



## RESTRICTIONS ON FREEDOM OF SPEECH IN SPORT

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### Abstract

Despite an active interest in sports rules and legal practices that affect freedom of expression, there is no general theory of limits of freedom of expression in sports in the literature. There are jurisdiction-specific analyses on this issue, but there is no work aimed at combining the experience of various jurisdictions and sporting events. This article discusses the problem of restricting freedom of speech in the sports field.

**Keywords:** restriction of freedom of speech, International Olympic Committee, Olympic Charter, European Convention on Human Rights.

### Introduction

Sport is one of the most important and necessary activities in the lives of many people. A huge number of people are engaged in professional sports, participating in competitions of various levels. Sport brings income, and in modern conditions it is often in close connection with politics. Sports events, which become the focus of attention of states, sponsors and society, are held by Sports Governing Bodies, which establish rules both for the functioning and development of sports and for the protection of their interests, including commercial ones.

Despite an active interest in sports rules and legal practices that affect freedom of expression, there is no general theory of freedom of expression in sports in the literature. There are jurisdiction-specific analyses on this issue, but there is no work aimed at combining the experience of various jurisdictions and sporting events.

For many years, the Olympic Charter, as the “constitution” of the Olympic movement, has included a provision prohibiting athletes from making political statements and conducting propaganda at Olympic venues under threat of disciplinary sanctions. A wide range of actions and statements as such have been banned and/or sanctioned, while the scope and nature of political statements have not been determined. Although this policy is supported by the International Olympic Committee, as the guardian of the Charter, the legality and compliance of





this norm with article 10 of the European Convention on Human Rights is questionable.

The case law of the European Court of Human Rights shows, among other things, that athletes are prohibited from making critical remarks or wearing symbols in public places.

Athletes' political statements about sporting events, such as the Olympic Games, are one of the controversial topics in the world of sports. The governing sports body, the International Olympic Committee (IOC), seeks to ban them, thereby referring to its rules and statutes, as well as the fact that sport should be free from politics and propaganda, this attitude is often violated by athletes who feel the need to express their (political) thoughts and feelings.

Incidents of the Sochi Winter Olympics such as commemorative helmet stickers worn by Canadian freestyle skiers in memory of Sarah Burke, who died after a training accident a few years ago, a gesture that was banned by the IOC, which considered it a political statement, black armbands worn by four Norwegian skiers in memory of the deaths of the brother of a team member, acts that were characterized as political and as such were reprimanded are an example of this contradiction. Another example: American sprinters Tommy Smith and John Carlos at the 1968 Summer Olympics in Mexico City stood on the medal stand with rosaries and without shoes, heads down and fists raised when the national anthem began to play. The IOC did not tolerate this political statement, through which athletes expressed their sympathy for the fight against racial segregation in the United States and beyond, and decided to remove them from the Olympic Games. These and many other decisions of the IOC go back to Rule 50 of the Olympic Charter on Advertising, Demonstrations and Propaganda, paragraph 3 of which states that: "No demonstrations or political, religious or racial propaganda is permitted at any Olympic venues, venues or other places".

This rule is supplemented by a by-law to Rule 50, paragraph 1, which provides that: "No form of advertising or propaganda, commercial or otherwise, may appear on persons, on sportswear, accessories or, more generally, on any item of clothing or equipment worn or used by athletes or other participants Olympic Games, except for the indication the manufacturer of the relevant product or equipment, provided that such identification data should not be applied explicitly for advertising purposes. Any violation of the provisions of this paragraph may lead to disqualification or withdrawal of accreditation of the relevant person. And the decisions of the IOC Executive Board on this issue are final".





The International Olympic Committee, which is responsible for prohibiting “any political or commercial abuse of sports and athletes”, basically states that paragraph 3 of Rule 50 of the Olympic Charter is aimed at ensuring the spirit of unity in diversity, uniting a wide range of participants and spectators from around the world, protecting athletes from external influences and creating an environment in which athletes can compete without disagreements and emotional distractions.

More specifically, the goal is: to protect athletes; to prevent excessive commercialization of the Games by protecting Olympic venues from advertising; to ensure that the Games are not used as a platform for protests, demonstrations or the promotion of political, religious or racial propaganda; and by defining strict rules for the identification of manufacturers and other identification marks on sports uniforms and equipment to prevent unauthorized commercial, political, religious or racial propaganda.

The IOC emphasizes that the Games are dedicated to sports and there is no place for political statements about armed conflicts, legislation, religious issues, etc.

Athletes, officials, other persons accredited for access to Olympic facilities, and spectators of the Games, therefore, are prohibited from displaying any signs, banners, posters, items of equipment or clothing at Olympic facilities and venues that can be identified as a form of demonstration or propaganda, as “actions or manifestations of any kind with the parties of a person or group of persons, including, but not limited to, their appearance, clothing, gestures and written or oral statements”.

Athletes and other accredited persons are free to express their opinions and thoughts and are free to answer any questions they deem necessary during the Games. They can do this in interviews (media), during press conferences, on social networks, in Olympic press centers or broadcast centers and engage in discussion with other athletes, officials and others.

In fact, this means, as IOC President Thomas Bach stated in an interview in which he assured that athletes enjoy freedom of speech, that: “Athletes are allowed to make political statements at press conferences, but they will be punished for it during competitions or during ceremonies”. In case of violation of the ban, each case is considered by the IOC depending on the facts on the matter.

The first explicit actions against political statements, which at that time were called political rallies or demonstrations, date back to 1967, almost 60 years after the entry into force of the first edition of the Olympic Charter and 72 years after the organization of the first modern Olympic Games in Athens.





It was decided that: “The invitations should indicate that no political meetings or demonstrations will be held at the stadium or other sports grounds, as well as in the Olympic Village, during the Games, either the previous or next week, and that it is not intended to use the games for any other purposes, besides promoting the Olympic movement”.

This rule is typical of a period dominated by the Cold War, competing nations, civil rights movement and protests, incidents that found their resonance in the world of sports. Characteristic in this regard is, for example, the speech of US Attorney General Robert Kennedy in July 1964 on the eve of the Olympic Games in Tokyo, which said: “Part of the prestige of the nation in the Cold War is won at the Olympic Games. On this day of international honor, countries use the sports scoreboard as a visual measure to prove their superiority over the “soft and decadent” democratic way of life”.

Another example in this context concerns the founding of the Olympic Project for Human Rights in October 1967, an organization that, through protests and boycotts, opposed racial segregation in the United States and in the world of sports. IOC President Brundage rejected the actions and statements of the group and in one of his speeches stated: “We should never allow the Olympic movement to be used as a tool or weapon for any hidden purposes, the Olympic Games should not become a forum for demonstrations for anyone”.

The above-mentioned rule was later supplemented by a clearer prohibition in the Charter, which read: "Any demonstrations or propaganda, whether political, religious or racial, are prohibited in the Olympic zones. In fact, there can be nothing on the uniforms of participants or officials other than the flag or emblem of the National Olympic Committee, which must be approved by the International Olympic Committee."

A similar rule was introduced in the 1990s in conjunction with the IOC's controlling authority, according to which only the IOC Executive Board is competent to determine the principles and conditions under which any form of publicity can be allowed. This institutional shift, as a result of which the IOC regained power, confirmed its monopoly and can be seen against the background of neoliberal events. As Edwards stated, “The IOC has become the nerve center of a rapidly developing corporate monolith, commanding an emergency budget”.Part of this process forms the commercialization of the Olympic Games.

Later, publicity or propaganda against people also became prohibited. During the same period, a mechanism for punishing violations of the above-mentioned provision was established, which provided for the following: “Any violation of the





provisions of this paragraph entails disqualification and deprivation of accreditation”.

Violation of the ban at that time automatically led to disqualification and revocation of accreditation, subsequently violation of this provision became punishable by disqualification or revocation of accreditation and is still punished today, albeit in a lighter form.

In the context of the problem of the limits of restriction of freedom of speech, it is necessary to analyze the legality and compliance of the restrictions imposed by the IOC with article 10 of the European Convention on Human Rights.

Despite the absence of comparable cases regarding how the European Court of Human Rights will consider an issue of this nature, there are serious signs that the ban on political statements prevents athletes from freely expressing their (political) views and contradicts article 10 of the European Convention on Human Rights, which guarantees freedom of speech.

Over the years, the ban on political speech, enshrined in rule 50 of the Olympic Charter, has become wider and wider in nature and scope. If in the first case only political meetings or demonstrations were prohibited, then later political propaganda and advertising also fell under this rule. The same applies to how advertising or propaganda is expressed. Initially, advertising or propaganda was not allowed on sportswear, accessories or any items of clothing or equipment. More recently, the ban has been expanded to also cover advertising or propaganda against people. Although at the same time, the sanctions mechanism has become weaker in the sense that a violation no longer leads to automatic disqualification and loss of accreditation, and currently athletes can be severely punished for violating the Olympic rule, covering a wider and indefinite range of incidents than a few decades ago.

The fact that the IOC equates cases of honoring athletes with black armbands to the same rules as cases where athletes make statements as part of a broader public debate, such as racial segregation, is indicative in this regard. Each case is considered by the IOC individually, depending on what action the athlete performed.

This cannot guarantee that sanctions for incidents will be applied in a uniform and proportionate manner, as shown by the cases in which various incidents were punished more or less equally.

The fact that the IOC usually does not disclose its arguments when making decisions on such cases makes them even more difficult, especially from the point of view of public control and legal certainty. The combination of this with the fact





that the decisions of the IOC Executive Board are final in the event of disqualification or revocation of accreditation, this jeopardizes the rights of athletes to due process. They have no choice but to accept the rules of the monopolistic IOC if they want to participate in the Olympic Games, since they are not able to influence the rules.

Excessive disciplinary sanctions in the form of disqualification or withdrawal of accreditation can cause serious damage to an athlete's career and prevent him or her from engaging in his or her professional activities.

In order to comply with Article 10 of the European Convention, the IOC must take the following steps:

1. Approve more transparent and less excessive sanctions mechanisms;
2. To draft more lenient bans on political statements in the Olympic Charter, which will cover a smaller range of incidents.

The rules of the international Football Association FIFA can serve as an example in this regard, since they allow players to wear black armbands, for example, in memory of the death of a person.

These two changes will serve to bring the regulatory framework of the IOC to compliance with international standards in the field of restriction of freedom of speech.

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