no age limit up to which the athlete can use this procedure and it is not necessary to demonstrate residence. ISU gives validity of one year and accepts that certificate instead of documentary evidence of citizenship that have not yet been issued.

3.5. International Swimming Federation (FINA)

Before the start of the procedures for changing citizenship FINA requires an official request from the federation. This procedure takes place only after the swimmer holds a valid nationality. Among the conditions imposed include¹⁴:

- *Confirmation from the new club*
- *Confirmation from the new national federations*
- *Confirmation from the previous federation*
- *Statement from the federation as a swimmer was not at international competitions in the last 12 months*
- *List of official results from the club home*

All these documents are assumed to be consistent, otherwise the request of the athlete may be rejected and the athlete subjected to penalties for statements inconsistent with the truth. The request may be submitted to FINA only after they have fulfilled the GR 2.5 and 2.6 of the General Regulation of the FINA.

GR 2.5 When a competitor or competition official represents his/her country in a competition, he/she shall be a citizen, whether by birth or naturalisation, of the nation he/she represents, provided that a naturalised citizen shall have lived in that country for at least one year prior to that competition. Competitors, who have more than one nationality according to the laws of the respective nations must choose one "Sport Nationality" and be affiliated to one Member only.

GR 2.6 Any competitor or competition official changing his affiliation from one national governing body to another must have resided in the territory of and been under the jurisdiction of the latter for at least twelve months prior to his first representation for the country.

Unlike other international federation FINA rules governing the case where an official, non competitor wants to change affiliation to a particular federation.

3.6. International Fencing Federation (FIE)

FIE status is much stricter than other individual sports federations presented so far. These are¹⁵:

9.2 FENCERS' NATIONALITY

9.2.1 At the Olympic Games a competitor's nationality is set by rules of the I.O.C. to which the F.I.E. must conform.

9.2.2 For official competitions of the F.I.E., competitors must be strictly of the nationality of the country which they are representing:

a) The fencer who enjoys multiple nationality must choose which country he wishes to represent. The fact that he has fenced for one of the countries implies that he has made a choice. If he wishes to represent another country of which he enjoys nationality, he must so advise the Office of the F.I.E. and he may only represent this other country after an interval of three years from when he advised the Central Office of the

¹³ ISU Clearance Certificate, ISU Statute.

¹⁴ FINA General Rules.

¹⁵ FIE Statute adopted in December 2016.

F.I.E., during which he can no longer represent the other country.

b) A fencer who has already represented a country and acquires a new nationality (from being stateless or through naturalisation) can only represent his new country after an interval of three years from his last participation in a competition for his previous country.

c) The fencer who acquires a new nationality as a result of marriage may fence for that new country immediately, without waiting three years.

d) The Executive Committee of the F.I.E., with the agreement of the member federations concerned, and only for just reasons, may reduce or dispense with the interval of three years.

e) The fencer who has never participated in an official competition of the F.I.E. or in a Regional Championships, is not constrained by these limitations concerning change of nationality and may fence for his new country immediately.

f) Any change in country which a fencer represents is definitive; no further change can be authorised.

g) In cases of dispute the Executive Committee of the F.I.E. will make a ruling, which is not subject to appeal.

9.2.3 For the FIE competitions fencers who are legally stateless may compete as long as they are registered by the member federation of the country in which they live.

The practical process for a request of modification of nationality is stated in the FIE Administrative Rules, "Licences and nationality" chapter.

4. Conclusions

Athletes citizenship issue is a current problem that must be considered from many angles to be understood correctly. On the one hand there are countries that want sport performance, without regard to nationality of sportspeople representing, and on the other hand there are athletes for which a country is only a means of reaching the Olympics.

As outlined in this thesis, the rules for each sport varies quite considerably, from sports that allow a high degree of flexibility and movement for Olympics such as individual sports and handball to regulations somewhat restrictive in football or very restrictive in tennis.

Because of the degree of participation, which varies in different sports, it is difficult to provide a set of rules to regulate and be effective for all sports. Indeed, in the world of free movement of workers and multiculturalism we are living now, some flexibility is certainly welcome, provided that establish an appropriate balance.

International federations take extra precautions to stop this process or diminish its benefits. International federations regulations aimed at bridging the gap between athletes who practice the same sport arisen due to different national laws. Despite these regulations, most cases are presented before an ethics committee that decides after the general criteria are met if the period of residence should be deleted. This practice can lead to discriminatory decisions and to prosecute the respective federation. Higher Forum International Federations, namely IOC tried to harmonize international law on citizenship by creating a set of universal rules for all sports available to participants in the Olympics. But unfortunately the international federations have diverged from this set of rules imposing stricter rules to stop this stream of migration. The autonomy of federations has created considerable differences between sports and automatically between individuals who practice them, giving rise to unlawful discrimination between persons.

The athletes citizenship must be addressed ethically and morally two principles that underpin sport performance, for example an American sportsman that has not caught the national team for the gymnastics team, decides to represent a country like Albania who has no tradition in this sport and no results. But this decision is not followed by naturalization of the athlete but rather it will follow the procedures of expedited naturalization and would probably never leave the US and do not know the language or positioning on the map of the state but represents that country in the Olympics and can win a medal for this. From an ethical standpoint this practice is condemned but there are still no legal regulations to discourage this phenomenon.

Regarding the states law is clear that they are supreme and only with their consent there is the phenomenon of rapid acceleration. Just as with international federations there is a huge discrepancy between states regulations, the difference being that states are not subjected to higher decision-making body such as IOC but have autonomy in this matter.

One possible way of solving the problem would be the conclusion of treaties between countries in some sports fields with a clear indication of the conditions which must be satisfied with the removal of the expedited naturalization. Another way of solving would be applying a much stricter set of rules of the IOC, after all the Olympics is the reason for naturalization of most athletes

This would help eliminate differences between sports, would ensure that athletes participating in Olympic events know the rules of citizenship, and to ensure that there is consistency between the different disciplines.

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