

SPRINGER BRIEFS IN LAW

Jan Exner

**Sporting Nationality
in the Context
of European Union Law**
Seeking a Balance
between Sporting
Bodies' Interests and
Athletes' Rights



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Jan Exner
Faculty of Law
Charles University
Prague, Czech Republic

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Preface

International sporting governing bodies administer one or several sports at world level and protect their objectives, including the integrity of international competitions. As a part of their mission and role, they establish and enforce the rules concerning the practice of their respective sports and ensure their application. They enact, amongst others, rules governing conditions of athletes' eligibility in national teams. Nevertheless, sporting autonomy is conditional since the rules of sport have to comply with other laws, including EU law, which influences the global sporting scene. Where does the balance between international sporting governing bodies' rules regarding sporting nationality and athletes' rights under EU law lie?

In this book, I argue that certain rules governing athletes' eligibility in national teams in their current state, notably certain waiting periods, quotas of naturalised athletes or athletes having previously competed for another national team and rules prohibiting the change of sporting nationality breach EU law provisions on EU citizenship, free movement of persons, competition law or fundamental rights. As such, these rules are potentially void under EU law and turn the relationship between international sporting governing bodies and the EU into a dangerous liaison.

I illustrate in this book that EU bodies and institutions' decisions clearly influence the world of sport and that a promising alliance of international sporting governing bodies and the EU is very desirable. Having that in mind, I seek the ideal model balancing objectives, interests and values protected by international sporting governing bodies on one hand, and the rights that athletes derive from EU law on the other hand. I argue that proportionality is the fundamental principle upon which the solution to ensure the compliance of rules governing athletes' eligibility in national teams with EU law rests.

In this respect, I make observations regarding the relation of international sports federations and the EU in general. More importantly, I formulate concrete recommendations for international sporting governing bodies on how to better adapt their sporting nationality rules to EU law requirements. I suggest broadening the possibilities for athletes to change their sporting nationality, to harmonise and shorten waiting periods, to allow up to half of naturalised players or players having previously competed for another national team to be part of a team and to exclude

minors from the applicability of these regulations. I also believe that respective bodies should conduct a case-by-case assessment taking into consideration specific circumstances of particular cases.

I suggest that international sporting governing bodies start learning from EU law and grab the helping hand that the EU offers to them in seeking the balance between their interests and athletes' rights. Otherwise, international sports federations should carefully think their moves over in the game of chess against EU law. They play with white pieces, and they have the right to make the first move. They must simultaneously pay attention to the moves of EU law. International sporting governing bodies are free to establish respective criteria of athletes' eligibility in national teams. At least, unless EU bodies and institutions checkmate them.

I am much obliged, and I would like to thank Ciarán Burke, Yann Hafner and Tereza Kunertová kindly for their time, patience, expert advice and valuable comments during my work on this book. All errors are nevertheless my responsibility. I also thank my family and friends for their love and support in the course of writing this book.

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December 2018

Jan Exner

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Abbreviations

CAS	Court of Arbitration for Sport
CFI	Court of First Instance (General Court)
CJEU	Court of Justice of the European Union
COC	Czech Olympic Committee
Convention	Convention for the Protection of Human Rights and Fundamental Freedoms
ECHR	European Court of Human Rights
ECJ	European Court of Justice
EEA	European Economic Area
EGC	General Court
EU	European Union
FFF	Fédération Française de Football
FIBA	International Basketball Federation
FIFA	Fédération Internationale de Football Association
FIGC	Italian Football Federation
FINA	Fédération Internationale de Natation
FIS	Fédération Internationale de Ski
FIVB	International Volleyball Federation
ICJ	International Court of Justice
IIHF	International Ice Hockey Federation
IOC	International Olympic Committee
IRB	International Rugby Board
ISU	International Skating Union
ITTF	International Table Tennis Federation
Member States	Member States of the European Union
NBA	National Basketball Association

NOC	National Olympic Committee
SFT	Federal Supreme Court of Switzerland
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UCI	International Cycling Union
UEFA	Union of European Football Associations