

## **Sporting exception: what are the specificities of sport?**

### **Political instrumentalisation of sport**

The expression 'the sporting exception' refers to a preconceived idea that is still widely held in public opinion and relates to the neutrality of sport. However, history shows that from the very beginning professional sport has been used as a tool by political powers, with sporting victory appearing as proof of the superiority of the regime that had produced it. Sport has thus been put at the service of various ideologies throughout history.

At the end of the First World War, the first boycotts of international sporting events between the victors and the vanquished (France and Germany, for example) began. Between the wars, sporting competitions amongst representatives of dictatorships and democracies were used to assess which political regime was the most successful. The football World Cup in Fascist Italy (1934 and 1938) and the 1936 Berlin Olympics in Nazi Germany are examples of this use of sport.

In the post-war period, it was the Olympic Games, which, from Helsinki (1952) onwards, were plagued by medal counts considered to reflect the effectiveness of the political system behind them, which was completely contrary to the original spirit of the Games. This political instrumentalisation of sport is also expressed in the practice of campaigns calling for the boycott of mega-sporting events: the football World Cup in Argentina (1978), Russia (2010) and Qatar (2022); the Olympic Games in Moscow (1980) and Beijing (2008); and international competitions organised in South Africa until 1991 or in Saudi Arabia (Paris-Dakar 2020). The reasons given mainly concern respect for human rights.

Faced with this instrumentalisation, the sporting movement reacts most often by putting forward a sporting exception. This false neutrality of professional sport with respect to politics was coupled, from the 1980s onwards, with a strong dependence on new economic actors that risked undermining the reality of the sporting exception.

### **The domination of economics**

The shift of sport to the economic sphere occurred in the 1980s, as shown by the example of Juan Antonio Samaranch, President of the IOC, who authorised the marketing of the Olympic rings in 1986. This shift meant the arrival of new financiers: sponsors, broadcasters, manufacturers of sporting goods and marketing agencies. The pressure of these new actors obeying a financial logic imposes itself on

the sports sphere. The result is a weakening of the power of sporting authorities in the overall regulation of the system. Moreover, the economic nature of professional sport is changing profoundly under the influence of television. Two markets are concerned: that of broadcasting rights, which now constitute a major pillar in the financing of sporting events, and that of sport programmes, which attract the main sponsors. This raises two fundamental questions: what is the balance of power between all these stakeholders, and who holds the power? Is there not a risk that financial logic will prevail over sporting logic? To answer these questions, three types of analysis are necessary:

- An internal analysis of the sporting sphere to understand why sport is not an activity like any other and to determine its specificities.
- An external analysis of the sporting system to understand what types of pressures and constraints are being exerted on it. First of all, we need to know why these new actors are interested in sport. Then, we must understand that sport is a good vector for advertising and marketing. However, when actors invest massively in sport they want to see a return on their investment - hence the risk of abuses - such as changing the rules of the competition simply to adapt the sporting spectacle to an audiovisual product or using technological tools to avoid refereeing mistakes.
- The third analysis relates to the interactions between stakeholders belonging to the sporting sphere and those belonging to the economic and financial sphere. It is a question of knowing what balance can be achieved based on a double consensus. It is indeed accepted today that we can no longer play 'the sporting exception card', but it is also accepted that it is not desirable to abandon the sports sector to a single market and financial logic. Some specificities must be taken into account in the regulation of the system so that sport is not treated as an ordinary economic activity.

### **Sporting specificities**

The example of the inclusion of sport in European competition law is representative of the recognition of the specificities of sport. It is Article 165 of the Treaty on the Functioning of the European Union (TFEU), which stipulates in particular: "The Union shall contribute to the promotion of the European dimension of sport while taking account of its specific characteristics, its structures based on voluntary activity and its social and educational function. [...] The Union's action shall be aimed at developing the European dimension of sport, by promoting fairness and openness in sporting competitions and

cooperation between bodies responsible for sport, and by protecting the physical and moral integrity of sportsmen and sportswomen, in particular, the youngest amongst them ...".

Article 165 reflects a radical change in relations between the European Union and sporting institutions. For a very long time, there was a profound misunderstanding between the European authorities and the sporting world. Europe considered that professional sport was an economic activity in its own right and that competition law should apply. On the contrary, the world of sport considered that there was a real sporting exception. Article 165 does not go as far as such an exception but recognises that sport has a certain number of specificities that must be taken into account. This might have been enough at the time to avoid the excesses of the deregulation of the labour market, such as the Bosman ruling. It will certainly make it possible to guarantee legal certainty around financial fair play, which could be denounced in the name of competition law or business freedom. In the same vein, the Treaty recognises the need to take account of the specific organisation of sport around the voluntary sector, as well as the social functions it fulfils. The second part of Article 165 also defines the European vision of a sporting policy centred on the promotion of the specificities of the European model: defence of competitive balance and refusal of the American-style closure of professional leagues. In the end, Article 165 of the Treaty represents a compromise between total deregulation and sporting exception. We find again the theoretical analysis of the search for a balance between economic competition and sporting competition.

### **Further information:**

Jean-François BOURG et Jean-Jacques GOUGUET, *Economie politique du sport professionnel*, Vuibert, Paris, 2007.

Jean-François BOURG et Jean-Jacques GOUGUET, *Economie du sport*, Repères, 3<sup>ème</sup> édition, La Découverte, Paris, 2012.

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