

## ARTICLE

# Olympic Dilemma: Discrimination Against Athletes at the Olympic Games Based on Their Nationality

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This article examines the intersection of politics and sports at the Olympic Games, focusing on the discrimination of athletes based on their nationality. It distinguishes between legitimate sanctions for athletes' own misconduct—such as doping or violations of Rule 50.2 of the Olympic Charter—and instances where athletes are excluded from the Olympic Games due to political decisions or misconduct of their states and/or National Olympic Committees. Through case studies, the article questions the proportionality of sporting sanctions imposed on states and their impact on individual athletes' rights. It argues for a balanced approach that upholds the integrity of sports while safeguarding athletes' fundamental rights to participate in sports without discrimination.

**Keywords:** discrimination; Rule 50.2; Olympic Games; Lex Sportiva; political sanctions

## 1. Introduction

Apoliticality, as a fundamental principle of the functioning of the National Olympic Committees (NOCs), was first declared in 1933 when the International Olympic Committee (IOC) announced that 'the NOCs, to fulfil their duty, must avoid any political or other influence and when called upon to take a decision be actuated only by general interest without taking into consideration local questions or the desire to favour national competitors' (IOC 1933). A retrospective analysis of the historical evolution of Olympism reveals that the initial call for adherence to the apolitical nature of NOCs was unsuccessful. In 1936, the Nazi regime in Berlin used the Olympic stage as a platform for propaganda, seeking to present an image of a newly unified and strengthened Germany, and to legitimise Hitler's regime in the eyes of the world, while simultaneously downplaying its attacks on Jews and the Roma (Nelsson 2021).

Despite the IOC declaring the autonomy of sports and the apolitical nature of the Olympic Movement (Di Marco 2022), it is evident that throughout the 20th and 21st centuries, the majority of Olympic Games have encompassed not only sporting events but also political disputes between states, boycotts against the political stance of the IOC, and both direct and indirect political expressions.

Rule 50.2 of the Olympic Charter stipulates that 'no kind of demonstration or political, religious or racial propaganda is permitted in any Olympic site, venue or other area' (IOC 2024), i.e. it restricts the freedom of expression of athletes during opening and closing ceremonies, in sporting venues, or on the Olympic podium. Dhonchak asserts that the restriction of any expression that generally appeals for the observance of human rights, the necessity of peace, mutual respect, and understanding is not in harmony with Article 19 of the International Covenant on Civil and Political Rights (Dhonchak 2020). James and Osborn support this view, noting that even symbolic gestures or messages may breach Rule 50.2. According to them, the rule's vague wording and inconsistent enforcement render it unpredictable and legally questionable. While the IOC justifies it as protecting political neutrality, such a goal is unlikely to meet the strict Convention standards for legitimate and proportionate interference with fundamental rights (James, Osborn 2024).

While aligning with critiques of Rule 50.2 of the Olympic Charter, this article shifts focus to a specific issue: political demonstrations in the form of deliberately avoiding competition with athletes from politically hostile states. It examines whether such actions—often shaped by decisions of governments, National Olympic Committees, or sports federations—can justify restricting an athlete's right to compete and argues that punishing athletes for actions beyond their control may constitute a violation of their fundamental rights. The purpose of this paper is to clarify the distinction between individual athlete responsibility and collective punishment in the context of the Olympic Games. It argues that while it is justified to sanction athletes for their own misconduct—such as doping violations or breaches of Rule 50.2 of the Olympic Charter—punishing athletes for the actions or decisions of their National Olympic Committees or governments constitutes a violation of their fundamental human rights.

The article aims to highlight that holding athletes accountable for misconduct beyond their personal control is unfair and infringes upon their right to participate in sport. By examining cases where athletes have been indirectly penalised due to the political or administrative actions of others, it seeks to challenge the legitimacy of such sanctions and advocate for a more just and rights-respecting approach in sports governance.

## 2. Exclusion of Iranian Judokas from Sports Events Due to the Violation of *Lex Sportiva* by Iran

Coubertin believed that the Olympic Games should be shielded from constant political changes (Berg 2008). However, in the 21st century, it must be understood that labelling the Olympic Movement as a beacon of apolitical unity, where sporting talent transcends the ideological and political boundaries of individuals and states, is hypocritical.

James and Osborn state that the freedom of expression of athletes is disproportionately restricted on the Olympic stage, respectively during opening and closing ceremonies (James, Osborn 2024). This prompts the question of whether athletes possess the same (restricted) right to freedom of expression and political demonstrations on the sports field, where they feel most 'at home', where they can reach the largest audience and be most visible. It is evident that political tension exerts a significant influence on sporting arenas. A relevant historical example is the 1956 Olympic Games in Melbourne, where the water polo teams of Hungary and the Soviet Union clashed in one of the final group matches. While the Soviet tanks suppressed the anti-communist revolution in the streets of Budapest, the teams competed fiercely in the pool (Roos 2021). Remarkably, the athletes on both sides demonstrated an ability to rise above the political tensions between their respective nations, embodying the spirit of Coubertin's assertion that 'the Olympic Games are open to the entire world and that all nations are welcome to participate. Racial or national distinctions should not play a role in sports.'

While the aforementioned water polo match at the Olympic Games in Melbourne has been declared the most violent match in history (Tarbotton 2017), in recent years, we have observed the opposite of the manner of sportspeople in Melbourne. Athletes from politically conflicted countries intentionally manipulate sports match outcomes to avoid competing against an opponent from a (politically) hostile state. Unlike overt and voluntary protests—such as Tommie Smith's famous Black Power salute at the 1968 Mexico City Olympics, which was a clear and conscious act of political expression—this form of demonstration is often indirect and involuntary. Athletes may find themselves pressured or compelled by their governments, National Olympic Committees, or sports federations to act in ways that convey political messages without openly declaring them as protests.

This subtle form of political expression challenges traditional notions of freedom of speech and demonstration within sport. While it communicates a political stance, it does so through actions that influence competition itself, rather than explicit gestures or statements. This raises difficult questions about the rights of athletes as individuals versus the political agendas imposed upon them, and whether such actions should be regarded as legitimate expressions of free speech or as coercive acts that undermine the principles of fair play and sportsmanship.

This negative behaviour is happening more and more in the world of combat sports. An illustrative example is the case of Algerian judoka Fethi Nourine and his coach Amar Benikhlef, who were banned from competition for ten years by the Disciplinary Commission of the International Judo Federation (IJF) because, during the Tokyo 2020 Games, they refused to compete against Israeli judoka Tohar Butbul for political reasons. This refusal constitutes a clear violation of the Olympic Charter, the IJF Statutes, and the IJF Code of Ethics, which prohibit political propaganda and discrimination against athletes based on their nationality (IJF 2021). The justification for their actions was as follows:

'We will not raise the flag of Israel and will get our hands dirty with them. ... I represent the Algerian flag in the Olympic Games. Algeria is a member state of the United Nations, and it does not recognise the State of Israel; I should not deviate from the principles of my country. This athlete represents a state that violated the principles of international law relating to the treatment of civilians in the time of war... As athletes, we carry the message of peace to the whole world, and we should promote this message through all international sporting events (IJF 2021).'

A similar but much more widespread (state-ordered) sporting boycott is occurring in Iran. The Supreme Leader of Iran, Ayatollah Ali Khamenei, has issued a directive to Iranian sportspeople, instructing them to avoid competing against Israelis, even in the face of threats from international sports organisations regarding disciplinary measures.

'No Iranian athlete can shake hands with a representative of the [Israeli] criminal regime to obtain a medal. The genocidal, illegal Zionist regime attempts to gain legitimacy by appearing in international athletic competitions. The world's arrogant powers and their cohorts [the West] assist and support them in this', said A. A. Khamenei at a ceremony honouring Iranian medallists from the Tokyo Olympic Games (RFE/RL 2021).

In response to the aforementioned political instructions and call for political demonstrations in sporting fields, the Disciplinary Commission of the IJF, by its (second) decision (note: the first disciplinary decision of the IJF was overturned by the Court of Arbitration for Sport (CAS) due to the uncertainty of the imposed penalty), suspended the activities of the Islamic Republic of Iran Judo Federation (IRIJF) in the international judo community for a period of four years—from 18 September 2019 to 18 September 2023. The IJF justified its decision on the grounds that the IRIJF

violated not only the provisions of the IJF Statute on the political neutrality of sports (Article 1.2.2) and the prohibition of discrimination (Article 1.2.4) but also the IJF Code of Ethics and the Olympic Charter (IJF 2021).

The sanctioned federation has appealed to CAS, arguing that the disciplinary sanction is disproportionate and fails to meet the legal standards for its imposition. The CAS and IJF had no doubt that in the case of Iran, there was a systemic failure where sportspeople received orders to discriminate against Israeli athletes, i.e., IRIJF and Iran seriously violated *Lex Sportiva* (CAS No. CAS 2019/A/6500, para. 121). The CAS has emphasised that the imposed sanction is not intended to eradicate judo in Iran but rather serves as a legitimate deterrent for those unwilling to comply with the IJF Statute and other international *Lex Sportiva*. Additionally, the Disciplinary Commission of the IJF was not held accountable for any presumed indirect negative consequences for the Iranian sportspeople. Instead, full responsibility for these repercussions lies with the actions of the IRIJF and Iranian state authorities (IJF 2021).

It is clear that Iranian leaders have violated the principle of sports neutrality by instructing their athletes to engage in political demonstrations during competitions. This indoctrination encourages athletes to deliberately discriminate against Israeli competitors, refusing to compete against them based solely on political grounds. Such demonstrations not only undermine the spirit of fair play and respect that sportsmanship demands but also constitute a clear breach of Rule 50.2 of the Olympic Charter, which prohibits any form of political, religious, or racial demonstration within Olympic venues.

For this reason I can agree with the opinions of the IJF and CAS, asserting that Iran grossly violated the principle of the apolitical nature of the sports movement. Conversely, it is important to acknowledge that sportspeople should not be subject to penalties for violations of *Lex Sportiva* perpetrated by their national sports federations and/or governments. The Iranian athletes did not act out of a desire to violate Rule 50.2 of the Olympic Charter, which prohibits political demonstrations during competition; rather, their conduct must be understood in the context of intense state indoctrination and coercion. These athletes (mostly) were not expressing personal political beliefs but complying with directives imposed by the Iranian authorities, who maintain strict control over all aspects of public life, including sport. Refusing to boycott Israeli opponents or failing to demonstrate hostility toward them would not have been seen as a neutral act—it could have been interpreted as disobedience or even treason by the regime. In such cases, athletes risk severe consequences, including exclusion from national teams, imprisonment, or persecution of their families. Their actions, therefore, cannot be viewed as free political expression in violation of Olympic norms, but rather as survival strategies within an authoritarian system that exploits sport as an instrument of state ideology. Despite this fact while Iran itself is responsible for violating the *Lex Sportiva*, the four-year ban imposed on the IRIJF effectively barred Iranian judokas from competing in two Olympic Games and three World Championships. In simpler terms, the practical consequences of the decision of the Disciplinary Committee of the IJF deprived (at least) one generation of judokas of the right to compete at the highest level, solely due to their nationality.

The CAS's argument that the deprivation of Iranian judokas' right to compete is solely the responsibility of the national sports federation or Iranian state authorities is understandable but falls short from the perspective of an athlete striving for international competition. Given that the primary victims of the sanctions were Iranian judokas, it is essential to go beyond assessing the responsibility of the national sports federation or Iranian state authorities.

We need to examine to what extent the restriction of athletes' participation in international sports events, based on sanctions imposed on their state or national federation, is compatible with the recognition of sport as a human right and with the principle of individual responsibility for wrongful acts.

### 3. Participation in Sport as a Human Right

In *Olympic Memoirs*, Pierre de Coubertin expressed a belief that sports belong to all members of society: 'For every man, woman and child, sport offers an opportunity for self-improvement quite independent of profession or position in life. It [sport] is the birthright of all, equally and to the same degree, and nothing can replace it...' (Coubertin 1979). This assertion is echoed in Article 4 of the Fundamental Principles of Olympism, which recognises sport as a human right.

Similarly, the International Charter of Physical Education, Physical Activity, and Sport proclaims the fundamental right of every individual to engage in sports. However, similarly to the Report of the Special Rapporteur in the field of cultural rights, Alexandra Xanthaki – The right to participate in sports it acknowledges that this right is not explicitly codified in international human rights treaties (UN 2024). Instead, its legal foundation can be inferred from established human rights provisions, such as Article 24 of the Universal Declaration of Human Rights, which guarantees the right to rest and leisure; Article 12 of the International Covenant on Economic, Social, and Cultural Rights, which ensures the right to the highest attainable standard of physical and mental health; and Article 15 of the same Covenant, which upholds the right to participate in cultural life.

The human right to participate in sports free from any form of discrimination, in the spirit of fair play, equality, and inclusion has also been affirmed by the CAS. It ruled that the freedom to engage in sports of one's choosing, among equal competitors, constitutes a personality right protected under Article 28 of the Swiss Civil Code (CAS 2012).

However, it is crucial to note that the right to engage in sports pertains exclusively to leisure activities and does not extend to elite sports. These activities are characterised by exclusivity, permitting individual participation solely upon the fulfilment of specific performance criteria (Donnelly 2008). Professional sports operate within a highly regulated framework, where (potential) elite athletes must adhere to *Lex Sportiva* and comply with participation requirements set

by governing sports organisations. Nevertheless, once an athlete meets the necessary performance standards and agrees to abide by *Lex Sportiva*, they acquire the human right to compete at the elite level (UN 2024).

In this regard, it is important to recall that, according to the Report of the Special Rapporteur in the field of cultural rights, Alexandra Xanthaki, 'States and public bodies are under the obligation to ensure that public and private bodies, including sporting associations, do not violate the right to participate in sports or any other human right during sport; when necessary, States must take positive measures to ensure that the right to participate in sports is fulfilled' (UN 2024).

This obligation is especially pertinent in the case of the Iranian judokas, who were excluded from international competition following sanctions imposed on their national federation due to the Iranian state's failure to uphold its duty to respect the right to participate in sport. Although international sanctions were motivated by the Iranian state's interference in sport—particularly its politically driven prohibition on competing against Israeli athletes—it has deprived Iranian athletes of their right to take part in international sporting events, regardless of their personal conduct or beliefs.

In this context, a fundamental question arises: if an individual holds the right to engage in sport at the elite level—which necessarily includes participation in international sports competitions—can the exclusion of their state or national sports federation from the sports movement, whether in general or from a specific competition, for political reasons, be considered an unjustified restriction of that individual's human right?

Restricting athletes' participation in international competitions due to sanctions imposed on their state or federation is incompatible with the recognition of sport as a human right. In the case of Iranian judokas, individuals who were not involved in their government's discriminatory policies and committed no violation themselves were collectively sanctioned. Their exclusion from international competition cannot be justified as a measure to protect the integrity of sport when, in fact, it constitutes a form of discrimination based on national origin or political affiliation. Similarly, Israeli athletes who faced boycotts or refusals to compete against them were also harmed as a result of political decisions made by third parties, demonstrating that human rights violations in sport are not one-sided.

While Pearce and Sanderson persuasively argue that the so-called 'right to sport' does not exist as an independent and legally enforceable human right, they emphasise that legal scrutiny must focus on the right to non-discrimination (Pearce, Sanderson 2024). This right—enshrined in binding legal instruments such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Convention on the Rights of Persons with Disabilities—is the proper framework through which to assess exclusion in sport. If sport is to be upheld as a universal human right, protection against discrimination must apply not only against states but also against sports organisations, which in practice exercise substantial control over access to elite sport.

From a non-discrimination perspective, collective punishment of athletes entails:

- (i) undifferentiated sanctioning regardless of individual conduct or responsibility,
- (ii) disregard for the personal autonomy of athletes and their separation from state authority, and
- (iii) discrimination based on nationality or national origin.

Therefore, it is essential to examine whether athletes in international competition appear solely as representatives of their states or national federations—regardless of their individual identity and beliefs—or whether they may claim protection of their individual human rights in cases where their state or federation fails to comply with *Lex Sportiva*.

Answering this question requires an analysis of the legal relationship between athletes and sports organisations, and an inquiry into the extent to which athletes can meaningfully influence the actions of their federations. If athletes lack such influence, international sports organisations must bear direct responsibility for ensuring that individuals are not deprived of their rights on the basis of collective guilt.

### **3.1. Human right to participate in sports vs. athletes' contractual relationships with sports organisations**

The 'contractual relationship' between elite athletes and sports organisations is highly complex, individually negotiated and regulated area. Unlike standard employment relationships, where contractual parties typically have equal standing, professional athletes often find themselves in a take-it-or-leave-it situation. In many cases, federations—both national and international—exercise unilateral authority in defining the terms and conditions that govern athletes' rights and obligations. The Olympic Games serve as a pertinent example. Athletes wishing to compete are required to comply with the regulations set forth in the Olympic Charter and must sign a Participation Agreement with their respective NOCs.

Athletes and nations participating in the Olympic Games comply with the rules established by the IOC and accept subsequent sports sanctions for violations, without scrutinising the conformity of *Lex Sportiva* with national legislation. This approach is rational, given the international nature of the IOC and the inherent difficulty of achieving a global consensus on fundamental human rights standards. However, because *Lex Sportiva* is enforced through the Olympic Charter, athletes often have little to no bargaining power in this framework. In connection to this issue it has to be noted that the European Court of Human Rights (ECtHR), in *Mutu and Pechstein v. Switzerland*, explicitly recognised the lack of genuine choice faced by athletes who are de facto compelled to accept arbitration by the CAS and to submit to *Lex Sportiva*. The ECtHR emphasised that this contractual coercion does not exempt private sports bodies from respecting fundamental rights, particularly the right to a fair hearing and the right to non-discrimination (ECtHR 2019, para. 95–96). *Mutu and Pechstein's* case illustrates the vulnerability of athletes vis-à-vis powerful sports institutions, and the

ECtHR held that Switzerland had a positive obligation to ensure that such private adjudicatory bodies operate within a human rights-compliant framework. The decision in *Mutu and Pechstein* underscores that sports organisations cannot escape scrutiny simply because they act under private law or international sporting rules. They bear responsibility for ensuring that no disproportionate or discriminatory sanctions are imposed on athletes.

English judge Denning argued similarly, and he noted the internal rules of sports federations often function as ‘legislative codes’ rather than mere contractual terms (Enderby Town 1971, para. 190). Consequently, such rules must meet public law standards of legitimacy and proportionality, particularly when they have the effect of excluding individuals from opportunities like elite sport. Following this reasoning, the German Constitutional Court ruled that when one party in a sports contract—typically a sports federation—has the unilateral authority to determine the conditions for participation, it is the responsibility of the state to protect the fundamental rights of athletes, ensuring that no individual is subject to arbitrary or unjust exclusion. Consequently, the relevant authority must prove, beyond reasonable doubt, that any imposed limitations do not disproportionately infringe upon the rights of the individual athlete (BvR 2103/16 2022).

For this reason it is essential to acknowledge that sanctions imposed on sports organisations for failing to comply with their human rights obligations may constitute a legitimate mechanism to hold the responsible actors—whether states or sports bodies—accountable. However, as the ECtHR emphasized in *Semenya v. Switzerland*, human rights compliance cannot stop at the institutional level. The implementation of such sanctions must not infringe disproportionately on the individual rights of athletes, particularly when they bear no responsibility for the underlying misconduct (ECtHR 2023).

The *Semenya* judgment made it unequivocally clear that even when national sports organisations enforce eligibility rules or disciplinary measures, the state remains responsible under Article 14 of the European Convention on Human Right. The ECtHR found that state had a positive obligation to scrutinise the human rights implications of *Lex Sportiva* applied by sports federations based in its jurisdiction, even though these bodies act under private law (ECtHR 2023). Although sports federations, as private entities, are not direct signatories to international human rights conventions, Switzerland, which is home to a number of international sports organisations, has a legal framework that extends human rights obligations to private entities within its jurisdiction (Shahlaei 2022). Consequently, sports organisations operating within Swiss territory (also IOC) are bound by the principles outlined in international human rights instruments. Thus, it becomes clear that both states and international sports bodies share the duty to uphold the human rights of athletes. They must guarantee that access to international competition is not subject to discriminatory barriers or collective sanctions. Otherwise, the very idea of sport as a universal human right becomes illusory—available only to those with the ‘right passport’ or the ‘right political background’.

Therefore, the key question becomes: Can the exclusion of athletes based solely on their nationality be considered a justified and proportionate measure, especially in light of the alternative possibility of targeting actual wrongdoers—namely, state authorities or sports administrators—without imposing collective punishment on athletes? Following the logic of the *Semenya* judgment, any such measure must undergo strict scrutiny. The burden of proof lies on the decision-making authority to demonstrate that no less harmful, more individualised measure could have achieved the same legitimate aim.

In conclusion, *Semenya v. Switzerland* reinforces the idea that the protection of human rights in sport cannot be waived by contractual formalisms or institutional autonomy. It calls for a deeper assessment of whether international sports law, as applied today, unjustly sacrifices the rights of athletes in the pursuit of broader regulatory or political objectives. If sport is to remain a universal human right, its access must not depend on politics—or passports.

### 3.1.1. Infringement of the right not to be discriminated against

According to the Olympic Charter, every individual must have the opportunity to participate in sports without any form of discrimination and in the Olympic spirit (IOC 2024, Fundamental Principles of Olympism). The right to non-discrimination is also affirmed in several international human rights instruments, including the Universal Declaration of Human Rights (Article 7), the International Covenant on Civil and Political Rights (Article 26), and Protocol No. 12 to the Convention for the Protection of Human Rights.

However, it should be noted that the right to non-discrimination is not unconditional or absolute, as there may be an ‘objective and reasonable justification’ for discrimination (UN 2009). This principle has been further clarified in the case-law of the ECtHR, which has defined discrimination as treating individuals differently in similar situations without an objective and reasonable justification. The absence of such justification is marked by a lack of a ‘legitimate aim’ or a ‘reasonable relationship of proportionality between the means employed and the aim sought to be achieved’ (ECtHR 2007, paras. 175 and 196).

Consequently, international sports organisations have a degree of discretion when determining whether distinctions in otherwise comparable situations justify disparate treatment (ECtHR 1996, para. 42). While there may be valid reasons for excluding athletes or states from international sporting events—such as the protection of human rights or the promotion of peace—the extent to which this discretion is exercised depends on the specific circumstances of each case, the nature of the subject matter, and its context.

The legitimate purposes for excluding some athletes and/or states could be seen in the case of Russian athletes. On 28 February 2022, the IOC Executive Board recommended the exclusion of Russian and Belarusian athletes

and officials from international sports events following Russia's invasion of Ukraine (IOC 2022). Subsequently, the UN Special Rapporteur on cultural rights and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia, and related intolerance expressed serious concerns about the decision to ban Russian and Belarusian individuals solely based on their nationality. They argued that such a measure raised significant issues regarding non-discrimination and urged the IOC to reconsider its stance towards Russian and Belarusian athletes, emphasizing the need to uphold internationally recognized human rights, including the principle of non-discrimination (IOC 2023).

Following the initial period of adjustment to the ongoing war, in December 2023, the IOC introduced a regulation that allowed athletes holding Russian or Belarusian passports to participate in the Olympic Games as neutral athletes, provided they were not actively supporting the war or involved in contractual agreements with the Russian or Belarusian military or national security agencies (IOC 2023).

In the context of the ongoing Russo-Ukrainian war, the prevailing sentiment among most democratic countries worldwide is that Russia is the aggressor, with Ukraine being the victim. Consequently, the exclusion of Russian and Belarusian athletes actively supporting the war from international sporting events should serve legitimate purposes, namely: (i) protecting the human rights of Ukrainian athletes, (ii) ensuring the smooth and secure conduct of sporting events, and (iii) preventing the use of sporting events for propagandistic purposes (Wiater 2023). This is particularly relevant given that Russian athletes have previously been employed in promoting war propaganda, attempting to legitimise the state's oppressive and aggressive policies through sports over the years (Vladimirova 2020). On the other hand, the obligation of international sports organisations to apply 'less restrictive measures' is in accordance with the legal standard that there must be a proportional relationship between the measures taken (in this case, the exclusion of Russian and Belarusian athletes) and the objectives set. The safety of Ukrainian athletes, along with the broader peace and security policy goals intended to be achieved through the ban, must be balanced against the rights and interests of Russian and Belarusian athletes (Schubert 2024). The proportionality of total exclusion must be compared to the more lenient restriction of partial permission, which can serve as a milder yet equally effective measure. Granting partial permission for Russian and Belarusian athletes, with certain restrictions, can be seen as a more moderate approach that reduces nationality-based discrimination. Also, P. Wiater conceded that, in order to prevent unfair treatment of innocent athletes, it is appropriate for international sports organisations to allow athletes with 'wrong passports', who fully adhere to the Olympic Charter and have not supported the war in Ukraine, to participate in sports events as neutral players, without the use of national symbols (Wiater 2023). This neutrality rule specifically holds states accountable, not the athletes.

In this context, the question arises whether protecting the rights of Israeli athletes and preventing the use of sporting events for war propaganda can justify exclusion of innocent Iranian athletes from international sports events (who are not involved in state-ordered 'match-fixing')? Given the legal status of Russia as the aggressor and Ukraine as the victim in the ongoing Russo-Ukrainian war, we can argue that the presence of Russian athletes at international sporting events may negatively affect the mental health of Ukrainian athletes, potentially undermining their dignity and impeding their right to participate in cultural activities free from undue influence. The analysis of the Gaza conflict highlights that the positions of the involved parties are unclear, and the international community has not reached a consensus on who holds the status of aggressor and who is the victim. While Ukrainian victims may rightfully react negatively to the potential war propaganda from Russian athletes, the international community has not reached a clear consensus on Israel's status as a victim (Amnesty International 2024). This view is supported by the CAS decision, which emphasised that during the restriction of human rights the impact on individuals must be carefully weighed against the broader objectives pursued (CAS 2019/A/6161). While it is understandable that efforts to combat Iran's discriminatory practices towards Israeli athletes, its use of sports events for war propaganda, and its involvement in match-fixing for political purposes constitute valid goals, concerns arise regarding the proportionality of imposing a blanket ban on all Iranian judokas to achieve this aim.

Therefore, drawing an analogy with the case of the Russian Olympic Committee's exclusion from the Olympic family due to Russia's aggression in Ukraine, while allowing Russian athletes to compete under neutral flags, it can be argued that excluding an athlete from another state based on political reasons—especially when the athlete is not at fault—constitutes unjustified discrimination within the community of elite athletes. When considering the proportionality of the imposed sanction, granting partial permission with restrictions for Iranian athletes represents a less severe measure, reducing nationality-based discrimination. This approach, however, could still be effective in achieving the legitimate objective of preventing the use of discriminatory policies by Iran in international sports events. The status of Iranian and Israeli athletes, alongside the broader objectives of peace and security, must be weighed against the conflicting legal interests of other athletes in order to achieve a fair balance. It means that it is essential to prioritise measures that are equally effective in achieving these goals while imposing lesser burdens on innocent Iranian athletes. These measures could include allowing participation of Iranian athletes on international sports events under a neutral flag and banning state symbols, war propaganda, or related gestures.

According to the aforementioned facts we can state that it is unjust to hold athletes responsible for representing a state that violates international public law norms. The state is the only entity that meets the criteria for responsibility, which include the occurrence of wrongful conduct, the harm caused, and the causal connection between the harm and

the wrongful conduct. Therefore, excluding athletes from international sporting events due to political reasons beyond their control and responsibility constitutes a form of unjustified discrimination. However, the implications of such exclusion go beyond questions of state responsibility and discrimination. They also directly affect the individual rights of athletes themselves, particularly their freedom to engage in sport at the elite level.

### 3.1.2. Violation of the athlete's freedom to engage in sports activities at the elite level

In line with the jurisprudence of the CAS, the freedom to engage in sports activities, including the right to compete against equal opponents, is considered a personal right protected under Section 28 of the Swiss Civil Code (CAS 2013/A/3091, para. 128). This right encompasses more than just the opportunity to develop and express one's personality through sports; it also includes the freedom to pursue economic activities related to sports, such as earning a livelihood through professional athletic participation. It is widely acknowledged that the 'market value' of a professional athlete who does not actively compete in international sports event significantly declines, leading to a limitation of their future career opportunities and potential financial support from sponsors and other stakeholders. Therefore, it is essential to uphold athletes' right to freely pursue their profession, a right safeguarded by Section 28 of the Swiss Civil Code.

The interpretation of Section 28 of the Swiss Civil Code confirms that imposing collective sanctions on a country and its athletes, leading to their exclusion from international competitions, constitutes a violation of the Swiss Civil Code. When an athlete is unable to fulfill their contractual obligations due to factors beyond their control, this amounts to a breach of their subjective rights (CAS 2013/A/3091).

As demonstrated in the case of Iranian athletes, some individuals opposed the state's policy mandating discrimination against Israeli sportspeople (Usher 2023). Nevertheless, they faced the same penalties as those who endorsed and complied with the policy. In the case of Iranian judokas, no justification was provided for their exclusion from the international sports community, even though those who did not seriously violate their obligations under *Lex Sportiva* were also barred from international competitions.

For this reason, the argument advanced by CAS—that the suspension of an athlete's activities, even if it infringes upon their personality rights, is acceptable as long as it remains proportionate and not excessive—cannot be unconditionally accepted. The determination of proportionality depends on balancing various interests, including the fundamental right of every athlete to participate in sports activities (CAS 2017/A/4998, para. 162). Sanctioning athletes due to the failure of their nation not only constitutes a breach of legitimate international human rights norms but also significantly impacts their right to freely pursue their profession, which is intrinsically linked to economic freedom in the field of sports.

### 3.1.3. Violation of the principle 'nulla poena sine lege'

CAS has ruled that imposing a ban on an athlete's participation in sports for a fixed period due to their intentional and unlawful conduct does not violate their right to pursue a profession or exercise economic freedom. Instead, such a sanction merely restricts the athlete's ability to take part in sports activities for a defined duration. However, the individual remains free to engage in other professional or economic activities unrelated to sports.

The legitimacy of CAS's assertion is not challenged when the sanction is imposed due to the athlete's own actions, such as the use of prohibited substances under the WADA Code or other breaches of *Lex Sportiva*. In these cases, a clear causal link exists between the prohibited act and the penalty imposed, ensuring compliance with fundamental legal principles such as foreseeability, legality, and accountability. However, this logic becomes untenable when an athlete is sanctioned not for their own behaviour, but solely due to actions or omissions attributable to their state or national sports federation. In such scenarios, the individual athlete neither engaged in misconduct nor had any power to influence the decisions that led to the violation of international public law or *Lex Sportiva*. As a result, there is no direct or indirect culpability on the athlete's side, and any penalty imposed in such circumstances lacks the necessary causal nexus between conduct and consequence.

The prevailing jurisprudence of the CAS—particularly in case CAS 2019/A/6278 (paras. 48 and 49)—reaffirms that the fundamental criminal law principle of *nullum crimen sine lege*, *nulla poena sine lege* applies, *mutatis mutandis*, to disciplinary sanctions within the sports regulatory framework. According to this standard, three essential criteria must be fulfilled for a sanction to be considered lawful:

- (i) the relevant rules (*Lex Sportiva*) must be enacted by a competent authority in a procedurally and substantively lawful manner;
- (ii) these rules must be coherent and non-contradictory; and
- (iii) there must be an unequivocal and foreseeable link between the prohibited conduct and the sanction imposed.

Applying these criteria, it becomes evident that penalising athletes for the political or institutional failings of third parties—such as national federations or governments—violates the *nulla poena sine lege* principle. Such collective punishment not only undermines the athlete's autonomy and legal certainty but also deprives them of the right to compete based on actions entirely beyond their control. In essence, the athlete becomes a scapegoat for structural or political wrongdoing, despite the absence of any individual culpability.

This approach is not only legally questionable but also ethically indefensible within a human rights–based framework. It erodes the foundational ideals of fairness and individual justice that sport purports to uphold and risks institutionalising forms of discrimination based on nationality or political affiliation, in clear contradiction with international human rights standards.

#### 4. Conclusion

The contractual relationships between elite athletes and sports organisations form a complex and asymmetrical legal terrain, marked by detailed regulations, limited bargaining power for athletes, and strict regulatory oversight by governing bodies. As K. Foster has highlighted, the legal framework governing international sport is neither purely public nor private—it exists as a hybrid regulatory regime where *Lex Sportiva*, international human rights law, and national legal norms intersect in often uneasy tension (Foster 2019).

This tension becomes especially clear when examining the operation of global sports organisations such as the IOC or IJF, particularly in the context of the Olympic Games. Participation in the Olympics is contingent upon adherence to the Olympic Charter, a quasi-constitutional document that codifies the rights and obligations of athletes and National Olympic Committees. As Foster notes, sports organisations exercise considerable legal autonomy (Foster 2019), often insulated from direct state oversight, yet they wield powers that can fundamentally shape the rights and livelihoods of athletes. Although athletes are bound to frameworks such as Olympic Charter or Participation Agreement through “contractual” acceptance, these are not traditional bilateral contracts, but rather standard-form, imposed agreements that leave little room for negotiation. Thus, any attempt to evaluate these arrangements must consider the structural imbalance of power and the absence of genuine consent. These dynamics raise concerns about due process, access to remedies, and the enforceability of fundamental rights within sport.

This issue comes into sharp relief when considering how the CAS has handled disputes involving athlete sanctions. While CAS has increasingly acknowledged the relevance of international human rights law, its jurisprudence still reflects deference to the autonomy of sports bodies, sometimes at the expense of individual rights. The case of the IJF and the exclusion of Iranian judokas is emblematic. While sanctions against states or organisations for violations of *Lex Sportiva* may be justified in principle, the collective exclusion of athletes based on nationality—without individualised review or clear legal basis—raises serious human rights concerns. This demonstrates the fragility of legal protections in the face of geopolitics, and the failure of the existing governance framework to ensure consistency, transparency, and proportionality.

As we navigate the complexities of international sports governance, the words of Nelson Mandela resonate deeply: ‘Sport has the power to change the world. It has the power to inspire. It has the power to unite people in a way that little else does.’ In striving toward this ideal, it is the responsibility of international sports organisations to place human rights, inclusivity, and the cultivation of shared goals at the forefront, serving as models of ethical conduct and collaborative action.

#### Competing Interests

The author has no competing interests to declare.

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