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To Speak, or not to Speak

Freedom of Expression under the Lex Sportiva and Human Rights Law at the 2022 World Cup in Qatar

Several national football federations and their teams had planned to wear a [rainbow armband](#) (also called the "One-Love" armband) when entering the 2022 World Cup in Qatar, which symbolizes solidarity with the LGBTQ+ community, including the people facing repression in the host country Qatar. The captain of the German national team, Manuel Neuer, had announced before the World Cup starter against Japan that he would insist on wearing it. Promptly, this simple gesture in favor of respect of human rights and diversity was forbidden by FIFA, threatening with severe competition-related sanctions, including yellow or red cards or match bans. As a result, Neuer and other team captains renounced on wearing it during the World Cup in Qatar. The days following the ban, players and teams expressed their unease about FIFA's strict position and about the uncertainty of the scope of the ban and the potential sanctions. [The German Football Federation \(Deutscher Fussball-Bund, DFB\)](#) announced that it would consider challenging the ban before the Court of Arbitration for Sport (CAS) in Lausanne.

It is difficult to recognize a logic in the organization's practice. In contrast, provocative gestures and behavior shown, for example, by certain Serbian players and fans, as well as Swiss players of Kosovar origin during the game [Switzerland against Serbia](#) have not been sanctioned by FIFA yet, contrary to [past tournaments](#). On the one hand, there is a very strict stance towards the wearing of the "One-Love" armband, a very discrete and soft expression of solidarity, and on the other hand, FIFA is very tolerant with disturbing signs of nationalistic content displayed directly to the adversary team during and immediately after the game.

Therefore, FIFA's practice towards freedom of expression lacks consistency, which further highlights the protection gap that exists between the *lex sportiva*, the rules and regulations governing sports, and human rights law in respect of freedom of expression. How could the differences be reconciled? Considering that a potential CAS award could be appealed to the Swiss Federal Tribunal under [Article 190 of the Federal Act on Private International Law](#) and, in last instance, to the European Court of Human Rights (the "Court"), the European Convention on Human Rights (the "ECHR") is at the heart of the analysis.



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I. Freedom of Expression Under the *lex sportiva* and under Human Rights Law: Miles Apart?

The “golden rule” for sport-governing bodies is the principle of political neutrality, as expressed in [Rule 50 § 2 of the IOC Charter](#), according to which “no kind of demonstration or political, religious or racial propaganda is permitted in any Olympic sites, venues or other areas.”

The prohibition for athletes and players to express political ideas in the sporting area is aimed at protecting the moral force of sport-governing bodies and at guaranteeing the autonomy of sport.¹⁾ The principle has traditionally been envisaged as “absolute” without mitigation or balancing.²⁾ The “black power salute” of the Olympic athletes Tommie Smith, John Carlos and Peter Norman at the 1968 Mexico City Olympic Games have become icons for human rights and democracy.³⁾ More recently, athlete activism has increased, in particular by athletes’ symbolic tributes to the Black Lives Matter movement, triggered by the death of an unarmed black man – George Floyd.⁴⁾

In football, several rules implement this principle further. Regarding the ban to wear the rainbow armband, FIFA can rely on [Law 4.5 of the Laws of the Game](#) and, more specifically concerning the 2022 World Cup, on Regulation 27.1 of the FIFA World Cup 2022 Regulations, both prohibiting any playing equipment from carrying any political, religious or personal slogans, statements or images. Regulation 33.3 of the FIFA World Cup 2022 Regulations is also relevant, prohibiting the display of political, religious or personal messages or slogans of any nature in any language or form by players and officials ([M. James](#)).

Within the [46 Council of Europe Member States](#), [Article 10 ECHR](#) guarantees freedom of expression, one of the fundamental rights in a democratic society: According to its paragraph 1, “Everyone has the right to freedom of expression.”

Article 10 ECHR does not enshrine an absolute right and a limitation is justifiable if the interference is “prescribed by law”, if it pursues a legitimate aim and if it is “necessary in a democratic society” within the meaning of paragraph 2 of Article 10. The last element requires a balancing exercise and considering the importance of freedom of expression for the political process in a healthy democracy, the standard to be applied must be a strict one.⁵⁾ An unfettered prohibition of a certain behaviour is problematic per se (see, *inter alia*, [Lacatus v. Switzerland](#) (available in French only)).

Regarding freedom of expression in sport more specifically, the Court delivered three judgments in respect of Türkiye on 18 May 2021 ([Sedat Doğan v. Turkey](#), [Naki et AMED Sportif Faaliyetler Kulübü Derneği](#), and [İbrahim Tokmak](#), available in French). All three cases concerned sanctions and penalties imposed on the applicants by the Turkish Football Federation on account of statements to the media or messages posted or shared on social media. In all three cases, the Court found violations of freedom of expression (Article 10 ECHR) on very similar grounds.

In conclusion, it appears that, whereas under the *lex sportiva* the rule is political neutrality, or “shut up and play”, under human rights law the principle is freedom of speech. Such a protection gap cannot be sustainable in the long run. But how to harmonize these two regimes?

II. Defining “Political” Expression

A particular difficulty with the principle of political neutrality lies in the definition of “political” and, in particular, its distinction from acts and expression of solidarity with victims of human rights abuse or social inequalities. [Faraz Shahlaei](#) raises the legitimate question whether athletes’ gestures against racism, conflict, war, xenophobia or in favor of inclusion, peace, human rights and so on can really be recognized as a threat to the public interest or a harm to the reputation of others? In such circumstances, he questions whether sports-governing bodies can invoke this principle at all.

The same seems to be true for the rainbow armband targeted by FIFA during the World Cup in Qatar. It is not easy to recognize therein a political statement. But even if it were considered “political”, it must be recalled that the Court grants particularly little scope under Article 10 § 2 of the ECHR for restrictions on freedom of expression in two fields, namely political speech and matters of public interest (See, inter alia, [Sürek v. Turkey \(no. 1\)](#), § 61). In other words, the authorities enjoy a particularly narrow margin of appreciation here. Doubtlessly, a debate on a minority that is persecuted because of its sexual orientation is such a topic.

III. Prosecuting Inadmissible Speech

There are limits to the freedom of speech. The Court’s jurisprudence reveals a variety of values which have been considered contrary to the ECHR, such as racism, anti-Semitism, (neo-)Nazism or hate speech more generally (see, for example, [Pavel Ivanov v. Russia](#), [Vejdeland and Others v. Sweden](#), or [Perinçek v. Switzerland](#)).

One situation of inadmissible speech in football was brought to the ECtHR. In the case of [Šimunić v Croatia](#), the applicant, a Croatian football player, was convicted by the Croatian courts of a minor criminal offence for addressing messages to spectators at a football match, the content of which expressed or incited hatred on the basis of race, nationality, and faith. The Court considered the applicant’s complaint under Article 10 ECHR manifestly ill-founded, finding that the Croatian authorities had struck a fair balance between his right to free speech, on the one hand, and society’s interest in promoting tolerance and mutual respect at sports events as well as combating discrimination in sport on the other hand (§ 48).

As a result, it would be perfectly in line with human rights standards if FIFA punished more severely provocative gestures with political or even nationalistic content, as described in the introduction.

IV. Balancing the Interests at Stake and Assessing the Proportionality of a Sanction

In order to comply with human rights standards, the circumstances of each individual case and the relative weight of the interests of the athlete or player, on the one hand, and the sport-governing body, on the other, would have to be considered and balanced against each other. ([J. Lindholm](#), p. 2) In this regard, the interests of a restriction might carry more weight when the athlete's expression is made during a competition – rather than outside the arena or on social media – or in a situation where the athlete acts as a representative of a team or a nation (*ibidem*.) Other factors to be considered might be whether speech or gestures are at stake, the actual content the message conveys, as well as the severity of the sanction and its nature: Is it only disciplinary imposed by the relevant federation or even criminal, prosecuted by a regular domestic tribunal? If disciplinary, is it a mere fine or a ban? In case of a ban, a life ban or only a temporary suspension? On-field sanctions, such as yellow or red cards or match bans for a player wearing the rainbow armband, appear particularly severe and amount to collective punishment insofar as the whole team has to bear the consequences.

In any event, in a case where the principle of neutrality is applied in an absolute fashion by sport-governing bodies, not leaving room for any appropriate balancing of the relevant interests at stake, the Court might find this problematic *per se*, as it has recalled in the *Lacatus* case, explained above.

V. Providing Appropriate Guidelines for Players Concerning their Role in Society

In the case of *Šimunić v Croatia*, mentioned above, the Court stressed that the applicant, as a famous footballer and a role-model for young people, should have been aware of the possible negative impact of provocative chanting on spectators' behavior, and should have abstained from such conduct (§ 45). At the same time, the United Nations has suggested that sport-governing bodies should encourage athletes to use their influence and experience as role models and to be "leaders who contribute to promote peace and human understanding through sport." ([UNGA Resolution, 26 October 2015, Building a peaceful and better world through sport and the Olympic ideal \(GA Res. 70/4\)](#))

Athletes and players, however, have no choice but to adhere to the principle of political neutrality imposed on them by powerful sport-governing bodies. As a result, athletes and players might feel a certain uneasiness facing the dilemma between, on the one hand, calls aiming at increasing public speech encouraging them to use their influence in order to be leaders contributing to promote peace and humanity and, on the other, the principle of political neutrality in sport that has the tendency to reduce public speech.

VI. Conclusions

A way out of this would require further clarification concerning freedom of expression in sport, whether through standard setting or strategic litigation, with a view to filling the protection gap between the *lex sportiva* and human rights law. Contrary to other organizations, FIFA has recently made positive steps in the direction of respecting human rights. However, with its excessively strict stance shown in Qatar in respect of the “One-Love” armband, which also lacks clarity and coherence, it runs counter to its own principles and has provoked resistance and concern even within its member organizations.

Further considerations on this and other topics can be found in the author's recently published book [Defending Athletes, Players, Clubs and Fans, Manual for human rights education and litigation in sport, in particular before the European Court of Human Rights](#), Council of Europe Publishing, Strasbourg, 2022. He expresses his own views.

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