

Ms. Kirsty Coventry
Members of the IOC Athletes' Commission
Mr. Kaveh Mehrabi
- by email -

29.09.2020

Consultation by the IOC on Rule 50.2 of the Olympic Charter

Dear Kirsty,
Dear Members of the IOC Athletes' Commission,
Dear Kaveh,

I am enclosing the position of the DOSB Athletes' Commission and Athleten Deutschland e.V. on the review of Rule 50.2 of the Olympic Charter below.

I am pleased to confirm that the DOSB AC has adopted this position. As already informed with earlier letter the DOSB AC had commissioned Athleten Deutschland e.V. with the development of such a position. It was elaborated in a working group with elite athletes and with the assistance of a human rights expert in a process lasting several weeks. Athleten Deutschland had then sent the results to the DOSB AC.

We would be happy if our position could be taken up in the consultation process of the IOC Athletes' Commission and if a discussion with our representatives from Athleten Deutschland would be possible.

Best regards,


Max Hartung

Chair of the DOSB Athletes' Commission



Athleten
Deutschland e.V.

Position Paper

FREEDOM OF EXPRESSION OF ATHLETES

Preface

On behalf of Athleten Deutschland, a task force of six German high level athletes has thoroughly reviewed the issue of freedom of expression in elite sports. Particular focus was accorded to the restrictions imposed on athletes by sporting federations through their application of Rule 50.2 of the Olympic Charter. Supported by a human rights expert, the group developed an athletes' position. Basic preliminary considerations and the consolidated position by Athleten Deutschland read as follows:

On freedom of expression

- I. Freedom of expression is considered a fundamental freedom and human right. It is guaranteed both through internationally recognized human rights law and the German constitutional Basic Law ("Grundgesetz"). Freedom of expression is a central enabler for the development of the human personality and, therefore, forms the basis of a free and democratic society. The Federal Constitutional Court (BVerfG) considers the freedom of expression one of the "most distinguished human rights" (BVerfGE 7, 198/208).
- II. Invoking and practicing freedom of expression comes with duties and responsibilities. There can also be limits to this freedom, which, according to the German Basic Law, lie "in the provisions of general laws, in provisions for the protection of young persons and in the right to personal honour" (Article 5 II GG). They can also be founded in the weighing of colliding fundamental rights. According to the BVerfG, any limits need to respect that "the special value of this right [...] must be preserved in any case", especially in the field of "public life" (BVerfGE 7, 198/208).
- III. Any restrictions to the freedom of expression must be applied as carefully as possible. Each restriction of the freedom of expression must at least be examined for its proportionality on an individual case basis.
- IV. Freedom of expression is rooted in "the special need for protecting the criticism of power" (BVerfGE 93, 266/293). Civil society plays a key role in the unfolding of a culture of freedom and diversity.

On role and ambition of organized sport

- V. Sport, in its role as a social protagonist, is part of civil society. Sporting federations are considered its primary representatives and have committed themselves to widely-established fundamental social values which they seek to promote through their activities.

- VI. The International Olympic Committee (IOC), the supreme regulator of the global elite sports system, considers its actions to serve "the harmonious development of humankind, with a view to promoting a peaceful society concerned with the preservation of human dignity" (Fundamental Principle 2, Olympic Charter).
- VII. The German Olympic Sports Confederation (DOSB) formulates the ambition to promote an open society, including the promotion of human rights.
- VIII. Despite human rights due diligence requirements introduced in 2011, neither IOC nor DOSB have incorporated an explicit human rights commitment in their statutes.
- IX. Organized sport itself benefits significantly in evoking freedom of expression and information rights: the benefits, particularly in terms of visibility and popularity, of freedom of the press, media and information are key components of its marketing strategy. On the other hand, organized sport has a vast untapped potential to use its public appeal in a coherent way in support of free and democratic basic values.

On Rule 50.2 of the Olympic Charter

- X. Rule 50.2 of the Olympic Charter restricts the freedom of expression of athletes at the Olympic Games and at all other competitions held according to IOC provisions. It states: "No kind of demonstration or political, religious or racial propaganda is permitted in any Olympic sites, venues or other areas."
- XI. The wording of the rule aims to restrict demonstrations and political, religious, and racist propaganda. Political expressions of opinion per se, however, are not covered by this wording. The supplementary "Guidelines" of the IOC Commission of Athletes do not close this gap.

On athletes

- XII. Elite athletes are citizens. They are entitled to freedom of expression, like everyone else, both for the free development of their opinion and for the expression of it.
- XIII. Elite athletes are people from different backgrounds and sociocultural influences. These differences should never be suppressed; on the contrary, they should be respected and appreciated at all times.
- XIV. Athletes have great inspirational power and can be important drivers of social change.

- XV. Athletes must be able to use their public visibility for statements of social relevance in recourse to their own freedom of expression.
- XVI. By expressing their views, athletes can make a decisive contribution to the pursuit of the social objectives of IOC and DOSB, possibly more so than any other actor in sport. They can thereby contribute prominently to the strengthening of a free and democratic society.

Based on these considerations, Athleten Deutschland takes the following position:

In light of the importance of the freedom of expression for the development of a free and democratic society, the far-reaching and general restrictions applied in the context of sporting competitions are unacceptable for Athleten Deutschland. Athletes should be able to profess to the values of a free and democratic society at any time, including in the context of sporting competitions. The current prohibition of the expression of opinions by athletes under Rule 50.2 is not based on legal provisions, nor is it based on the requirements of relevant human rights treaties and principles. Furthermore, the prohibition stands in contradiction to the values proclaimed by IOC and DOSB and it carries the risk that human rights and/or the human dignity of individual athletes are affected and restricted by its application. However, restrictions to human and fundamental rights cannot be justified by internal declarations of "political neutrality" such as in the Olympic Charter. Athleten Deutschland is aware that freedom of expression can be restricted through other fundamental rights. No violation of the honor and dignity of others caused by an expression of opinion is acceptable. Athleten Deutschland is also convinced that the sporting achievements of athletes should be appreciated appropriately and as undisturbed as possible.

Athleten Deutschland therefore calls for the implementation of the following measures:

1. An explicit and coherent commitment to human rights in the Olympic Charter and in the DOSB Statutes.
2. A revision of Rule 50.2 in accordance with internationally recognized human rights instruments and principles. An implementation framework for Rule 50.2, which could be introduced in the form of guidelines including sufficiently specified, least-intrusive and duly justified restrictions on the expression of opinion by athletes. Such restrictions could include:
 - a. intentionally untruthful statements;
 - b. the violation of the rights of others;
 - c. hate speech;
 - d. explicit support for political parties or groups.

Any restrictions, including those of the aforementioned character, must come without the exertion of pressure on athletes to conform as this kind of pressure could restrict the desired free and democratic diversity of opinion.

3. An appropriately specific approach to the application of the IOC requirements for competitions in Germany by the DOSB. This approach must meet the high requirements of the German Basic Law as interpreted by the Federal Constitutional Court with regard to restrictions on the expression of opinion. In particular, it must specify precisely which expressions of opinion are deemed inadmissible; a general inadmissibility of expressions of opinion cannot be assumed.
4. An assessment as to whether and in what form a preliminary examination can be set up on the admissibility of certain (especially written and symbolic) intended expressions of opinion in the direct competition context.
5. The accompanying introduction of a clearly defined sanctioning practice for breaches and violations. This practice must take into account established international procedural standards and instruments. They include a clearly-defined set of sanctions and an independent body to review the facts of the case according to predefined criteria as well as extensive transparency with regard to the reasoning and the grounds of decision to guarantee due process.

Athleten Deutschland underlines that only if the rules and regulations of sporting federations are adequately specified, restrictions on the expression of opinion of athletes in the direct competition context can be tolerated. Generally applicable legal requirements must be taken into account in such a revision process. Under no circumstances may any restrictions on the expression of opinion by athletes hinder a commitment to free and democratic basic values or the pursuit of human and fundamental rights. Sport as a whole should commit itself to this shared cause also in order to maintain and strengthen its positive influence in society.

Athleten Deutschland e. V.
Berlin, September, 2020

Gefördert durch:



aufgrund eines Beschlusses
des Deutschen Bundestages