



Arbitration CAS 98/209 Spanish Basketball Federation / FIBA, award of 6 January 1999

Panel: Mr. Stephen Townley (England), President; Mr. Francesco Geli Simon (Spain); Mr. Walter Seitz (Germany)

Basketball

Dual nationality of a basketball player

“Legal” citizenship and “basketball” citizenship

Interpretation of FIBA Regulations governing the National Status of Players

- 1. The FIBA Regulations governing the National Status of Players provide that a player may have one or more legal nationalities, according to the law of the countries concerned, but that he may, at any time, have only one nationality for basketball purposes (basketball nationality). This concept is solely for sports purposes. No player may have a basketball nationality without having the same legal nationality.**
- 2. Only players holding the legal and basketball nationalities of the country they represent and having fulfilled the terms of eligibility according to the appropriate other internal Regulations may play on a National Team. However, a player may continue to represent a country if he has previously played on the National Team of the country in a main competition of FIBA in any age category and still has the legal nationality of that country, even if he no longer has the basketball nationality of that country.**

This present Appeal is from a decision of the International Basketball Federation (FIBA) dated 19 May 1998. This decision gave permission to Natalia Zassoulskaia to play for the Russian National Team in the FIBA World Championships. This event took place in or about May and June 1998. The Appellant appealed this decision through internal FIBA processes. The Central Board of FIBA sat on 24 July 1998 and upheld the 19 May decision of the FIBA Eligibility Department.

Subsequent to the decision of 24 July and after the Appellant had referred the FIBA decision to CAS, FIBA has issued a new Certificate of citizenship to Natalia Zassoulskaia. This Certificate of Citizenship confirms that at 14/09/98 Natalia Zassoulskaia is a citizen of Spain and has legally obtained the basketball nationality of Russia. A protestation was filed regarding this further decision of FIBA by Federation Espanola de Baloncesto (F.E.B) on 5 October 1998. In addition to the previous claims of the Appellant, the Appellant has also asked the Panel to take into account the FIBA decision of 5 October 1998 in the light of the Appellants previous claims.

The decisions of FIBA from 19 May this year onwards were made against a background in which FIBA had taken previous decisions regarding Natalia Zassoulskaia.

LAW

1. The Panel has been referred to documentation issued by FIBA regarding this Athlete which suggests that she lost her previous Russian legal Nationality on or before 21/03/94. In particular correspondence took place at the time of the Summer Olympic Games in Atlanta in 1996. A decision was also made by FIBA as recently as the 17 April 1998. Both the FIBA decision in 1996 and April 1998 confirmed that Natalia Zassoulskaia was not eligible to compete as part of the Russian National Team. These FIBA decisions on an interpretation of the FIBA rules referred to later could have meant that she had either lost or indeed never acquired Russian legal citizenship.
2. There were automatic transfer provisions (Art 13 Section 1 of the Russian Law of Nationality of the Russian Federation [RBFSR] of 28 November 1991) the effect of which were to confer Russian citizenship upon former Lithuanian citizens who qualified. Natalia Zassoulskaia was Lithuanian by birth. The transfer provisions followed the disappearance of a number of Soviet States that had existed prior to reforms. The Appellant has sought to show that Natalia Zassoulskaia failed to “qualify” for Russian citizenship due to evidence of residency in Spain at the time of the operative provisions.
3. The process of naturalisation under Spanish Law (in common with certain other countries) requires the renunciation of the previous legal nationality of the applicant. Natalia Zassoulskaia signed a form of renunciation in relation to her former Lithuanian nationality after she has been issued with a Spanish passport in or about February 1994. On 21/03/94 following the issue of her Spanish passport she was granted by FIBA a Certificate of Eligibility giving her Spanish Basketball nationality and limited eligibility with effect from the 28/02/97. The Appellant has sought to show that she lost any Russian Citizenship as part of the process of naturalisation.
4. The Appellant has also sought to show under Russian Law that it was impossible for Natalia Zassoulskaia to simultaneously hold dual nationality. The Panel were referred to part 3.1 of the Law of Nationality of the Russian Federation of the 6 February 1992. Whilst this text (which deals with Dual Nationality) is open to different interpretations, taken within the context of other parts of the legislation, the Panel do not believe that it precludes the holding of a dual Russian/Spanish nationality as a matter of Russian Law. It is worth noting also that the process for relinquishing Russian Citizenship according to Articles 22 to 24 and 38, 39 and 41 of the Russian Law of Nationality of the Russian Federation, is a formal process requiring a positive act of the person seeking to relinquish and a positive act on the part of the state in affirming in writing that it has been lost. These circumstances need distinguishing from a previous CAS Case OG 98/004-005. In that case there were clear and express provisions

under the Swedish Nationality Act which stated that Swedish Nationality was automatically surrendered if a Swedish National became a naturalised citizen of another state.

5. The Panel believes the issues now to be determined (there being no substantive new evidence adduced) are whether FIBA was correct in applying the Law and Facts to resolve the following matters:
 - (a) Approving the decision in May 1998 which permitted Natalia Zassoulskaia to play for the Russian National Team in May/June 1998.
 - (b) Subsequently conferring upon Natalia Zassoulskaia a Russian Basketball Nationality.
6. Sports governing bodies are usually established by private contractual arrangements with their members. These contractual arrangements are found both in the Rules of Membership and in the Rules and Regulations promulgated by the International Federations. The ordinary members of FIBA include the F.E.B and the Russian Basketball Federation (R.B.F). The Rules of Membership and other Rules of FIBA, which are accepted by F.E.B and R.B.F, confer upon FIBA powers (with authority to delegate in certain circumstances) to resolve certain matters connected with the governance of the sport of basketball.

Neither the FIBA Eligibility Department nor the Central Board are courts of law. Subject to basic safeguards these organs are empowered through the rules to deal with certain matters arising during the course of administration of the sport. Any judicial body subsequently examining such matters should be reluctant to impose on the sports body a materially different standard of proof or evidence than that which the parties accepted through their membership of the sports body.

7. The Appellant has not sought to challenge the authority of FIBA to decide the issues in hand nor has it sought to challenge the fairness or legality of the rules applied, nor has it sought to criticise the procedures or conduct of the Eligibility Department or Appeal Procedures or composition of the Central Board. The Appellant's claims goes to whether in applying the Law and facts to the eligibility of Natalia Zassoulskaia based upon FIBA rules the correct decision was reached.
8. The gist of the FIBA rules that require consideration and which have been referred to by the Appellant are as follows:
 - 1.6. *A player may have one or more legal nationality, according to the laws of the countries concerned.*
 - 1.7. *A player may, at any time, have only one nationality for basketball purposes. This is referred to in this text as basketball nationality. The concept is solely for sports purposes. No player may have a basketball nationality without having the same legal nationality.*
 - 2.1. *FIBA may require that proof be provided to verify the legal nationality (or nationalities) of any player through the furnishing of such documents as FIBA may deem to be appropriate.*
 - 2.2. *Proof of a legal nationality is not of itself sufficient to guarantee that a player has the same basketball nationality.*

- 6.2. *The naturalisation may or may not involve the automatic surrender of any previous legal nationality of that person:*
- (a) *If a player, in naturalising, loses his former legal nationality, he must apply to FIBA in accordance with the provisions of Section 6 of these regulations before holding another basketball nationality.*
- 9.1. *Only players holding the legal and basketball nationalities of the country they represent and having fulfilled the terms of eligibility according to the appropriate other internal Regulations may play on a National Team. However, a player may continue to represent a country if he has previously played on the National Team of the country in a main competition of FIBA in any age category and still has the legal nationality of that country, even if he no longer has the basketball nationality of that country.*
9. In applying these rules to the decisions of FIBA, it appears common ground that from February 1994 to date, Natalia Zassoulskaia held the legal nationality of Spain and as at the 24/02/97 she held Spanish Basketball Nationality with limited Eligibility. This Spanish Basketball Nationality continued until the 5 October 1998 when, and this is contested, Natalia Zassoulskaia acquired Russian Basketball Nationality.
- For the reasons set out earlier the Appellant contests that Natalia Zassoulskaia held Russian Legal Nationality in or about May and June 1998 and subsequently in October 1998.
10. Eligibility is a question that, unless otherwise precluded by rules or operation of law must be capable of review as circumstances change. FIBA has an ability to require proof of Legal Nationality [2.1] Nationality both under concepts of International Law and FIBA's own rules is a matter for the state or country conferring it. In or about April of this year FIBA sought to determine whether as a matter of Russian law any document other than a passport was evidence under Russian Law of Russian Legal Nationality. They were advised not.
11. As at May 1998, the start of the World Championships, Natalia Zassoulskaia held a CCCP/USSR passport issued on 21.05.97 and valid until 21.05.2002 number 43 No: 7318299. In addition there is evidence that she continued to hold an internal passport No: 504086 issued on the 26/08/85 and reissued on July 18 1994 and subsequently on 17 July 1988. The 1994 and 1998 internal passport documents state the holder has Russian nationality, and in the case of the 1998 document, states that this is according to Article 13, section 1 of the Russian Law of Nationality of the Russian Federation (RBFSR 28 November 1991).
12. FIBA were entitled based upon these documents and notwithstanding its previous decisions and written statements to find that Natalia Zassoulskaia held Russian Legal Nationality at May 1998. Uncontested evidence was available to FIBA that Natalia Zassoulskaia had previously competed in a main official competition for USSR/Russia. Accordingly FIBA was entitled to find her eligible to compete as part of the Russian National Team in the World Championships in 1998.

Similarly FIBA were entitled on the basis of the evidence before it to issue a new Certificate of Basketball Nationality on the 5 October 1998 for Natalia Zassoulskaia as Russian.

The Court of Arbitration for Sport:

1. Affirms its jurisdiction to settle the dispute.

2. Rejects the appeal with all its claims.

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