
Elite Athletes and Worker Status

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ABSTRACT

Recent research regarding the working conditions of elite athletes in Olympic sports in the European Union, Norway and the UK shows that most athletes are not in an employment relationship with a sports stakeholder such as a National Olympic Committee, sports governing body or club because legislation at a national level or the terms of a contract preclude their status as employees or workers. Elite athletes who are excluded from employee or worker status do not have access to valuable social and employment benefits and protections, for example, a pension entitlement or maternity benefits. This article highlights the complex contractual situation of elite athletes who are integrated into a national elite sports programme and the regulatory and legal frameworks in which they provide services during an athletic career and posits that elite athletes are workers irrespective of an athlete's legal status designated under national law or contract.

1. INTRODUCTION

Elite athletes selected to compete in an Olympic Games have traditionally competed in the sports event as *amateurs*.¹ The concept of amateurism underpinned the codification of most sports' rules in Victorian England and the concept's effects remain for elite athletes even though professionalism

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¹Amateurism or the concept of an amateur athlete may be defined in different ways across sports and also in national legislation: see Art 12, Sports Act (*Zakon o sportu*) OG 141/2022 (Croatia). Prior to 1992, the International Olympic Committee (IOC) considered an amateur athlete to be an athlete who did not profit personally in any capacity from their sporting exploits: Matthew Llewellyn and John Gleaves, *The Rise & Fall of Olympic Amateurism* (Champaign, IL: University of Illinois Press, 2016) 2.

and commercialisation have changed the face of Olympic sport. The term *elite athlete* is often used interchangeably with the term *professional athlete*, and it may also be used to denote the highest-level amateur competitors in certain sports, for example, boxing, wrestling or golf. For the purposes of this article, the authors use the term *elite athlete* to describe an athlete, who trains and competes in an individual or team sport that is included in the Olympic Games programme and is typically integrated into a national elite sports programme. An elite athlete, as defined, will not have full-time employment with a club in an organised professional sports competition, although they may enter a contract of short duration to compete in a specific event for which they receive remuneration and which may not affect their eligibility to remain on a national elite sports programme.²

An elite athlete falls outside the personal scope of employment law. Sports legislation or the terms of a contract that an athlete has with a private National Olympic Committee (NOC), national federation or other elite sports organisation that is involved in supporting elite athletes, may preclude worker status. Elite athletes who are excluded from employee or worker status do not have access to social and employment benefits and protections, for example, a pension entitlement or maternity benefits, unless the NOC, national federation or an elite sports organisation voluntarily provides the benefits, or specific legislation provides for access to the benefits.³ There may also be concerns about the low levels of income and contract terms provided to elite athletes, concerns regarding well-being, the unfairness and uncertainty of contract termination and the unilateral implementation of contract terms.

A career in competitive sport exposes elite athletes to high opportunity costs, with many foregoing a regular full-time job that provides a steady income and access to social protection benefits, such as a pension, paid maternity or paternity leave, and health and safety provisions.⁴ Elite athletes may become celebrities and national heroes, although many do not reach the renowned status that Jamaican athlete Usain Bolt, British heptathlete Dame Jessica Ennis, Norwegian biathlete Ole Einar Bjørndalen or American gymnast Simone Biles achieved, and not every athlete can

²For example, in the UK, athletes who are registered in a sport's world-class programme would fall within the definition of elite athlete for the purposes of this article.

³Jürgen Mittag et al., *Good Governance in the Employment Relations of Athletes in Olympic Sports in Europe* (Rijeka: University of Rijeka, 2022) 115–21.

⁴Christoph Breuer et al., *Die Lebenssituation von Spitzensportlern und—sportlerinnen in Deutschland* (Bonn: Statistisches Bundesamt, 2018).

generate an income through sponsorship or by licensing their name, image and likeness. If they are fortunate to do so, it may not be at a level that provides a decent livelihood. Commercial opportunities may also be further restricted by a sport's regulatory rules or by the terms on which money that is channelled into the sport through public funding or private donations, is made available to elite athletes.⁵ The reality for many elite athletes is long, tiring days spent on a track, in a field or pool, with financial support provided through a stipend, grant funding (which may be means tested and/or taxed), parental or family support, a part-time job or a combination of all of these.

The services that elite athletes provide produce global sports events, for example, the Olympic Games or World Athletics Championship, which are a form of entertainment for consumers and generate significant revenue for NOCs and other sports organisations through the sale of broadcasting rights and sponsorship arrangements.⁶ Research shows that national governments invest in elite sports development,⁷ and that significant public and private money is involved in staging sports events.⁸ The contribution that athletes make to the economic value of elite sports, is undeniable, and from the perspective of economic theory, athletes are viewed as the first link in the value chain for elite sport;⁹ it is the athletes' performance that attracts broadcasters and sponsors to purchase the commercial properties attached to the sports event.

The pyramidal regulatory structure that characterises sports in the Olympic Movement regulates the professional, elite, amateur and grassroots levels of the sport. There is a continuing tension within a national federation

⁵For example, IOC Rule 40, and the IOC Executive Board principles that complement it, limit the endorsements that an elite athlete can make on social media or in any other way during the period of an Olympic Games: IOC, 'Olympic Charter', <<https://stillmed.olympics.com/media/Document%20Library/OlympicOrg/General/EN-Olympic-Charter.pdf>> accessed 18 June 2024.

⁶Please note that in this article the term 'sports governing body' is used interchangeably with the word 'federation' to denote a sports regulator, whether at an international or national level.

⁷Christoph Breuer and Kirstin Hallmann, *Die gesellschaftliche Relevanz des Spitzensports in Deutschland* (Köln: Sportverl. Strauß, 2011); Veerle de Bosscher et al., *Successful Elite Sport Policies: An International Comparison of the Sport Policy Factors Leading to International Sporting Success (Spliss 2.0) in 15 Nations* (Maidenhead: Meyer & Meyer Sports, 2015); Mittag et al. (n.3).

⁸Eric L. Windholz and Graeme A. Hodge, 'International Sports Regulation: An Evolving Private-Public Partnership' (2019) 45:2 *Monash University Law Review* 1.

⁹Gerd Nufer and André Bühler, 'Sportmanagement und Sportmarketing: Einführung und Perspektive' in Gerd Nufer (ed), *Management im Sport: Betriebswirtschaftliche Grundlagen und Anwendungen der modernen Sportökonomie* (Berlin: Erich Schmidt Verlag, 2010) 3–21.

athletes in the Olympic Games is scarce and no research has been undertaken regarding the situation pertaining to Paralympic elite athletes.¹⁵ This article contributes to the discussion regarding the employment status of elite athletes in the Olympic Games. It draws on research from a seminal study conducted in 2021 and 2022 into the working conditions of male and female elite athletes in Olympic sports across the European Union Member States, Norway and the UK,¹⁶ to examine the legal status of elite athletes, and posits that elite athletes are workers irrespective of the funding models that support an elite sports system at a national level and an elite athlete's legal status designated under national law, sports regulations or contract. The focus of this article is on elite athletes in the Olympic Games and the authors acknowledge that many contracts, regulations and sports policies applicable to elite athletes who compete in the Olympic Games will also apply to Paralympic elite athletes. However, there may be alternative contracts or sports stakeholders for Paralympic elite athletes that the research study, upon which data this article is based, did not evaluate, and consequently, this article's analysis is limited to elite athletes who compete in the Olympic Games. Research into the specific situation of Paralympic elite athletes is required.

Section 2 provides an overview of the organisation and regulation of elite sport, and the environment in which elite athletes provide their services. Section 3 describes the findings of recent research regarding the contracts that an elite athlete may enter and their legal status at a national level, while Section 4 examines the doctrinal and philosophical arguments

¹⁵The research gap was acknowledged in the International Labour Organisation (ILO) Global Dialogue Forum on Decent Work in the World of Sport (January 2020) 20: 'Lack of cohesive statistical and comprehensive knowledge on the working conditions, social protection, contractual arrangements and other work-related issues makes it difficult to develop evidence-informed policies and measures addressing work deficits among athletes.'

¹⁶Mittag et al. (n.3). A copy of the final report is available at <<https://repository.pravri.uniri.hr/en/islandora/object/pravri%3A3107>>. The research study was supported by European Commission ERASMUS + Sport Programme funding which determined the study's geographical scope. Approximately 25,000 male and female elite athletes—as that term is defined earlier in Section 1 of this article—fell within the scope of the research study across 29 countries. Athletes who compete in a professional sports league or competition are usually not included in a national elite sports programme and fall outside the scope of the research study and consequently this article. The sports included in the scope of the research study vary between countries because the sports that are organised in professional competitions in a specific country differ, for example, Handball has a professional league in Germany but not in other European countries, and handball athletes may be included in the national elite sports programme of other European countries but are not included in Germany's elite sports programme.

that support the position that elite athletes are workers. Section 5 concludes with recommendations for facilitating change in elite sports to improve the conditions under which elite athletes train and compete in global sports events.

2. THE ORGANISATION OF THE IOC, THE OLYMPIC MOVEMENT AND THE OLYMPIC GAMES

To appreciate the broader context in which elite athletes provide their services, it is important to understand the regulatory framework for sport, the organisation of the Olympic Games, and the revenue sources of the IOC, international and national federations. The IOC was founded in 1894 by Mr Pierre Coubertin as a sports organisation staffed by volunteers and responsible for organising a multi-sports event, which in Greece in 1896, commenced with athletes participating from nine countries.¹⁷ The IOC is now a private non-governmental organisation, the leader of the Olympic Movement and the global governance actor for sport. Its values or the fundamental principles of Olympism, objectives, regulations and byelaws are described in the Olympic Charter. The Olympic Charter establishes the legal personality of the organisation as a Swiss law association, with its seat in Lausanne.¹⁸ The IOC's membership consists of up to 115 eligible individuals who are not appointed as state representatives but represent and promote the IOC's interests in their respective countries and in the organisations of the Olympic Movement in which the individuals serve.¹⁹ The Olympic Movement is, in turn, made up of a number of entities and individuals who agree to abide by the Olympic Charter and the IOC's decisions. The three principal entities of the Olympic Movement are the IOC, the NOCs and the international federations that are recognised as the governing bodies for sport at an international level.²⁰

¹⁷For a discussion regarding the history of the Olympic Games and its governance structures, see Jean-Loup Chappelet, 'The Governance of the Olympic System: From One to Many Stakeholders' (2023) 8:4 *Journal of Global Sport Management* 783; Ryan Gauthier, *The International Olympic Committee, Law, and Accountability* (London, New York: Routledge, 2017).

¹⁸The Olympic Charter (n.5), Art 15.

¹⁹Ibid. Art 16.

²⁰Ibid. Art 1.

A. National Olympic Committees

The NOCs represent the IOC in their respective countries, promote the fundamental principles of Olympism, encourage the development of high-performance sport and 'sport for all', encourage and support measures relating to the medical care and health of athletes, and adopt and implement the World Anti-doping Code, amongst others.²¹ Specifically, in relation to the Olympic Games, a NOC's role is to select and support potential host cities in their country for an Olympic Games, and to represent their countries at an Olympic Games or at any other world multi-sports event patronised by the IOC. In some countries, a NOC has the function of an umbrella organisation for national sports governing bodies,²² whereas in other countries it does not have that function.²³ NOCs are private organisations and not public agencies. A NOC is obliged to participate in an Olympic Games by sending athletes,²⁴ and it collaborates with those national federations whose sports are part of an Olympic Games programme to select athletes who meet the performance standards (which are set by an international federation) and other eligibility criteria for participation in a country's team at an Olympic Games.

B. International Federations

The international federations are another principle constituent of the Olympic Movement,²⁵ and the IOC recognises one international federation per sport. An international federation's membership will consist of one national federation per country, creating a pyramidal system of sports regulation, with the international federation at the apex of the pyramid and the national federations, clubs and athletes in the hierarchy below.²⁶ An international federation regulates the sport independently of the IOC, promulgating regulations and codes of conduct that govern the sport and its

²¹Ibid. Art 27.

²²See the Norwegian Olympic and Paralympic Committee and Confederation of Sports (or NIF), the German Olympic Sport Confederation (or DOSB), the NOC of Croatia and the Olympic Committee of Slovenia Association of Sports Confederations.

²³See the British Olympic Association (BOA) in the UK or the Olympic Federation of Ireland.

²⁴The Olympic Charter (n.5), Arts 3 and 7.1.

²⁵Note an international federation is not an IOC member; the IOC's members are only the 115 individuals who are accepted into its membership.

²⁶In Europe, the pyramid system of sports regulation is one of the characteristics of the European Sport Model. See European Commission, 'White paper on sport', COM (2007) 391 final, 12–13. Some sports are not part of the Olympic Movement and sit outside the pyramidal framework of sports regulation, for example, professional sports leagues in the USA such as the NFL, NBA, NHL, MLS and MLB.

participants. It is obliged to ensure that its statutes, practice and activities conform with the Olympic Charter.²⁷

An international federation collaborates with the IOC to organise their respective sport in the Olympic Games. Their role is to set the selection criteria to participate in the Olympic Games, provide technical officials, umpires, etc., and ensure that their respective sport is organised and run in accordance with the international federation's rules during the Olympic Games period. Outside the Olympic Games, an international federation will organise its own World Championship or World Cup event in which elite athletes may also participate, and from which the revenue generated is usually distributed to the international federation's membership for the purposes of growing participation and developing the sport globally.

C. Organisation of the Summer and Winter Olympic Games and IOC Revenues

The IOC is the rights holder of the Olympic Games and all intellectual property rights that attach to the multi-sport event.²⁸ The IOC undertakes a bidding process to determine a host city for an Olympic Games and pursuant to the host city contract delegates the organisation of the respective Games to the host city, the NOC of the country in which the host city is situated, and an entity that is created by the host city contract known as the Organising Committee for the Olympic Games.²⁹ Although the IOC has been selling the television rights for the Olympic Games since the 1960 summer Olympic Games in Rome (with a then value of US\$1.2 million), the commercialism of the Olympics increased rapidly with the 1984 Los Angeles Olympics, which established the Olympics Games 'as a global commercial event'³⁰ and the subsequent creation of the Olympic Games marketing programme.³¹ The IOC organises its finances across a four-year period during which a summer, winter and youth Olympic Games are held, and for the period 2017 to 2021 the IOC reported revenues of US\$7.6 billion.³² Ten percent of those funds

²⁷The Olympic Charter (n.5), Art 25.

²⁸The Olympic Charter (n.5), Art 7.

²⁹For example, the summer Olympics Games in Paris in 2024, is organised by the city of Paris, the Comité d'Organisation des Jeux Olympiques et Paralympiques de Paris 2024 (COJOP2024), and the Comité National Olympique et Sportif Français.

³⁰Gauthier (n.17) 34.

³¹Chappelet (n.17) 7–8.

³²IOC, *Olympic Committee Annual Report 2021: Faster, Higher, Stronger—Together* (2022) <https://stillmed.olympics.com/media/Documents/International-Olympic-Committee/Annual-report/IOC-Annual-Report-2021.pdf?_ga=2.41488482.1159323209.1702576347-1514360523.1702450822> accessed 11 March 2024, 173.

are retained by the IOC, with the remaining 90% reinvested into sport globally through the distribution of funding to NOCs, international federations, the organising committees of the Olympic Games and directly to athletes in the form of scholarships and benefits under the IOC's Solidarity Model.³³

D. Government Investment in Elite Sport

Medal success at the Olympic Games and other major sports events has cultural and political attaché for national governments and also influences government investment in elite sports. The reasons for a national government spending public money on the facilities for, and development of, elite sport are varied, but according to academic opinion, underpinning most Western government investment is the 'virtuous cycle of sport', the notion that the success of elite athletes leads to prestige for a country that contributes to a collective sense of identity, which in turn increases mass participation in sport, leading to a healthier population and consequential benefits to a publicly funded health system. It also provides a bigger pool of talent from which to select the elite sports stars of the future, and so the cycle continues. Building national pride and the 'feel-good factor' are also highlighted as potential benefits.³⁴

Although the empirical evidence that demonstrates a positive correlation between medal success and improvements in mass participation in sport is tenuous,³⁵ the public funding invested in elite sports as countries seek improvement to their placing in the medal table is significant and tangible. By way of example, for the period ended 31 March 2022, UK Sport, the public body in the UK that funds elite sport, received £82.8 million of national lottery funding and £56.5 million of government treasury funding.³⁶ UK Sport distributes funding to national sports federations to support elite sports and provides athlete performance awards to eligible elite athletes. For comparison, the German government distributed €103,269,034.57 to national sports federations, of which €95,269,839.20 was provided to those national sports federations that participate in the Olympic Games.³⁷ A further €9.7 million

³³The Olympic Charter (n.5), Art 5 and IOC Annual Report 2021 (n.32) 172.

³⁴Jonathan Grix and Fiona Carmichael 'Why do governments invest in elite sport? A polemic' (2012) 4:1 *International Journal of Sport Policy and Politics* 73, 76.

³⁵*Ibid.* 80.

³⁶*The UK Sports Council Annual Report & Accounts for the Year Ended 31 March 2022*, 15.

³⁷Zuwendungen des Bundes zur Förderung der Bundessportfachverbände (Kapitel 0601 Titel 684 21 und 684 26) [Federal grants for the promotion of national sport federations (Chapter 0601, Titles 684 21 and 684 26) Bundesministerium des Innern und für Heimat (Federal Ministry

was provided to the German Sport Aid Foundation to award scholarships for eligible elite athletes.³⁸ Having considered the broader context in which elite athletes provide their services, the next section highlights the findings of recent research regarding the contracts and legal status of an elite athlete under national law.

3. ELITE ATHLETES IN THE EUROPEAN UNION, NORWAY AND THE UK: CONTRACTS AND LEGAL STATUS

Research conducted in 2021 and 2022 disclosed the following about the contracts and the legal status of elite athletes in the EU, Norway and the UK.³⁹

A. Contracts

The research identified the following types of contract that an elite athlete may enter, namely: i) an employment contract as a civil servant with the police, armed forces or customs; ii) a contract with a NOC; iii) a contract with an elite sports organisation—which is defined for the purposes of this article as a public, private or public/private organisation that has been established in a national elite sports system with a mandate to support elite sport, for example, UK Sport, the German Sport Aid Foundation and the Agence Nationale du Sport in France; iv) a contract with a national federation; and v) a participation agreement.

An elite athlete may enter one or more of these contracts simultaneously and for different purposes. The identity of the counterparty (or counterparties) and the contract terms will depend on the organisation of the elite sport system at a national level and the funding models in place to support elite sports. A national elite sports system and any funding model that

of the Interior and Community) (2023) <https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/themen/sport/2013-2022-IST-sport-foerderung-spitzensportverbaende.pdf?__blob=publicationFile&v=2> (in German) accessed 18 June 2024. Please note these figures refer only to distributions to national federations for the purposes of administering and developing the sport and do not include all funding provided to the sports sector, for example, funding of public sports facilities or funding for military places for those elite athletes who are employed in the armed forces.

³⁸15. Sportbericht der Bundesregierung Drucksache 20/5900 [15th Sport Report of the Federal Government printed matter 20/5900] Deutscher Bundestag [German Bundestag] (2023) <<https://dserver.bundestag.de/btd/20/059/2005900.pdf>> (in German) accessed 18 June 2024.

³⁹Mittag et al. (n.16).

supports it, are organised according to the sports policy and regulation that dominates a country's political and sports landscape. The contracts are usually not mutually exclusive, although an athlete who is employed in a public role, for example, the armed forces, may be excluded from benefiting from income under a contract with an elite sports organisation, if the money and benefits provided by the latter derive from public funds. For example, all elite athletes who are selected to a country's national team to compete in the Olympic Games will sign a participation agreement for that competition. In addition, an elite athlete in the UK will have a contract with the national federation and a contract with UK Sport, if eligible for monetary payments from that organisation. In Germany, an elite athlete will have a contract with the national federation and a contract with the German Sport Aid Foundation for support, and in Croatia, an elite athlete will have a tri-lateral contract with a national federation and the NOC. The following sections provide further details of the contracts that an elite athlete may enter with a sports stakeholder to support their elite sports career.

i) Employment Contract With the Police, Armed Forces, Customs or as a Civil Servant

In 17 of the 29 countries that were the subject of the research, an elite athlete may have an employment contract with the police, armed forces, customs agency or as a civil servant in an elite sports organisation.⁴⁰ The opportunities for employment in the police, armed forces, customs agency or elite sports organisation are limited and not every elite athlete in those 17 countries is employed in this manner. Employment in the police, armed forces or customs agency is obtained on the basis of the athlete's sporting achievements and provides a monthly salary and other employment and social security benefits consistent with those of a serving force member, customs officer or police officer; with the exception of elite athletes employed in the army in the UK, the elite athlete's primary job duties are to train and compete in elite sport. In the UK, individuals are recruited as soldiers or officers in the army and if they demonstrate talent as an elite athlete, they may be accepted onto the Army Elite Sport Programme.⁴¹ Up to 10 elite athletes on the Army Elite Sport Programme may train full-time, although

⁴⁰The countries are Austria, Belgium, Bulgaria, Croatia, Czech Republic, Finland, France, Germany, Italy, Latvia, Lithuania, Luxembourg, Poland, Romania, Slovenia, Slovakia and the UK.

⁴¹See <<https://britisharmysport.com/army-elite-sports-programme/>> accessed 18 June 2024.

they are still employed as part of a unit and their primary obligation is as a soldier in the army; other athletes on the Army Elite Sport Programme combine regular army duties with training for their sport.

In 3 of the 17 countries, Belgium, the Czech Republic and Slovakia, elite athletes may also find employment as a civil servant with an elite sports organisation that has been established under the control of the government ministry responsible for sport.

ii) Contract With a National Olympic Committee

The research data discloses that elite athletes in 13 countries have a contract with an NOC.⁴² The reason for elite athletes entering a contract with an NOC in some countries and not others is not clear, although it may arise from the role of the NOC in the national sports system. In some countries, the NOC is a confederation of national sports governing bodies and may play a broader role in a national elite sports system than in countries where the NOC is established as a single private entity. None of the contracts with an NOC were expressed to be an employment contract. The figure noted above relates to a contract that an elite athlete enters into with an NOC for purposes other than participation in the Olympic Games. For the Olympic Games, all elite athletes across the 29 countries who are selected to compete for a national country team will sign a participation agreement with their respective NOC (see point *v* below).

As an example of a contract that an elite athlete may have with an NOC, in Croatia, during the period between two consecutive Olympic Games, an elite athlete will have a trilateral contract with the Croatian NOC and a national federation. Pursuant to the contract, the elite athlete is entitled to a scholarship, *preparation costs* (eg, travel expenses for training and attendance at competitions, meals, vitamin supplies, anti-doping testing), health insurance, regular medical check-ups, and sports equipment. The elite athlete is obliged to train and compete, and participate in a prescribed number of promotion and media activities for the NOC and its financial partners and sponsors. The Croatian NOC is obliged to make the scholarship payment and to provide the national federation with the financial resources for the *preparation costs*. The elite athlete's health insurance, regular medical

⁴²The countries are Belgium, Croatia, Czech Republic, Finland, Hungary, Latvia, Lithuania, Luxembourg, The Netherlands, Norway, Portugal, Romania and Slovenia.

check-ups, and sports equipment are provided by the Croatian NOC's marketing partners. The national federation is obliged to support the implementation of the contract and to assist the athlete to train and compete, is responsible for disciplining the athlete for a breach of the contract obligations, and is obliged to respect the elite athlete's obligation to wear the NOC's official clothing at the Olympic Games, amongst others. The contract does not include a clause that states the nature of the contractual relationship under Croatian law.

iii) Contract With an Elite Sports Organisation

The research found that in 18 countries an elite athlete may have a contract with an elite sports organisation that provides financial support to athletes that is variously described as a stipend, scholarship, award or grant, although the contracts are not considered to form an employment relationship, and these contracts may also have terms and conditions attached to the financial support, for example, the financial support may be means tested or require an athlete to adhere to anti-doping rules and other regulations.⁴³ By way of example, in Germany, an elite athlete will have a contract with the private German Sport Aid Foundation that includes an obligation on the elite athlete to participate in training and competition under the supervision of the national federation and to pay the German Sport Aid Foundation 5% of any income received from individual sponsorship activities up to a maximum of €5,000, amongst others. The German Sport Aid Foundation is obliged to provide financial support to the athlete, the amount of which is determined at its discretion in accordance with a policy. The agreement is expressed as a funding agreement or support agreement and does not include a clause that expressly states it is not an employment contract under German law.

These elite sports organisations exist in different forms: in Austria, Germany and Norway, they are private entities; in France, Portugal and Spain, they exist as public/private partnership organisations; and in the remaining 12 countries, the entities are public agencies that have been established under the auspices of a government ministry. With the exception of Belgium, the Czech Republic and Slovakia (as mentioned in *i* above), none of these contracts were stated to form an employment relationship between the elite athlete and the elite sports organisation.

⁴³The countries are Austria, Belgium, Bulgaria, Czech Republic, Denmark, Finland, France, Germany, Hungary, Ireland, Lithuania, Luxembourg, Norway, Poland, Portugal, Slovakia, Spain and the UK.

iv) Contract With a National Federation (eg, National Athletics Federation)

Specifically in relation to the sport of athletics, the research shows that in 19 out of 29 countries elite athletes have an athlete agreement or support contract with the national athletics federation that provides various benefits (eg, access to coaching services, physiotherapy or medical services, etc.).⁴⁴ None of these contracts were stated to form an employment relationship between the elite athlete and the national athletics federation. The research did not consider the contract situation of an elite athlete and every national federation, but usually the practice that is established for a national athletics federation and an elite athlete mirrors the practice between elite athletes and other national federations.

v) Participation Agreement

The research also shows that elite athletes will enter a participation agreement as a condition of participating in an Olympic Games or other World Championship event. For example, in respect of the Paris Olympic Games, an elite athlete is required to sign a document titled Conditions of Participation under which the athlete: agrees to comply with the Olympic Charter and other rules; agrees that their image may be used as part of media coverage for the Games, to inform the public of the Games and to promote the Olympic Movement (with the exception of commercial use that requires the athlete's separate written consent); acknowledges that they have received all third party consents required for the artistic and creative elements of their performance to be filmed; acknowledges and accepts responsibility for the risks attached to their participation at the Games; agrees to the processing of personal data; confirms the athlete's understanding that bodily samples collected during anti-doping may be subject to genetic analysis for limited purposes; and agrees to submit any dispute arising out of their participation at the Olympic Games to arbitration.⁴⁵ The law governing

⁴⁴The countries are Bulgaria, Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Ireland, Latvia, Lithuania, Luxembourg, The Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Spain and the UK.

⁴⁵A copy of the Conditions of Participation for NOC Delegation Members: Games of the XXXIII Olympiad Paris 2024 (February 2024) can be found at <<https://www.olympia.at/download/olympia/files/Paris-2024-Conditions-of-participation-form.pdf>> accessed 18 June 2024.

interpretation of the agreement is Swiss law.⁴⁶ Acceptance of the terms of participation, together with meeting the performance threshold and other criteria for selection to an Olympic team, enables an athlete to participate in the Olympic Games. The NOC also signs the agreement. The document does not state that it creates an employment relationship between the athlete, NOC and/or IOC.

B. Legal Status

The research identified that in four countries, the legal status of an athlete was defined in sport-specific legislation that regulates the national sports sector. In Hungary, the status of athletes in Olympic sports is defined as *amateur* so long as no employment contract exists with a sports club.⁴⁷ Legislation in Italy previously defined an elite athlete as *amateur*;⁴⁸ however, in July 2023, new legislation came into force which recognises a *sports worker* who may be engaged in a self-employed capacity or as an employee.⁴⁹ Legislation in Lithuania recognises that an elite athlete may be engaged under a *sports performance contract*,⁵⁰ and in Romania, an athlete may be engaged under a *sports activity contract*.⁵¹ Since the research concluded, a fifth country, Croatia, has enacted the Sport Act which states that an elite athlete may be a professional athlete or an amateur athlete.⁵² The status afforded to elite athletes under the sports legislation in Hungary, Lithuania and Romania removes an elite athlete from the scope of employment law; in Italy and Croatia, the sports enactments recognise that the contract an elite athlete enters may bring the elite athlete within the scope of employment law.⁵³

⁴⁶Note the NOC signs the Conditions of Participation in its own capacity and on behalf of the national federation, see (n.45) 6.

⁴⁷Law on Sport, Act I of 2004 (Hungary).

⁴⁸Law No. 91, 23 March 1981 (Italy).

⁴⁹Law No. 36/2021, 10 July 2023 (Italy). A sports worker is defined in art 25.1 as 'an athlete ... who without any distinction of gender and regardless of the professional or amateur sector exercises the sporting activity for a fee' (Informal translation from Italian).

⁵⁰Law on Physical Education and Sport 2022, No. I-1151 (Lithuania).

⁵¹Art 14, Law no. 69 of April 28, 2000 (Romania).

⁵²Art 12, Sport Act OG 141/2022, 2022 (Croatia).

⁵³Note the situation in Croatia, Portugal, Luxembourg, Poland and Estonia where elite athletes are expressly provided with statutory social protections under statute even though they may not be defined as workers. Also note that under legislation in Italy, labour law, tax and social security provisions apply to an employed sports worker: Art 25.5, Law No. 36/2021, 10 July 2023, see (n.49).

The research also disclosed that the issue of an elite athlete's legal status under a contract with a sports organisation has been considered substantively by the courts in two countries only, namely the UK and Austria. One case involved an athlete seeking to assert employment rights under a contract with a national federation and an elite sports organisation and the other case involved consideration of an elite athlete's status under the terms of a participation agreement. Following consideration of the contract terms, the national courts came to different conclusions regarding an elite athlete's legal status and whether an employment relationship existed. These cases are discussed below.

i) *Jessica Varnish v British Cycling and UK Sport*

In *Jessica Varnish v British Cycling and UK Sport*⁵⁴, an Employment Tribunal concluded that Team GB cyclist, Jessica Varnish, was not an employee or worker of the national federation, British Cycling, nor was she in a trilateral employment relationship with British Cycling and UK Sport, the public agency that funds Olympic and Paralympic Sport in the UK. The case arose from the non-renewal of Ms Varnish's podium performance agreement with British Cycling, which, Ms Varnish, claimed was an unfair dismissal,⁵⁵ an act of direct sex discrimination,⁵⁶ victimisation⁵⁷ and an unlawful detriment for having raised a complaint of sex discrimination against her former coach.⁵⁸ As a preliminary matter, and in order to proceed with her claims, Ms Varnish needed to establish that she was an employee of British Cycling or, alternatively, in a trilateral employment relationship with British Cycling and UK Sport, or a worker, within the meaning of the Employment Rights Act 1996 and the Equality Act 2010.

As an elite athlete, selected for British Cycling's world-class programme, Ms Varnish entered into an agreement with British Cycling, under which British Cycling agreed to develop a performance plan, which identified Ms Varnish's performance goals, and provided her with equipment and clothing and certain services (eg, access to a dedicated athlete support team, for

⁵⁴ *Jessica Varnish v British Cycling Federation t/as British Cycling and United Kingdom Sports Council t/as UKSport* (Employment Tribunal Manchester, 16 January 2019).

⁵⁵ A statutory claim arising from the termination of an employee's contract: Employment Rights Act (ERA) 1996, Part X.

⁵⁶ Equality Act (EA) 2010, s 13.

⁵⁷ EA 2010, s 27.

⁵⁸ ERA 1996, s47B.

example, physiotherapist, massage therapist, medical services, nutritionists, bio mechanical experts, etc. and coaching services). Ms Varnish was able to select her own coach if she preferred. British Cycling estimated the value of the services provided to Ms Varnish under the podium performance agreement at between £600,000 and £700,000 across a four-year period. Ms Varnish did not receive any money from British Cycling. Instead, as a member of British Cycling's world-class programme, she was eligible for a UK Sport athlete performance award, which is a means-tested grant provided by UK Sport to eligible elite athletes. The podium performance agreement expressly stated that it was not an employment agreement.

Pursuant to the agreement, Ms Varnish agreed to wear team clothing, was subject to detailed behavioural standards, including in relation to anti-doping and betting, was restricted in terms of her personal commercial work, required permission before engaging in media appearances, was obliged to attend training camps and train with the British Cycling team, as and when required, was required to undertake appearances for UK Sport's sponsors, and agreed to British Cycling, amongst others, using her image in certain circumstances. British Cycling could, at its absolute discretion, suspend or terminate the agreement. The contract terms were not negotiated with Ms Varnish; instead, British Cycling used a template agreement provided by UK Sport. The terms of the agreement were not negotiated with elite athletes collectively, although it was acknowledged during the case that UK Sport provided a copy of the draft agreement yearly to the (then-named) British Athletes Commission (BAC), for the BAC's review and feedback.⁵⁹ The evidence showed, however, that amendments to the template agreement at the request of an elite athlete were rare.

Following a consideration of the agreement's terms, the Employment Tribunal concluded that Ms Varnish was neither a worker nor an employee, but instead performed a commitment to train in anticipation of gaining selection to compete for Team GB at the Olympics, for which she received a non-refundable grant from a third party based on an assessment of future potential; she was not providing work or skill in consideration for wages. The Employment Tribunal accepted that control—an indicia of subordination—was a significant feature of the contractual relationship,⁶⁰ but that there was no 'work/wage bargain' or mutuality of obligation between British

⁵⁹*Varnish ET* (n.54) [69]. The British Athletes Commission is now known as the British Elite Athletes Association.

⁶⁰*Ibid.* [165].

Cycling and Ms Varnish.⁶¹ Central to the conclusion was the Employment Tribunal's assessment that the tasks that Ms Varnish undertook as an elite cyclist could not be considered 'work'. Ms Varnish was, in the Employment Tribunal's view, 'training as an athlete, an elite sprint cyclist in the hope she would be selected to represent Great Britain in international competitions. She was not working for either (British Cycling or UK Sport) or both of them under a tripartite arrangement'.⁶² Based on the contract terms and the features of the relationship, the Employment Tribunal considered that Ms Varnish was the recipient of services from British Cycling which supported her athletic success, and was personally performing a commitment to train, rather than a person in a subordinate position, who was dependent on British Cycling for access to elite cycling competitions, and whose services of training and competing for British Cycling generated revenue to support British Cycling's operational and regulatory objectives. The Employment Appeal Tribunal (EAT) dismissed Ms Varnish's appeal.⁶³

ii) The Vanessa Sahinovich Case

By contrast, in the case of Austrian synchronised swimmer, Vanessa Sahinovich, the participation agreement between Ms Sahinovich and the Austrian NOC was considered to form an employment relationship for the duration of the European Games in Baku in 2015, with the effect that Ms Sahinovich was covered by compulsory insurance for her career-ending injury following an accident at the European Games' athletes' village. The relevant Austrian law defined an employee as anyone who 'was employed in an employment relationship of personal and economic dependency for remuneration'.⁶⁴ The Federal Administrative Court had no difficulty concluding that personal and economic dependency existed in the relationship between Ms Sahinovich and the Austrian NOC because during the period of the participation agreement, she had no influence over working hours or place of work and was obliged to perform personal work, amongst other things.

⁶¹ *Ibid.* [139–54].

⁶² *Ibid.* [192].

⁶³ *Jessica Varnish v British Cycling Federation t/as British Cycling and Anor* [2021] ICR 44 (EAT).

⁶⁴ General, Social Insurance Act (Austria), s 4.2. Please note the informal translation from German to English.

Ms Sahinovich's freedom to organise her own work hours and place of work was restricted. She was provided with transport to and from the Games' village, provided with training and competition times, required to undertake sponsorship and press appearances, attended the opening and closing ceremony and as she was a minor, she was required to be in the Games' accommodation by 10pm. She also had no control over the place of work, for example, host country and location, training facility and accommodation. Ms Sahinovich had to adhere to a strict dress code and dress regulations, adhere to the NOC's rules and guidelines and was provided with the essential equipment needed to compete. She was obliged to do the work personally and could not delegate her services, and following her accident, her team was not permitted to compete at the Games. All these features pointed towards a relationship of personal and economic dependency under the relevant legislation.

The factual issue considered on appeal by the Federal Administrative Court was whether Ms Sahinovich received remuneration. The Austrian NOC did not pay Ms Sahinovich for her services to the Austrian team at the European Games. However, under the participation agreement, the Austrian NOC provided clothing and equipment, travel expenses, event location, board and lodging in the athletes' village, prize money for medal winners, and medical services, amongst others, which the Federal Administrative Court concluded were benefits in kind sufficient for Ms Sahinovich to establish an employment relationship under the relevant statutory definition, even if the agreement under which she participated at the European Games, was not expressed as one.⁶⁵

iii) Summary: Contracts and Legal Status

The contractual situation of elite athletes is complex. However, excluding employment with the armed forces, police, customs or as a civil servant, within national elite sports systems, even though there may be a contractual relationship with a NOC and/or national federation and/or other elite sports organisation, the research shows that the contract is not considered to be an employment contract; elite athletes are generally not employed by sport stakeholders to train and compete at major sports events. Even in those countries where legislation defines an elite athlete's status, only

⁶⁵Federal Administrative Court decision of 10 March 2017, BVwG GZ W145 2128879-1.

Italy and Croatia, recognise that an elite athlete may be contracted as an employee and therefore able to benefit from employment and social protections, although whether in practice elite athletes are employed by sport stakeholders in these countries will only become apparent over time.

The commercialisation of sports has changed the practice of sports at an elite level. There are now increased performance expectations on elite athletes that require more time spent training and competing (and therefore less time available for other paid employment), sponsor and media obligations owed to a national federation or Olympic team, strict requirements regarding adherence to anti-doping rules and other federation rules, and limits to an athlete's commercial activities while they train and compete. Elite athletes train and compete in an environment that has changed because of globalisation, commercialisation, governmentalisation and advances in technology.⁶⁶ These factors have had an effect on the organisation and functions of national and international federations and the IOC, and in turn, the contracts under which athletes provide their services and their legal status. The next section outlines the arguments for elite athletes falling within the scope of employment law.

4. ELITE ATHLETES AND WORKER STATUS: DISCUSSION

The legal status of elite athletes falls within a broader and continuing discussion regarding the personal scope of employment law and the exclusionary nature of the employment contract.⁶⁷ The challenges for athletes to establish worker status arise from national legislation that defines elite athletes in a manner that excludes worker status, and where legislation does not exist, the factors applied under national employment law to determine worker status which may be interpreted against elite athletes. The existence of an employment contract underpins an employment relationship and access to employment protection and benefits under labour law, however, the factors or indicators used to determine the existence of an employment contract

⁶⁶Barrie Houlihan and Mick Green, *Comparative Elite Sport Development: Systems, Structures and Public Policy* (Oxford: Elsevier, 2008).

⁶⁷See Guy Davidov and Pnina Alon-Shenker, 'The ABC test: a new model for employment status determination' (2022) 51:2 *Industrial Labour Journal* 235; Nicola Countouris, *Defining and Regulating Work Relations for the Future of Work* (Geneva: ILO, 2019); and ILO, *Non-Standard Employment Around the World: Understanding Challenges, Shaping Prospects*, (Geneva: ILO, 2016).

differ between national legal systems.⁶⁸ In broad terms, an employment relationship is considered to arise when a person performs work for the benefit of another in return for remuneration under certain conditions established by national law and practice.⁶⁹ One of the common factors used to distinguish employees or workers from self-employed contractors, is subordination or dependency, either used as alternatives or together. Falling between the categories of employee and self-employed contractor is the category of ‘economically dependent workers.’⁷⁰ Sometimes the contract may be ambiguous or constructed in a way to avoid employment obligations which creates legal uncertainty. Elite athletes are a group of individuals who are generally excluded from national employment law, and yet there are strong arguments in favour of an elite athlete being a worker, such as their status under ILO standards and EU law, and the priority of employment law over national sports policy. These factors are discussed in the following sections.

A. International Labour Organisation Standards and the Characterisation of Elite Athletes’ Activities

There is no single, universal and conclusive international legal definition of employment relationship, employment contract or employee.⁷¹ Nevertheless, ILO Standards support the view that elite athletes are workers. The ILO Recommendation 206 (No 198) on the Employment Relationship offers guidance to member states on the formulation of policy to protect workers in an employment relationship,⁷² and the determination of an individual’s employment status.⁷³ The guidance states that the determination of the employment relationship should be directed ‘primarily by the facts relating to the performance of work and the remuneration of the worker’ rather than ‘how the relationship is characterized in any contrary arrangement,

⁶⁸For a summary of the different approaches applied by countries to determine worker or employee status, see ILO, *International Labour Conference 95th Session 2006 Report V(1): The Employment Relationship* (Geneva: ILO, 2005).

⁶⁹ILO, *The Employment Relationship* (n.68) [71–83]. The approaches adopted by countries include: defining in legislation an employment contract, worker or employer or including a presumption of employee status if certain factors are present; or leaving case law to develop the concept of employment contract: *Ibid.*

⁷⁰ILO, *The Employment Relationship* (n.68) [44].

⁷¹Valerio de Stefano, ‘Not as simple as it seems: The ILO and the personal scope of international labour standards’ (2021) 160:3 *International Labour Review* 387, 390.

⁷²ILO Employment Relationship Recommendation No 198 (2006), arts 1–8.

⁷³*Ibid.* Arts 9–18.

provided by British Cycling to elite athletes generally mirror those provided by a professional cycling team, for example, access to medical services, nutritionists, physiotherapist, massage therapist, etc., and the obligations on Ms Varnish are activities that a professional cyclist would undertake in the course of a contract with a professional cycling team.

British Cycling is the national cycling federation in the UK and Varnish was dependent on it to provide services, training facilities and access to international competitions such as the Olympic Games in order to carry out her occupation as an elite athlete. The ILO lists ‘Athletes and Sports Players’ as an occupation in its *Standard Classification of Occupations*,⁷⁸ and identifies the job tasks for the occupation as including, among other things: participating in regular training practice and training sessions and undertaking private training to maintain the required standard of fitness and skill; undertaking sports promotional activities and media interviews; maintaining a high degree of expertise in a particular sport; competing in sports events and adhering to the rules and regulations of a specific sport, all of which the Employment Tribunal found that Ms Varnish undertook, yet was considered insufficient for a finding that Ms Varnish was engaged in work.

The ILO’s categorisation of occupations has been undertaken for the purpose of facilitating a comparison of occupational classifications internationally so inclusion on the list is not an expression of the ILO’s position on the legal or regulatory status of a particular occupation, but it shows conceptually that elite athletes undertake tasks that have been categorised by the United Nation’s specialised labour organisation as a job and occupation. The tasks are service-related and provided by an elite athlete to produce an entertainment product that is sold by sports stakeholders such as the IOC, international and national federations—through the sale of broadcast rights, sponsorship and tickets sales and merchandise—for economic gain. This is consonant with the ILO’s broad definition of work as ‘any activity performed by persons of any sex and age to produce goods or to provide services for use by others or for own use’.⁷⁹ The concept of work in sport

⁷⁸ILO, *ILO Standard Classification of Occupations ISCO-08 Volume 1* (Geneva: ILO, 2012) 210, Code 3421 states: ‘Athletes and sport players participate in competitive sporting events. They train and compete, either individually or as part of a team, in their chosen sport’.

⁷⁹ILO, *ILOSTAT 2022* <<https://ilostat.ilo.org/methods/concepts-and-definitions/forms-of-work/>> accessed 18 June 2024; ILO, Resolution to amend the 19th ICLS resolution concerning statistics of work, employment and labour under-utilisation, 21st International Conference of Labour Statisticians (Geneva, 11–20 October 2023), <https://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/normativeinstrument/wcms_230304.pdf> accessed 18 June 2024, 3.

provided in the Centre for Sport and Human Rights White Paper on Child Labour in Sport: Protecting the Rights of Child Athletes (White Paper) states that child athletes are considered to be at work ‘when they are participating in the sport for their own or someone else’s gain or engaged in intensive training in order to do so in the future’.⁸⁰ The definition provided in the White Paper highlights that ‘participation in sport’ or an engagement ‘in intensive training’ is the activity that when undertaken for someone else’s gain now or in the future constitutes *work*. Children are recognised as a special category of individuals who require additional employment law protection, and depending on the sport, children either compete or are included in development programmes with a view to competing as an adult, in a specific sport under the same sport’s rules as adults. Although the definition arises in the context of children’s rights, the activities that the Report describes as *work* would apply equally to adult elite athletes.

On appeal, Ms Varnish argued that the training she undertook was no different in concept to that provided by a football player and that there was no reason why the tasks that she did, should not be considered work too, drawing an analogy with the case of *Walker v Crystal Palace Football Club*⁸¹ which establishes that football players are employees or workers. The argument, however, was not successful because under the tests applied to determine worker status, the contract under which the football player was considered to be employed, contained terms that were consistent with employment, for example, the player was required to ‘serve the club’ and the club was required to pay the player and the EAT considered it significant that Crystal Palace FC carried on ‘the game of football “as a trade”’.⁸²

It is apparent that neither the Employment Tribunal nor the EAT appreciated the broader environment in which elite athletes such as Ms Varnish and others, provide their services. Football in England turned professional in 1885 when the private football regulator, the Football Association, introduced rules that permitted players to earn a living from football, and the Football League (now the Premier League and the English Football League) was formed three years later in 1888. No other entity other than the club paid the player because a football club was expected to be commercially self-sufficient. The league structure permitted regular full-time employment

⁸⁰ Centre for Sport and Human Rights, *White Paper Child Labour in Sport: Protecting the Rights of Child Athletes*, (2022) 6–7.

⁸¹ *Walker v Crystal Palace Football Club* [1910] 1 KB 87.

⁸² *Walker* (n. 81) [45].

likely that an Employment Tribunal may take a different approach to determining an elite athlete's legal status.

B. European Union Law

EU law prefers the term 'worker' instead of 'employee'. It has developed an autonomous definition specific to EU law that has its genesis in the case law on free movement and the economic provisions of the Treaty, and has been applied in other areas of EU law, most notably EU labour law.⁸⁷ The definition depends on the right that is asserted; however, a key factor of the EU law definition is subordination. The presence of subordination is usually analysed through the lens of 'control' and a consideration of the factors that demonstrate control in the contractual relationship, for example, how the services are provided, when and where, etc. Pursuant to EU law, a worker is a 'person who performs services for and under the direction of another in return for remuneration'.⁸⁸ When determining whether an individual is a worker, EU law requires a consideration of the objective situation of the individual, including their work circumstances and how obligations are performed in practice, and an interpretation of the term that is supported by the objectives of the relevant legislation.⁸⁹ The term must not be interpreted narrowly.⁹⁰

The worker must be engaged in a genuine and effective economic activity, rather than an activity that is marginal and ancillary.⁹¹ Even if the activities undertaken are not for the sole purpose of providing an occupation, the relevant issue is whether the activities in question possess economic value.⁹² In *Fenoll*,⁹³ a case which concerned the definition of worker for the purposes of the Working Time Directive and the Charter of Fundamental Rights of the European Union, the CJEU confirmed that an individual training for their

⁸⁷ See Nicola Kountoris, 'The Concept of "Worker" in European Labour Law: Fragmentation, Autonomy and Scope' (2018) 47:2 *Industrial Law Journal* 192; Paul Craig and Gráinne de Búrca, *EU Law, Text, Cases, and Material* (7th edn, Oxford: OUP, 2020) 785.

⁸⁸ Case C-256/01 *Allonby v Accrington & Rossendale College*, [2004] EU:C:2004:18, [67].

⁸⁹ Case C-610/18 *AFMB Ltd v Raad van bestuur van de Sociale verzekeringsbank* [2020] EU:C:2020:565, [60–1].

⁹⁰ CJEU C-143/16, *Abercrombie & Fitch Italia v Bordobnaro*, EU:C:2017:566, [19].

⁹¹ C-188/00 *Kurz v Land Baden - Wurttemberg* [2002] EU:C:2002:694, [32]; C-316/13 *Fenoll v Centre d'aide par le travail 'La Jouvène'* [2015] EU:C:2015:200, [34].

⁹² *Fenoll* (n. 91) [39].

⁹³ *Ibid.* [39].

C. Priority of Employment Law Over National Sport Policy

The organisation of elite sports at a national level and the funding models in place to support elite sports are the product of national sports policy and regulation. As highlighted in Section 3, elite athletes are typically excluded from worker status, either by national legislation, which may take the form of a national sports law, or by the categorisation of an elite athlete's contract that demonstrates a preference at a national level for sports policy and regulation to prevail over employment law. The rationale for national sports policy and regulation prevailing may relate to resource limitations. Government funding for elite sports is limited and for some (not all) national federations or other sports stakeholders, the notion of elite athletes as employees brings into sharp focus a requirement to pay elite athletes, which is a challenge for national federations and clubs that do not have commercial value in the properties attached to their sport, and yet require money to fund their objectives, which include supporting the amateur and grassroots levels of the sport.

There is no incentive in a national sports system to structure an elite athlete's contract in a way that protects elite athletes from vulnerability, unfair treatment or commercial exploitation, and the power disparities in national sports systems make elite athletes vulnerable to exploitation. There is an absence of independent athlete organisations advocating for worker status in an industry in which the interests of sports governing bodies and NOCs have traditionally dominated decision-making. There is also a general reluctance on the part of governments to interfere in the autonomy of sport, all of which creates a sector organised in favour of the interests with greater power, namely, the NOCs and the national federations.

Employment law pursues a number of goals, including the redistribution of power, social justice, confronting the vulnerabilities of workers caused by subordination and dependence, equality, freedom, autonomy, dignity and the protection of human rights.⁹⁸ The argument to adopt a broad inclusionary approach to the definition of worker is stronger when a fundamental right is at stake such as the freedom of association.⁹⁹ Elite athletes are dependent on sports governing bodies for access to competitions, equipment, training facilities and their livelihood, amongst others. Recognising elite athletes as workers

⁹⁸ Philippa Collins, 'The Role of Human Rights in Labour Law' in Philippa Collins (ed) *Putting Human Rights to Work* (Oxford: OUP, 2022) 34, 57.

⁹⁹ Alan Bogg and Michael Ford, 'Employment Status and Trade Union rights: Applying Occam's Razor' (2022) 51:3 *Industrial Law Journal* 717, 741.

would rebalance power in the elite sports system and limit the vulnerabilities of elite athletes that are presently caused by dependence on sports governing bodies and NOCs. Employment status also provides more than an entitlement to remuneration. Access to a plethora of employment protections and social policy benefits that rely on worker status, and an entitlement to form a trade union and negotiate the terms of a contract collectively, are some examples of benefits that would improve the economic conditions for elite athletes, but which elite athletes are presently denied.

5. CONCLUSION

It is indisputable that private sports organisations and the development of sports globally are supported by the revenues generated by major sports events such as the Olympic Games, which are produced using the services that elite athletes provide. The opportunity to participate in an Olympic Games benefits elite athletes because it enables them to showcase their athletic skills to a wide audience which can assist an athlete to generate income from commercial opportunities outside an Olympic Games. However, research shows that some elite athletes receive limited financial support while training and competing, have limited access to social protection measures, and that their legal status at a national level established by contract or national legislation contributes to the challenges they face.¹⁰⁰

To improve the conditions in which elite athletes provide their services, elite athletes require recognition as workers. The absence of political will at a national or European level may prove, however, an obstacle for legislative change to occur. Legal action can be a catalyst for change although it relies on an individual elite athlete to challenge the status quo which has an emotional and economic cost, and is challenging in the elite sports environment. Recognition as workers could arise voluntarily through sports organisations offering contracts that provide worker status. In 2021, a committee established by the Norwegian Sports Confederation and Olympic and Paralympic Committee (the NOC in Norway) investigated the conditions in which elite athletes in Norway provide their services and recommended that Norway's elite athletes, who are supported through the country's national sports system, be employed to ensure access to a pension and sick pay.¹⁰¹ Another

¹⁰⁰Mittag et al (n.16).

¹⁰¹Norwegian Sports Confederation and Olympic and Paralympic Committee, *Top Athletes Framework Conditions: Report to the NIF Sports Board* (20 December 2021) 34.

mechanism for improving the working conditions for elite athletes could be dialogue through the ILO, which the sport of football has used successfully to create an international bargaining framework between the main stakeholders in professional football.¹⁰² A similar framework could be established amongst the key stakeholders in the Olympic Movement to improve working conditions globally for elite athletes.

¹⁰²ILO News, 'ILO Welcomes First Global Agreement on Working Conditions and Rights of Professional Football Players' (Geneva, 26 September 2022) <https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_856730/lang--en/index.htm> accessed 18 June 2024.