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Who will represent Australia at the 2000 Olympics?: Case-study - Handball

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The goal of the Olympic Movement is to contribute to building a peaceful and better world by educating youth through sport practised without discrimination of any kind and in the Olympic spirit, which requires mutual understanding with a spirit of friendship, solidarity and fair-play.¹

¹ Fundamental Principle 6, *Olympic Charter*, International Olympic Committee, Lausanne, 1995, p11

Any form of discrimination with regard to a country or person on grounds of race, religion, politics, sex, or otherwise is incompatible with belonging to the Olympic Movement²

This is the crucial time for sport lawyers and administrators, if they are have an input in how Australia will be represented at the Sydney 2000 Olympics. The policy, administrative and legal decisions made now will shape the face of the future champions. It is clear that the public, as represented in the media and reflected in the funding and programs instigated by the Australian Sports Commission (ASC), will be judging the performance of the Australian athletes by the medal tally³. One of the key questions facing the decision-makers, is how to best place Australia in a position to win the greatest number of medals.

The benefits of sport to the community as a form of exercise and competition have been well documented. The aim of holding the Olympic Games is to promote sport to all people because, in the words of the President of the International Olympic Committee (IOC);

Sport is friendship, sport is health, sport is education and sport is life.⁴

The ideals expressed in the Olympic Charter were developed by the founders of the modern Olympic movement to be fundamental rights that athletes and nations could aim for, so that ultimately, the numerous examples of goodwill and fair play could be emulated outside of the sporting arena. It was envisaged that, particularly children, would be inspired to achieve, in the way that the athletes had demonstrated.

A community can admire greatness from any quarter, but its passion will be ignited when superior skill and effort is demonstrated in athletes representing their country. The Olympic ideals are more likely to have effect when people are able to identify with the athletes representing their chosen nation. Those athletes must be recognised as having a close association with the flag they represent. The public likes to feel that they are in some way responsible for the athletes' success. In Australia, as the international mix within the community is reflected in the athletes representing us, people have become comfortable with cheering for athletes whose heritage is far wider than the traditional Anglo-Saxon mould. It is now accepted that athletes do not have to have been born in a country to adopt it as their own, and wish to represent it at the highest level. This acceptance is certainly encouraged by the Olympic principles⁵ and promoted in domestic policy and legislation.

The public are justified in feeling that they are responsible in some way for 'their' athletes' success, because of the enormous role government funding plays in sporting development. The funds obtained from the public by the state and federal government, are to be used for the benefit of the Australian community. The Constitution expressly allows the Commonwealth government to legislate on taxation, "for the peace, order and good government of the Commonwealth."⁶ To allow

² Belonging to the Olympic Movement, pt 2, *Olympic Charter*, International Olympic Committee, Lausanne, 1995, p13

³ It was suggested, allegedly by then Sports Minister Ros Kelly, that the Federal government funding for sports would be linked to the number of medals won at Barcelona, but was denied by then Prime Minister Paul Keating
A Connolly, *The Australian*, 1-2 August 1992, p3

⁴ H E Juan Antonio Samaranch, President, IOC, 1980 - Opening speech to the Atlanta Olympic Games, 20 July 1996

⁵ See the discussion on the IOC's rules governing the nationality of a competitor below: *Olympic Charter*, International Olympic Committee, Lausanne, 1995, Rule 46, p69

⁶ *The Constitution* s51(ii), Australian Government Printing Service, Canberra, 1986, p17.

the maximum gain to be achieved under this power, definitions of persons subject to taxation legislation are framed widely, to include residents and non-residents⁷, yet those persons able to benefit from the monies received is defined much more narrowly⁸. Under section 6 of the *Australian Sports Commission (ASC) Act*, the ASC has power;

*to provide resources, services and facilities to enable Australians to pursue and achieve excellence in sport while also furthering their educational and vocational skills and other aspects of their personal development.*⁹

The term “Australians” is defined to include; “persons who are ordinarily resident in Australia.”¹⁰

To date, the ASC has not developed written guidelines for how this section should be interpreted, and so arguably, sports can submit any player and expect the ASC to interpret its own legislation to declare players ineligible who they believe did not meet the criteria. The other side to that argument is that associations are expected to comply with their own international and domestic rules on eligibility before putting any player forward to the ASC as suitable for funding. This is where the sports administrator and lawyer can have an influence on the make-up of the team. Many members of the public would be alarmed if they thought that non-Australian athletes were denying local athletes the use of ASC funding. The rules on eligibility for representation and importation need to be closely examined and, in many cases, tightened, to ensure that national sports associations have rules that reflect domestic policy and international standards.

The meaning of “Australians” has not been legally tested under the *ASC Act*, but assistance in interpretation can be gained from the courts’ consideration of matters brought under the *Bankruptcy Act*.¹¹ The policy for the two different pieces of legislation must be borne in mind however, when the cases are considered. The bankruptcy legislation is intended to encompass people who attempt to avoid liability for their debts within Australia, by taking themselves outside of the scope of the Act. The experience of the ASC is just the opposite; where people are trying to bring themselves within the criteria, so that they may benefit from the funding.

Under the bankruptcy legislation, Justice Burchett, in the case of *Re Vassis; Ex parte Leung*¹² agreed with Viscount Sumner in stating that “ordinary residence” is a person’s “settled and usual place of abode”.¹³ “Ordinarily resident in Australia” therefore does not necessarily mean “personally present”.¹⁴ That case dealt with a person who temporarily left Australia for a holiday, and fully intended to return to his home and family in Australia. Conversely, the Full Court in *Turner v Trevorrow*¹⁵, having referred to *Re Vassis*, felt that Mr Turner was no longer “ordinarily resident in Australia” as he was living in Germany, and had “severed his ties with Australia”; as he had sold his

⁷ For example, *Income Tax Assessment Act*, 1936, (Cth), s17. “Resident” is also defined widely in s6(1).

⁸ For example the definitions of “Australian resident” contained in legislation such as; *Social Security Act*, 1947, (Cth), s3 discussed below and *Veterans’ Entitlements Act*, 1986, (Cth), s35.

⁹ *Australian Sports Commission Act*, 1989, (Cth), s6(1)(c).

¹⁰ *Australian Sports Commission Act*, 1989, (Cth), s6(2)

¹¹ *Bankruptcy Act*, 1966, (Cth), s43(1)(b)(i)

¹² (1986) 64 ALR 407; (1986) 9 FCR 518

¹³ (1986) 64 ALR 407 at 413. Viscount Sumner in *IRC v Lysaght* [1928] AC 234 at 245

¹⁴ (1986) 64 ALR 407 at 413

¹⁵ (1994) 126 ALR 263

house, wound down his business, and taken his family overseas for a substantial period, without having employment that linked him to Australia.¹⁶

The question that must be asked under the ASC legislation is; at what point can a person newly arrived in Australia be considered “ordinarily resident”? The person may have given up residence in their country of origin, and yet not established sufficient ties with Australia. A complainant under this section would therefore have to demonstrate, through family, employment and accommodation arrangements¹⁷, that they had a “sufficient degree of continuity to be properly described as settled.”¹⁸ The wording seems to suggest that a person may be eligible for funding, even though they have not satisfied the criteria for citizenship, including the required period of actual residence.¹⁹ This also leads to the conclusion that a person may have been granted temporary or permanent residency status²⁰, but not be “ordinarily resident” at the moment they receive their visa, and thereby not be entitled to the benefits of funding provided by the ASC.

The way the *ASC Act* is worded in sections 6 and 7²¹ suggests that the definition of an “Australian” is widened by s6(2) to “include” an Australian who is “ordinarily resident” so that Australian athletes training overseas for an event who, like Mr Vassis, fully intend to return to Australia, are not disadvantaged. On a stricter interpretation, rather than diluting the requirement that the recipients be Australian citizens, s6(2) highlights the power in the ASC to award funding to Australian athletes with citizenship, who spend much of their time away from our shores. This interpretation is given weight by section 7(2) of the same Act that states that the ASC may exercise their functions both “within or outside Australia”²².

Support for this strict view can be gained by looking at the interpretation of legislation that refers to an “Australian resident” rather than those who are “ordinarily resident”. It can be seen by examining the *Social Security Act*²³ for example, that the definition contained in the *ASC Act* is intended to encompass a narrower class. Section 7(2) defines an “Australian resident” as; “a person who”:

- (a) resides in Australia; and:
- (b) is one of the following:
 - (i) an Australian citizen;
 - (ii) the holder of a permanent visa;
 - (iii) the holder of a special category visa who is likely to remain permanently in Australia;

¹⁶ (1994) 126 ALR 263 at 271. Note that owning a dwelling house in Australia alone did not convince the court in *Re Meredith; Ex parte Commonwealth Bank of Australia* that the debtor was “ordinarily resident in Australia”. [1993] ACL Rep 50 FC 36

¹⁷ Such as the factors set out in s7(3) *Social Security Act*, 1991, (Cth), in determining “whether or not a person is residing in Australia”.

¹⁸ *Shah v Barnett London Borough Council* [1983] 1 All ER 226 at 235 per Ld Scarman considering an application for benefits under the *Education Act*, 1962

¹⁹ Permanent residents are required to be resident for two years out of the last five years, including a total of 12 months in the two years immediately preceding the application for citizenship, although the Minister has the discretion to waive the residential requirements for certain groups: No. 3 *Citizenship by grant (naturalisation)*, Australian Citizenship, 976I, Department of Immigration and Ethnic Affairs.

²⁰ Defined in s30, *Migration Act*, 1958, (Cth). NB: A temporary visa is issued to those of a “specified status”, and presumably this would include, for example, those applying for migration under the “Special Assistance Category Application Pack: Subclass 209 - Citizens of the Former Yugoslavia”, Department of Immigration and Ethnic Affairs, July 1995

²¹ See particularly s6(1)(b), 6(1)(c), 6(1)(d) and 7(1)(c), *Australian Sports Commission Act*, 1989, (Cth)

²² *Australian Sports Commission Act*, 1989, (Cth), s7(2)

²³ *Social Security Act*, 1991, (Cth), s7(2)

- (iv) *the holder of a special purpose visa who is likely to remain permanently in Australia.*

Without going into the intricacies of that legislation, it seems clear that the difference in the wording of the two Acts signifies that a person applying for Social Security benefits must be personally in Australia, and show a “likelihood” of remaining legally.

On the face of it, the ASC is permitted to fund any Australian citizen, without concern for periods of residency.²⁴ The appropriateness of this as a policy benefiting the Australian community has been questioned. For example, sections of the Australian public voiced some concern when Kasumi Takahashi won five gold medals for Australia in rhythmic gymnastics at the 1994 Commonwealth Games. Takahashi was born in Japan and her primary residence is in the United States.²⁵ Takahashi’s mother is an Australian citizen, and the *Australian Citizenship Act*,²⁶ makes it clear that, Takahashi is entitled to be an Australian citizen and upon registration, falls within the ASC legislation.²⁷ The concern lies in the fact that, although she receives financial and other support from the ASC, Takahashi is not available to promote and develop the sport locally. Members of the public argued that they had been denied the opportunity to watch her progress over the years, and thereby to identify with her success. One wonders whether it was the intention of the legislature to allow all Australian citizens, whether or not they had set foot on Australian soil, to receive funding under the *ASC Act*. The looseness of the wording in the *ASC Act* is highlighted by the fact that it appears to be quite easy for persons holding temporary visas to have the residency requirements waived, and thereby an obtain citizenship, on the ground of “hardship” due to an ineligibility to represent Australia.²⁸ Tony Nolan’s view, as stated in his article, “Limits on Foreign Nationals - Unlawful discrimination or Protecting the Farm?”, is that; “Most national sporting associations have entered into arrangements and agreements with the Department of Immigration, Local Government and Ethnic Affairs.”²⁹ It is therefore up to sports lawyers, when drafting by-laws and constitutions for sports associations, particularly for national controlling bodies, to determine to what extent the eligibility criteria will be narrower than the *ASC Act*.³⁰

²⁴ For example, the *Australian Sports Commission Act*, 1989, (Cth), s6(1)(d) refers to “Australians generally”, and s7(1)(c) includes “all Australians”.

²⁵ *Kasumi Takahashi - Rhythmic Sportive Gymnastics*, Athletes Profiles, Australian Gymnastics Federation, <http://www.ausport.gov.au/gym/kasumi.html>

²⁶ *Australian Citizenship Act*, 1948, (Cth), Part III, Division 1, as discussed in *McManus v Clouter*, (1980) 29 ALR 101 at 117 - McLelland J

²⁷ Her citizenship therefore is dependant on the registration under the *Australian Citizenship Act* 1948, (Cth), s10B

²⁸ Permanent residents are required to be resident for two years out of the last five years, including a total of 12 months in the two years immediately preceding the application for citizenship, although the Minister has the discretion to waive the residential requirements for certain groups: No. 3 *Citizenship by grant (naturalisation)*, Australian Citizenship, 976I, Department of Immigration and Ethnic Affairs. Where the person is a temporary resident, one indication of “significant hardship or disadvantage” is that the person; “would not be able to represent, or be selected to represent, Australia in a national representative team solely on the basis that [they] were not an Australian citizen”. ‘How to apply for a grant of Australian citizenship’, Department of Immigration and Ethnic Affairs, 1027I (Design date 11/95), p5

²⁹ T Nolan, *Limits on Foreign Nationals - Unlawful discrimination or Protecting the Farm?*, ANZSLA 3rd Annual Conference Papers, 2-4 December, 1993, AIS Canberra, p15

³⁰ The competitions from which athletes will be selected for the national team should be set in Australia and in advance: AOC Guidelines, *Draft Guidelines For the Selection of the Australian Teams To Compete in the 1996 Olympic Games*, 1 February 1993 and sports may require athletes to be registered members of state leagues, before being eligible for national selection.

The ASC wording aside, national teams also have to comply with the sport's international and domestic regulations on the composition of those teams whether an application for funding is made or not. For sports competing at the Olympics, the over-riding principle is contained in rule 46(1) of the Olympic Charter;

*Any competitor in the Olympic Games must be a national of the country of the NOC which is entering him.*³¹

Teams having to compete in elimination rounds for a position at the games, would also have to comply with this rule during all the qualification matches.³² One such sport is handball. Handball has been played in Australia since the early nineteen-seventies. The Australian Handball Federation (AHF) was admitted to the International Handball Federation (IHF) in 1984.³³ This fast and dynamic sport is described as a mixture of soccer, water-polo, and basketball. It is a semi-contact sport played by a team of seven, on an indoor court twelve metres longer than a basketball court, with an hockey-sized goal. Also known as European, Team, or Olympic handball, to distinguish it from the children's game of four square, or from American handball which is played inside a squash court, this form of handball was developed in Europe, and its rules standardised by Karl Schelenz in 1917³⁴. Now over 10 million people world-wide play the game, and it is the second most popular team sport in Europe after soccer.³⁵

The Constitution of the AHF does not specifically deal with nationality³⁶. The Eligibility Code for Handball Players, in clause 37, requires that every player "observe and abide by" the rules of the IOC, the IHF Eligibility Code and the AOC Code of Conduct.³⁷ Having discussed the IOC's position on nationality, the next level of authority on this issue is that of the IHF *Bylaws and Regulations*.³⁸ The IHF states that it; "tolerates no discrimination on the basis of race, creed or political orientation."³⁹ It further states that the "IHF shall be committed to fairness in sports and prohibit any attempts at unfair performance improvement."⁴⁰ In the same document, the AHF is recognised as an affiliated body, and so is required to comply with the IHF rules⁴¹. The IHF Player Eligibility Code.⁴² states that "National team players shall meet the following conditions";

a) *citizenship in the country concerned;*

³¹ *Olympic Charter*, International Olympic Committee, Lausanne, 1995, Rule 46, p69. "NOC" is National Olympic Committee, and "him" is defined as "including the feminine gender" in the Note on p9.

³² See for example the *(Draft) Guidelines for the Selection of the Australian Teams to Compete in the 1996 Olympic Games*, John Coates, President and Chairman, AOC Planning & Review Commission, AOC, 12/11/92

³³ *Evaluation of the ASC's Impact on Sports Performances and Participation in Australia*, ASC, <http://www.ausport.gov.au/evalhan.html>, obtained 15/6/96

³⁴ Z Marczinka - *Playing Handball: A Comprehensive Study of the Game*, IHF, Trio Budapest Publishing Company, Hungary, 1993, p20

³⁵ Z Marczinka - *Playing Handball: A Comprehensive Study of the Game*, IHF, Trio Budapest Publishing Company, Hungary, 1993, p21. Also para-phrased from a media release by Gerard Morrison, President, Australian Capital Territory Handball Association, 7/3/96

³⁶ *Constitution of the Australian Handball Federation Incorporated*, Version 4.0, 7 December 1994

³⁷ See 37.2-37.4 *Constitution of the Australian Handball Federation Incorporated*, Version 4.0, 7 December 1994.

These documents are not attached to the Constitution, and are not available for players or administrators.

³⁸ *Bylaws and Regulations*, International Handball Federation, Werne, 1994

³⁹ *Bylaws and Regulations*, International Handball Federation, Werne, 1994, I, II, Article 6(1)

⁴⁰ *Bylaws and Regulations*, International Handball Federation, Werne, 1994, I, II, Article 7

⁴¹ *Bylaws and Regulations*, International Handball Federation, Werne, 1994, I, III, Article 11(2), recognises the Oceanian Handball Federation

⁴² *Bylaws and Regulations*, International Handball Federation, Werne, 1994, III. Player Eligibility Code

- b) *they shall not have played in the national team of another country in the two years preceding their first appearance in the national team;*
- c) *they shall have been eligible to play in the country in question for no less than the previous twelve months.*⁴³

This Article requires that all players satisfy the three criteria in any international matches played by Australia. Yet this rule is honoured more in the breach, than in the observance by the AHF.

One international competition has been chosen to highlight how easily sports can lose sight of the policy behind the rules governing them, if a clear direction is not constantly maintained. Of the seventeen man handball squad sent to Kumamoto in April 1996 for the "Japan Cup", at least five players held Yugoslav passports according to documents supplied to the ASC by the AHF;⁴⁴

*Rajan Pavlovic;
 Dragan Sestic;
 Milan Slavujevic;
 Dragan Radulovic; and
 Zoran Rikalo*

while the other players were stated to have Australian passports and therefore be Australian citizens.

Representatives from the Department of Immigration⁴⁵ and The Embassy of the Socialist Federal Republic of Yugoslavia have indicated that Yugoslav citizens are permitted to have dual citizenship with Australia, and are not required to surrender their Yugoslav passports. The principles under the *Privacy Act*⁴⁶ prevent further confirmation of their citizenship status, however, in a recent memorandum to the AHF board, it was acknowledged that "Radulovic, Slavujevic and Pavlovic" are not Australian citizens.⁴⁷ The other two players were not specifically mentioned in the context of their availability for a forthcoming international trip, presumably because it has been suggested that they have returned to the Socialist Republic.

Players without citizenship have therefore breached the IHF eligibility requirements and were not entitled to represent Australia in Japan.⁴⁸ The potential for resentment and low morale in the other team members is obvious. The athletes could also be expected to feel some resentment if they had had the opportunity to refer to the AHF selection criteria. By letter dated 20 April 1993 to the ASC, Aleksandar Dimitric, President, AHF, enclosed a document entitled "Selection Principles", stating that the AHF would conform with this procedure;

A) *Squad Selection*
1-6 months before an international match at:

⁴³ *Bylaws and Regulations*, International Handball Federation, Werne, 1994, III. Player Eligibility Code, Article 7

⁴⁴ AHF, *Team Registration Form*, 25/3/96 (d:\ahfe2-team\1squad-m\1996)

⁴⁵ Department of Immigration, Local Government, and Ethnic Affairs

⁴⁶ *Privacy Act*, 1988 (Cth), Principle 11(1)

⁴⁷ Letter S Allatson to A Dimitric (cc Board), AHF, 25 July 1996

⁴⁸ The Japan Cup was not the first occasion that Slavujevic and Radulovic had represented Australia internationally: eg. Team List, AHF: Men's Tour to Europe Aug-Sept 1995, p1, (although competing in the international club George Marrane Handball Tournament' as 'Sydney', eligibility continues to be governed by the IHF criteria as the team is actually "representing Australia in international competition": S Allatson - Report to the AHF, 1995 National Men's Team Tour to Europe', 25/9/95)

national titles
major tournament
national competition

B) Follow Up

B1 at national camps

B2 at state matches

C) National Team Selection

C1 at least from last one or two camps and/or matches

C2 possible changes prior to the match; based on lack of performance, injury, discipline, etc⁴⁹

This procedure for selection was subsequently expanded⁵⁰ to allow for consideration based on the following factors:

1. *Character*
2. *Attitude*
3. *Physical Features⁵¹*
4. *Technical Skills*
5. *Strategic Skills*
6. *Goalkeeping*
7. *Training*

Further, that the “squads will be reviewed quarterly by the appointed National Coaches, the High Performance Manager and the AHF Board”.⁵²

The drafters of this latter document may have intended for it to replace the first criteria, especially considering that it was timed to arrive at the ASC a few months prior to the competition in Japan, however, the procedures do not deal with the same material. The second document is therefore regarded as further elaboration, and where there is any overlap between the two documents, it can be presumed that the latter document is intended to prevail. The selection criteria indicates that squad members are to be selected for the Japan cup during the period October 1995 - February 1996. There was no international competition during this period, and, from the five without citizenship, only Radulovic and Rikalo competed in the AHF National Championships in November 1995. The only other major tournament during that period, the Tropicana Festival held 14-15 October 1995, saw Rikalo, Radulovic and Slavujevic compete for different teams. For squad selection then, two players were seen twice, two were not seen at all, and one competed in one tournament.

Once the squad is determined, further trials are to take place, during stage “B) Follow Up”, at national camps and state matches. The first national camp that can only just be included within the

⁴⁹A Dimitric, President, AHF, letter to K Norris, Senior Manager, Sports Development Section, ASC, 20/4/93 encl (e2teams/select/principl) A Dimitric April 19, 1993. The reference on the document indicating that the contents had probably not been passed by the AHF Executive prior to sending, but were intended to satisfy the requirement under Condition 6 of Cooperative Arrangement undated for the period 1/7/93 to 30/6/96 that selection criteria be provided.

⁵⁰By letter received by the ASC 14/12/95: AHF: *National Selection Criteria*, ahf48, which amended J Matschoss’s previously submitted National Women’s Team Selection Criteria by removing the requirement to “train daily”.

⁵¹I am sure that we are intended to read “Physical Characteristics”.

⁵² By letter received by the ASC 14/12/95: AHF: *National Selection Criteria*, ahf48

Oct-Feb period was held 29/9/95 - 1/10/95⁵³, although, strictly speaking, it was before the part A) squad selection tournaments took place. In any event, only Radulovic attended out of the five non-citizens that went to Japan. This was also the outcome for the camp held 17-19 November 1995, during which Radulovic was fitness tested. The results for Radulovic indicated that, particularly in speed and agility, he is below average in comparison with the other back players,⁵⁴ which is not surprising considering his age.⁵⁵

The next national camp during this period was held 26-28 January 1996, and all but Sestic are named as attending on 28 January.⁵⁶ The national coach, Maksimovic does not refer to any club matches when reporting on selection for the Japan Cup, and was at that time not living in either Melbourne or Sydney, which is where the five would have been playing club matches.⁵⁷ For team selection then, one of the five players was seen three times, three players were seen once each and one player was still yet to be seen.

Maksimovic refers to the next camp outside of the October-February period as the "preparation camp", because presumably, being only two weeks before the departure date, the touring team had already been selected. Only Pavlovic and Slavujevic are named as attending the "Preparation Camp, 22-24 March 1996",⁵⁸ in Australian Institute of Sport (AIS) documentation, however, Maksimovic comments in relation to this camp as follows:

The recent arrival of three new players from Yugoslavia (the Sestic brothers and Rajan Pavlovic) who have all played in the national league of Yugoslavia (D Sestic and R Pavlovic were also members of the National Youth Team of Yugoslavia) and their inclusion in the squad meant that the team required some "settling in" time.⁵⁹

Apart from breaching article 7c) of the IHF Eligibility Code, in that these players at least have not "been eligible to play in the country in question for no less than the previous twelve months",⁶⁰ they have not conformed with the AHF's own selection policy. The second AHF policy states that squads will be reviewed quarterly, but it appears that the AHF Executive Minutes do not contain a report of any review that may have taken place in January to incorporate Pavlovic in the squad. It is difficult to see how Sestic could have been legitimately admitted when apparently he was only seen in March, although the first documentation for the camp lists is in the "Pre-departure Japan Tour Camp", from 4-7 April 1996.⁶¹ A report also does not appear to have been tabled by the Official Selectors⁶² to the AHF Executive of the team selection, apart from Maksimovic's report, and the AHF Minutes contain no discussion of how, why or on what basis the three men mentioned came to be in Australia, and after their "recent" arrival were able to attend a 'preparation camp' in Melbourne, without having played so much as a game in local or state league.

⁵³ *Coache's [sic] Report Camp 5, Lidcombe, 29/9/95,, Australian Men's Handball Team*

⁵⁴ *Dr D Smith, Results of Sports Science Testing, AHF National Team Men and Women, 17/11/96*

⁵⁵ *DOB 22/10/62 - Dr D Smith, Results of Sports Science Testing, AHF National Team Men and Women, 17/11/96*

⁵⁶ *Office Ledger Copy, Statement to 29/2/96, Handball NSP, AIS, p1-3*

⁵⁷ *N Maksimovic, Report: Japan Cup 1996, Kumamoto, to AHF Executive, 13/5/96*

⁵⁸ *National Sports Program (NSP), AIS, TN 1451, p1*

⁵⁹ *N Maksimovic, Report: Japan Cup 1996, Kumamoto, to AHF Executive, 13/5/96*

⁶⁰ *Bylaws and Regulations, International Handball Federation, Werne, 1994, I, II, Article 7c)*

⁶¹ *From AHF to National Sports Program (NSP), AIS, p1*

⁶² *By-Law 32.5, Constitution of the Australian Handball Federation Incorporated, Version 4.0, 7 December 1994*

In addition, all Sydney-based squad members were required to travel overnight by train to attend the camp in Melbourne. Several Sydney-based squad members however, without cancelling the train tickets, were given return flights to enable them to attend their club match.⁶³ Dragan Talic, Rajan Pavlovic and Milan Slavujevic therefore did not participate in the final day of the 'preparation' camp, and, although it was there that Pavlovic played his first club match in Australia, no 'Official Selectors' were present at the match.

Once in Japan, Zoran Rikalo appears as the seventeenth named player on the Team Registration form⁶⁴, and therefore was ineligible to play in the Japan Cup, which allowed teams of only sixteen. The *Coache's[sic] Report 8-18 April 1996*, shows that although he participated in most trainings, Rikalo only played in the post-Cup "friendly" matches.⁶⁵ An minimal ability to speak English, and a reluctance to be involved with the team, appears to have made it difficult for him to participate in any way other than a tourist. The hand-written entries at the bottom of the *Coache's[sic] Report* indicate that younger players in the national squad, with Australian citizenship, were overlooked so that the names of "Zoran Rikalo, Dragan Sestic and Rajan Pavlovic" could be added,⁶⁶ defying all international and domestic eligibility criteria. The selection criteria, or the combination of the two, has proved to be superficial and inadequate, and, as illustrated above, completely ineffective in providing any kind of certainty, fairness or equity in the selection procedure. The AHF By-laws also do not provide for any appeal mechanism by which players can have their grievances independently heard, or at all.

As to the issue of funding, following many years of minimal funding by the ASC⁶⁷, in a Cooperative Arrangement between the AHF and the ASC,⁶⁸ the ASC agreed to fund the AHF in the areas of "management, coaching, competition, daily training environment and Direct Athlete Support." In the introduction of this document, the ASC states that one of its prime functions is to "develop sport in Australia as an efficient and well run industry of benefit to the culture, health and well being of all Australians."⁶⁹ "Australians" are not specifically defined here, but it can be assumed that the term is being used in the sense contained in the *ASC Act*.

In the example of the Japan Cup above, the question is whether the five players are entitled to participate in any capacity with the national squad, and thereby utilise any of the ASC funding provided for "Australians". Until self-funding, the AHF are required to comply with the *ASC Act* in promoting the sport in Australia. The only argument envisaged about the five players examined, is whether Radulovic, (Slavujevic and Rikalo at outside chances), can be considered "ordinarily resident in Australia" and therefore eligible to benefit from the funding. The only way players directly receive ASC funds is through the Olympic Athlete Program (OAP). This program, replacing the Australian Athlete Scholarship Scheme (AASS), is designed to reimburse athletes individually⁷⁰.

⁶³New South Wales Handball Association Scoresheet: Match - Bonnyrigg White Eagles Handball Club Juniors v Bonnyrigg White Eagles Handball Club Seniors, 24/3/96

⁶⁴AHF, *Team Registration Form*, 25/3/96 (d:\ahf\2-team\1squad-m\1996)

⁶⁵*Coache's [sic] Report 8-18 April 1996: Japan Cup '96, Kumamoto*, Australian Men's Handball Team

⁶⁶*Coache's [sic] Report 8-18 April 1996: Japan Cup '96, Kumamoto*, Australian Men's Handball Team

⁶⁷*Cooperative Arrangement*, undated for the period 1/7/93 to 30/6/96, allocated \$7,000 per year not including international funding

⁶⁸For the period 1/7/96 - 30/6/96 - dated 26/2/96

⁶⁹For the period 1/7/96 - 30/6/96 - dated 26/2/96, p1, pt 2

⁷⁰Letter ASC (Ferguson) to AHF (Dimitric), 12/4/95

The ASC is given names of national athletes eligible for grant money. These Olympic Athletes (OAPs) are then entitled to receive Direct Athlete Assistance (DAS). These payments are usually administered by the ASC, however, due to the administrative burden of carrying out this task, a sport may be permitted to administer these funds themselves. This obviously requires the sport to administer the funds accurately, honestly and fairly. DAS payments are designed to reimburse players for medical treatment, specialist clothing or equipment, and unpaid travel or wages. Athletes wishing to be part of OAP, are required to declare that they are "an Australian citizen, or have permanent residency status, and eligible to represent Australia under the international rules of [their] sport."⁷¹

Out of the five players mentioned in relation to the Japan Cup, only Radulovic and Slavujevic's names are mentioned as receiving "proposed payments",⁷² but are then later stated to have not been paid because of "citizenship".⁷³ Dragan and Sasha Sestic are listed with the AHF National Squad 1995-96, and were "added 3/96" but have not been accredited with receiving any DAS payments.⁷⁴ Rikalo has not been listed at all. None of the five players without citizenship appear to have directly received DAS payments.

It is possible for a particular team or sport to decide, with the approval of all players, to pool their DAS payments for a team goal; such as overseas travel to a particular competition. In some cases this may be the only way that those athletes can be afforded that experience, as the budget for the sport would not otherwise allow it. Due to the high cost of the trip to Japan, this pooling process was proposed. The ASC approved this suggestion, on the condition that all the athletes "endorsed" the proposal.⁷⁵ The AHF stated that they had "discussed the issue with members of the National Squad based in Brisbane, Sydney and Melbourne and believes there is a consensus of support for the use of the DAS funding to enable both tours to proceed."⁷⁶ It was not indicated whether the "consensus" included the view of those not receiving DAS payments.

The extent of the agreement aside, this funding was used towards the general expenditure of the Japan trip, and therefore benefited all touring players, including the five without citizenship. In a letter from the AHF to the ASC, \$30,000.00 was allocated for the airfares, departure taxes and gifts.⁷⁷ To date, an actual expenditure break-down has not been tabled for the benefit of the AHF Executive, or the ASC. Athletes that are challenging the definition of "Australians" have therefore received the benefit of both the general grant, as well as the DAS payments that were intended for Australian citizens or permanent residents including those not selected to tour Japan.

The Cooperative Arrangement also specifically requires the AHF to provide information and policies on many topics, including the following;

*The AHF agrees to identify in its Development Plan measures that are being taken to combat any racist attitudes that may be exhibited from time to time within handball.*⁷⁸

⁷¹Direct Athlete Support Scheme, ASC, Attachment C1

⁷²OAP Squad Members and Direct Athlete Support Details 1995-6, Form DAS/A, ASC

⁷³Payment period Aug & Nov 1995, Nov 1995 Payment Schedule - Men, OAP

⁷⁴the AHF National Squad 1995-96, p1

⁷⁵Letter ASC (Peereboom) to AHF (Dimitric), 1/4/96

⁷⁶Letter AHF (Allatson) to ASC (Strang), 16/3/96

⁷⁷Letter AHF (Allatson) to ASC (Strang), 16/3/96, although it has been suggested that the Japanese Handball Federation did help to finance the trip, the extent has not yet been formally documented.

⁷⁸Cooperative Arrangement, for the period 1/7/96 - 30/6/96 - dated 26/2/96, p3, pt 11

Many of the problems with satisfying nationality criteria stems from the arguments of policy relating to the importation of athletes. As yet however, a definitive guide has not been set down by Australian authorities for individual sports to follow. Traditionally, Australian sporting champions have clamoured their way up to the winner's podium by working themselves through the junior ranks to senior and then elite competition. This development path continues to be the accepted one today. However, time is running out for sports that do not already have a well established pool of juniors, and experienced older players, from which to draw when team selection becomes crucial in 1999. For these sports, essentially they have two options; to select talented youthful players from other, particularly non-Olympic, sports, or to import.

The former suggestion gives talent spotters, with a wide vision, access to a large number of athletes with the requisite skills already developed, that need only to be honed to the particular sport. Skills required in that sport can then be developed in the time remaining with an appropriate mix of quality coaching, access to high level international competition, and where appropriate, concentrated building up of a team dynamic. This "fine tuning" process, already begun in many sports, can be continued over the next four years to produce a competitive side. The AHF claims to support the policy of "attract[ing] high performance athletes from other sports . . . to bolster its playing numbers . . . [and to] provide . . . greater flexibility",⁷⁹ but does not appear to have prepared an adequate Development Plan nor produced measurable results.

Many sports however, are not prepared to make the commitment to Australian athletes to give them this training, and would rather buy/collect a ready-made team to 'guarantee' results. The stakes are high in the funding game, and some administrators are not prepared to risk mediocrity on the one opportunity the Sydney Olympics gives them to present themselves and their sport to Australia. The official policy of the AHF on importation is stated to be as follows;

*The Federation reiterates its opposition to the active recruitment of non-Australian players. As a policy, the AHF takes no active part in and makes no contribution to the relocation of such players. However, the AHF has determined to welcome any player who arrives in Australia of his or her own volition and wishes to contribute to the sport.*⁸⁰

Importing athletes to "boost" weak Australian teams may serve to enhance the potential for Olympic gold, but at what price? From a global view, experienced overseas athletes who may miss selection in their own country, due to an abundance of talent, or an impoverished economy, can be given a second chance at competing at an elite level. These people are able to provide local athletes with strengthened competition and knowledge that can only assist. There are many current athletes, former players, coaches and administrators, both in Australia and overseas, with international experience, that would be prepared to help. Few people would refuse the assistance of coaches and experienced overseas players when preparing Australian sides, but the controversy arises when overseas nationals are invited to represent Australia in their chosen sport.

The position against importation highlights the loss to sport at the club level, because the view is that these imported athletes are taking the place of local athletes who have worked their way up the junior

⁷⁹ Report to the Olympic Athlete Program Management Committee, "The Preparation of Australia's National Handball Teams: July 1996-September 2000", Australian Handball Federation to the Australian Sports Commission, p4

⁸⁰ Report to the Olympic Athlete Program Management Committee, "The Preparation of Australia's National Handball Teams: July 1996-September 2000", Australian Handball Federation to the Australian Sports Commission, p4

ranks and during their lives have involved themselves, and their families, with the sport at a grassroots level to ensure its growth and survival. This view was reiterated by the men's national handball coach, Maksimovic, when he identified one of the main reasons why handball was not progressing in Australia;

I feel that the national squad members should be endeavouring to transfer some of the knowledge that they have gained in camps and in their international matches in order to improve the total team performance at club level.⁸¹

It is difficult for players to be able to achieve this when they may not speak the language, and do not have reason to be motivated to improve the sport in a country to which they do not feel that they belong.

Local players have sacrificed other aspects of their lives to chase a dream, and that chance may be denied to them by imported players. As observed by Tony Nolan, in his article, "Limits on Foreign Nationals - Unlawful discrimination or Protecting the Farm?";

The reality is that if there are too many "imported players" in a team, then those players will monopolise the game leaving the Australians to watch from the sidelines as nothing more than interested spectators in uniform.⁸²

Whether this is what was alluded to when the AHF President, Dimitric, described Dragan Talic, as "one of many players of Yugoslav origin who expect to become dominant players in Australia",⁸³ is not clear. What needs to be determined by lawyers and administrators is whether the existing regulations provide enough protection to the local athletes, and appropriate flexibility to the sport's future needs.

In the case of handball, the IHF's articles are quite workable as a minimum standard, but should be extended. In many sports, athletes aiming to represent Australia must have resided in Australia for two years, and be members of a governing state body, before they will be eligible for selection. This requirement could also state that the athlete should have actually played in local competition. This allows the player to do exactly what Maksimovic suggested; to give something back to the sport. Without this stipulation in place, it is open for team selectors or administrators to have overseas nationals arriving in the country unseen, and making their debut at a national training camp funded by the ASC, and then be paid to attend overseas competition. Without specific rules, there is nothing requiring such a player to arrive in Australia at all. They can simply wait for the team to tour, and then join them at the international competition.

Australians seem to readily give their support to athletes even when they have only relatively recently taken up residency in Australia, particularly when they are good, provided the athlete is seen to have embraced or committed to this country, and is not using the opportunity for purely selfish reasons.⁸⁴

⁸¹ N Maksimovic, *Report: Japan Cup 1996*, Kumamoto, to AHF Executive, 13/5/96

⁸² T Nolan, *Limits on Foreign Nationals - Unlawful discrimination or Protecting the Farm?*, ANZSLA 3rd Annual Conference Papers, 2-4 December, 1993, AIS Canberra p3

⁸³ S Peer - (as translated) 'Australia Towards 2000', *Attivita Internazionale, Il Giornale dell'Handball*, n 68, December 1994, p18

⁸⁴ Paradoxically, although loved by tennis fans when playing in Australia, Hana Mandlikova, was resented for taking out Australian citizenship following her marriage, but public opinion may also have been effected by the fact that she did not become the saviour of Australian women's tennis as it was hoped. (For a discussion of how the public treated

The concern about readily admitting foreign nationals is that these athletes may use funds that might have otherwise gone to a local competitor, and then leave Australia after the international competition is over.⁸⁵

Similarly, the stories of overnight marriages and fast-tracked citizenship applications for some members of the Australian weightlifting team over the years, have not inspired local athletes to join a sport that is seen to be predominated by competitors born overseas. To their credit however, the national federation strictly complies with the stipulation set down by the International Weightlifting Federation (IWF) for international competition; that all athletes become Australian citizens and sign a declaration that they are eligible for that competition. AWF's constitution binds them to the IWF requirements, and does not make any express reference to citizenship in their domestic rules.

To ensure that fairness and equity is maintained in the sporting arena, it is important that sports lawyers assist "sport [to] own sport"⁸⁶ and draft clear, comprehensive regulations on importation and eligibility to ensure that the National Sporting Organisation (NSO) complies with its international obligations and conforms to internal policies and funding criterias. Lawyers do have a role in shaping the face of the champions in 2000. Now is the crucial time to finalise policies on importation and translate those policies into workable instruments for the NSO and the athletes. The provision of information is the key to running a successful organisation; administrators and players need to know that their efforts are supported by their representative body. The public also demands that "their" funds are properly acknowledged and acquitted. There is nothing inherently flawed with the game of handball in Australia that has allowed these obvious deviations. The experience of the AHF however does stand as a reminder to all lawyers and administrators involved with sport; that their specialised skills are necessary to keep an organisation on track, and to ensure that Australian sport develops to its full potential.

Mandlikova during the 1980 Australian Open see J Johnson - *Grand Slam Australia: The Story of the Australian Open Tennis Championships*, Courtney Books, Newport, 1985, p300-303)

⁸⁵ One of many examples is contained in A Gavrilovic, NSW Handball Association, *1995 AHF National Championships Report, 11-12 Nov 1995*, undated, is "The women's perpetual Best Player Trophy has apparently been taken overseas by last year's winner and is lost to us."

⁸⁶ *A Guide to the ASC's Grants Programs and Services to NSOs 1995/96*, ASC, Appendix A3, Guidelines, p31