Political Considerations in the Sports Establishment

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I. Independent Countries not Recognised by Sports Authorities

On the 10th of October 2010, the Netherland Antilles ceased to exist and Curaçao became an independent country within the Kingdom of the Netherlands. Curaçao consists of five islands which used to make up the Netherlands Antilles. In July 2011 the IOC withdrew its recognition of the Netherlands Antilles National Olympic Committee.\(^1\) As a result the athletes from these five islands – now Curaçao – could no longer compete with the colours of the Netherlands Antilles National Olympic Committee. The IOC decided to allow these athletes to compete under the jurisdiction of the National Olympic Committee (henceforth NOC) of their choice recognised by the IOC within the Kingdom of the Netherlands. This means that they could choose to compete either under the jurisdiction of the NOC of the Netherlands or of the NOC of Aruba. The Curaçao Sport and Olympic Federation filed an appeal against the IOC’s decision. It demanded that the Curaçao Sport and Olympic Federation should be recognised by the IOC as the NOC for the new country of Curaçao. The IOC argued that the CAS lacked jurisdiction to hear the matter and therefore requested a preliminary ruling on jurisdiction issue.\(^2\)

It should be noted that the CAS is not a Court of Justice but merely an arbitration court. Recourse to arbitration procedures cannot be obligatory. The CAS acquires jurisdiction to hear a case only when the parties have signed an arbitration agreement. According to rule R39 of the CAS Code of Arbitration «Unless it is apparent from the outset that there is manifestly no arbitration agreement referring to the CAS, the CAS Court Office shall take all appropriate actions to set the arbitration in motion. ... The Panel shall rule on its own jurisdiction.»

After finding that there was no specific arbitration agreement between the parties to refer the dispute to the CAS, the Panel examined whether Article 61 of the

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Olympic Charter could be considered as an arbitration clause. According to this Article «The decisions of the IOC are final. Any dispute relating to their application or interpretation may be resolved solely by the IOC Executive Board and, in certain cases, by arbitration before the Court of Arbitration for Sport (CAS). ... Any dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport (CAS), in accordance with the Code of Sports-Related Arbitration.». The Panel found that these provisions were not capable of justifying CAS’s jurisdiction on the case and therefore dismissed the Curacao Sport and Olympic Federation on the grounds of lack of jurisdiction.3

II. Nations Recognised by Sports Authorities

A few days before the opening ceremony of the 2012 London Olympics South Sudan, became the 195th and world’s newest country according to the Geneva Conventions. Hearing media commentators referring to “204 nations” participating at the games could easily raise the question how can there be 204 nations in the olympic games when there are only 195 countries in the world.4 5

According to the Article 1.2 of the Olympic Charter «The three main constituents of the Olympic Movement are the International Olympic Committee, the International Sports Federations and the National Olympic Committees.» It is not specified what exactly is a NOC. It is uncertain whether it represents a country, in which case it could only represent one of the 195 countries in the world or a nation which is a much broader and abstract notion. A sovereign State under international law is an international sovereign entity with capacity to engage in foreign relations. A nation on the other hand signifies a group of people who share a common bond (such as identity, language, culture, religion etc.).6 According to Article 3 «The IOC may grant formal recognition to the constituents of the Olympic Movement. ... The IOC may recognise as NOCs national sports organisations, the activities of which are linked to its mission and role.». Based on this wording the NOCs represent nations not countries. The situation becomes more complicated when one reads Article 27

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3 See http://www.tas-cas.org/en/infogenerales.asp/4-3-6268-1092-4-1-1/5-0-1092-15-1-1/
5 See http://olympics.wikia.com/wiki/National_Olympic_Committee
according to which «The mission of the NOCs is to develop, promote and protect the Olympic Movement in their respective countries, in accordance with the Olympic Charter.» In Article 30 it is stated that «In the Olympic Charter, the expression “country” means an independent State recognised by the international community. ... The name of an NOC must reflect the territorial extent and tradition of its country and shall be subject to the approval of the IOC Executive Board.».

In most cases the IOC recognizes NOC’s from one of the 195 internationally recognized sovereign States. But there are some exceptions to this rule. In some cases the IOC does not recognize countries but nations. In that sense there is a number of nations participating at the Olympic Games. Chinese Taipei (Taiwan), Palestine, American Samoa, and Guam are some examples. The international community has not recognized statehood to Taiwan and Palestine and American Samoa and Guam are not sovereign States but territories of the United States.7

It seems that in the athletic establishment, similar cases of «disrespect» to international laws and treaties are common. FIFA is often described as «the United nations of football». However, FIFA members exceed the number of UN members. This is not only because there are some independent nations that are not affiliated in the UN but also because there are some non-independent political entities that FIFA has accepted as members. It has been reported that 23 non-independent entities were allowed to field a national team for FIFA as well as for their continent’s confederation competitions.8

III Political Considerations or Complete Disregard for them?

This sui generis situation needs to be further examined. Independent countries are not recognised as countries by Sports authorities while non-independent entities are. The sports establishment and the Olympic Movement are supposed to be politically independent. In the IOC’s view, its members do not represent their countries but rather the Olympic Movement within their countries.9 This is how their

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political independence from their respective governments is explained. One question remains unanswered though. Is it political considerations or a complete disregard for them, that has led sports authorities to take these decisions? The situation is further complicated since as explained above the CAS has no jurisdiction to rule on these matters. The sports establishment therefore is the last resort and its decisions are final, albeit revocable.

12 Avard, C., «All Sports are Political», http://thestartingfive.net/2011/02/05/all-sports-are-political-the-starting-five-interview-with-sportswriter-dave-zirin-by-christian-avard/