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Special Issues: In memory to Unforgettable Colleague + **Lucio Colantuoni, who was a** Member of IASL from 1995 and IASI's Board Member from 2004

Papers from 21th IASL Congress, Marrakech 1-2 November, Morocco 2015
SPORTS LAW (22 Years I.A.S.L). Lex Sportiva - Lex Olympica and Sports Jurisdiction
Experience - Development & Perspective

Special Research Papers

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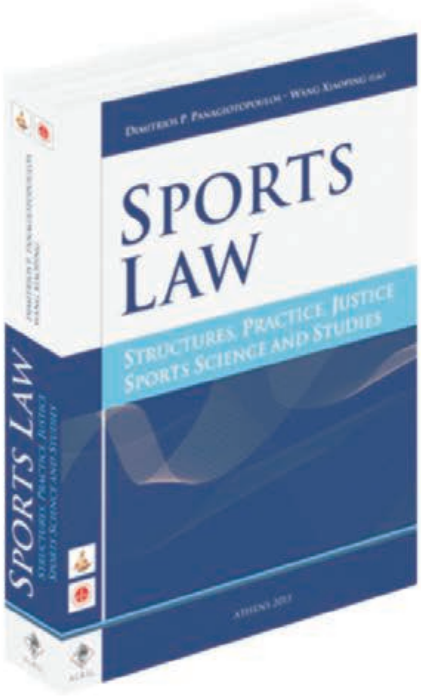
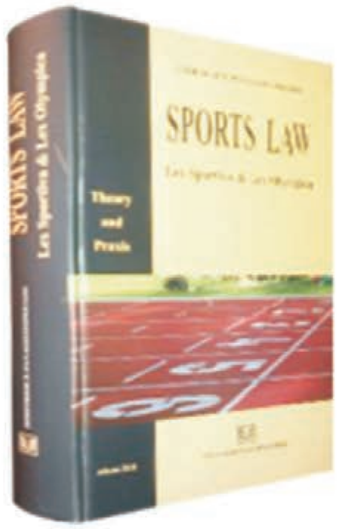


SPORTS LAW
Structures, Practice, Justice, Sports Science and Studies

Dimitrios P. Panagiotopoulos
Wang Xiaoping (Eds)

13, Veranzerou str.
GR-10677, Athens, Greece
tel.: +(30) 210 3839440
fax: +(30) 210 3839540
e-mails: ekead@iasl.org, info@iasl.org



SPORTS LAW
Lex Sportiva & Lex Olympica
Dimitrios P. Panagiotopoulos

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13, Veranzerou str.
GR-10677, Athens, Greece
tel.: +(30) 210 3839440
fax: +(30) 210 3839540
e-mails: ekead@iasl.org, info@iasl.org

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Contributors

Aristov Evgenii V., *PhD (Law) Perm State University, Russia.* Atienza-Macías Elena, *University of Deusto, Researcher at the Inter-University Chair in Law and the Human Genome, University of Deusto and University of the Basque Country UPV/EHU, Bilbao, Spain.* Garoub Mejud, *Lawyer, Saudi Arabia.* Gandert Daniel, *Clinical Assistant Professor, Northwestern University School of Law, USA.* Giandomenico Anna Di, *Assistant Professor (PhD), University of Teramo, Italy.* Gkonta Aikaterine, *Lawyer, Greece*. Karagianni Maria, *City University London Master Programme: Culture, Policy and Management, UK,* Karabekou Amalia, *Panteion University, Department of Economic & Regional Development.* López-Frías Francisco J., *Researcher. University of Valencia,Valencia, Spain.* Peskov Anatoly, *Head of Security Department, Russian International Olympic University,Advocate, Ph.D. in Law.* Mokarrami Mahsa, *M.A student of private law, Electronic Branch, Islamic Azad University, Tehran, Iran*. Nemes András, *Prof., Lex Sportiva Hungarian Society of Sport slaw, Hungaria*. Panagiotopoulos Dimitrios P., *Professor at the University of Athens Attorney-at-Law, AdvocatePresident of International Association of Sports Law, Greece.* Patronis Aggelos, *Lawyer Cnditate Dr., Law Faculty, University of Athens.* Patsantaras Nikolaos, *Assoc. Professor of Sport Sociology, University of Athens, School of Physical Education and Sport Science, Greece.* Pérez-Triviño José Luis, *Professor of Philosophy of Law, Pompeu Fabra University, Barcelona, Spain.* Petruchak Larisa A., *Doctor of Law, Professor*, *Prorektor for Academic and Educational work of the Kutafin Moscow State Law University* Moscow, Russia. Ponkin Igor V., *Doctor of science (Law), Professor of the chair of sports law of the Kutafin Moscow State Law University, State Professor, Russia*. Ponkina Alena I., *Ph.D. (Law), Lecturer of the chair of sports law of the Kutafin Moscow State Law University, Russia.* Sadeghloo Mehdi Yousefi, *Assistant professor of Payamnoor University of Karaj, Alborz, Iran.* Shevchenko Olga A., *Doctor of science (Law), Director of the International Cooperation Office of the Kutafin Moscow State Law University, Russia*. Serra Maria Francesca, *Italy.* Shokri Nader *(Dr.), President of Sports Law committee in NOC. of IR. IRAN, Bord of Director in International Association of Sports Law(IASL), Iran.* Yeun Kee-Young,

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www.iasl.org

E-mails: info@iasl.org, ekead@iasl.org
panagiod@otenet.gr

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13 Veranzerou Str., GR – 10677 Athens, Greece / Tel.: +30 210 3839440 / Fax: +30 210 3839450
E-mail: info@iasl.org, ekead@iasl.org, panagiod@otenet.gr
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TABLE OF CONTENTS

b. Research Papers

In memory to Unforgettable Colleague + **Lucio Colantuoni, who was a** Member of IASL from 1994 and IASl's Board Member from 2004 until 7-1-2016

It is with great sadness that the IASL has learned of the tragic death of Prof. Avv. Lucio Colantuoni on 7 January 2016.

Lucio Colantuoni was a Professor at the Law Faculty of the Milan University, Director of the Sports Law Research Center (Italy), Attorney at Law and Arbitrator at the Court of Arbitration for Sport. He was a member of the IASLsinse 1994 and member of Board of Directors since 2004.

Lucio Colantuoni was an outstanding sports lawyer and a friend to all of us who knew him.

Our thoughts are with his family. He will be greatly missed.

For the International Sports Law Association.

The President of IASL
Dimitrios P. Panagiotopoulos
Professor at the University of Athens

In Memory of unforgettable + **Lucio**

By: **Olga Shevchenko**
Secretary General of IASL

Words can't be helpful in expression of how sorrow were all we to get to know of this tragically loss occurred of our undoubtedly professional colleague, loyal friend, dear son, husband and father - Lucio this year.

Lucio will always be kept in our hearts as an example to be followed. He commenced a huge work on Sports Law development in the sphere of Jurisprudence in Italy and extended it among all Sports lawyers around the World. He shared his knowledge with all who asked, he did his best to those, who needed it from him.

Most of us have known him as an arbitrator and mediator of the Court of Arbitration for Sport (Lausanne) and his achievements in the field couldn't be underestimated.

He was in the very beginning and in the very intention of launching the brand-new International Sports Law LLM in cooperation with the most experienced Universities in Europe including Kutafin University.

He is an author of numerous academic researches, textbooks, articles, including Sports Law textbook for Master students made for Russian Universities.

We are grateful to all what he's done for us and our followers and our goal is to continue his work and to share our memory of him and of his work.

July, 2016

Speech in the opening ceremony of the 21th IASL Congress (**Marrakech** 1November, Morocco 2015)

Mejud Garoub
His Excellency/Minister of Sports & Youth,
Mr. Lahsan Scori, Saudi Arabia

Their Highnesses, Sheikhs and Excellencies,
His Excellency/Chairman of Sports Law International Society
Prof . Dimitrios Panagiotopoulos,
Ladies and Genlemen, Members of the Board of Directors
of the Sports Law International Association,
Speakers and Participants from All Over the World,
Our Colleagues and Friends from the Arab World, hosting for
The first time in Marrakesh, the City of Culture, History and
Civilization, the Society's Annual Conference,

We would like to emphasize our support to Morocco land unity, the Desert Case and all Morocco cases, and also our support to the Green Procession, being precious to all Moroccans and Arabs, as it denotes Morocco's persistence on its union and progress, which has been completed by His Majesty, King Mohammed VI, may God safeguard him and our sister country, Morocco, united, independent and supporting both the Arab and Islamic Worlds, through his call for peace and love around the world.

In the beginning of my speech, I would like to thank the Moroccan Minister and Ministry of Sports & Youth for their warm reception and full support in hosting and organizing this Conference, and also the Moroccan sports organizations, and in particular the Olympic Committee and the Football Federation. This was since I met Your Excellency for the first time early in this year.

Also, I would like to express my thanks to His Royal Highness Prince Talal Bin Badr, Chairman of the Arab National Olympic Committees Federation and Chairman of the Arab Sports Council, as well as His Highness Prince Turki Bin Khaled, Chairman of the Arab Football Federation, for their participation in organizing and preparing for this Conference.

In addition, I would like to extend my thanks to Her Highness Sheikha/ Naeema Al-Ahmad al-Sobah, Chairman of the Gulf Women Sports Organizational Committee, Mrs. Ahlam Al-Mane', Head of Qatar's delegation to Gulf Women Sports Championship, Mrs. Nada Al-Naqabi, Directress of Women Sports Administration in Sharjah, for their attendance with large delegations to participate in this Conference, and to all attendants including participants and speakers from the various countries of the world.

I would like also to denote the students of the Law Sports Master Degree at the American University, United Arab Emirates, who represent the Arab World first law generation, specialized in sports law, and I hereby greet them and sister, United Arab Emirates, its leadership, government and people, and seize the opportunity to congratulate them for the Science Day.

Thanks should also be expressed to my colleagues in the Media and Executive Committees of Morocco, in particular Mrs. Nozha Bedwan, Mr. Mostafa Azzerwal, Chairman of the Moroccan Sporting Media Federation, Mr. Badr Al-Din Al-Idreessi, the media expert, Hanan Al-Shaffa', Dr. Fatema Bou Ali and Mrs. Marwa Malik, the Executive Director of this Conference.

With regard to Mrs. Nozha Bedwan, I would like to note her contribution to *"Women and Sports Issue"* since the First Preparatory Meeting for Organizing the Conference.

I would like to convey to you the greetings and appreciation of my colleague, friend and brother, His Excellency/Dr. Mohammed Al-Najjar, the Tunisian Ex-Minister of Youth and Sports, who was, to our regret, exposed some days ago to an accident due to which he had to take some rest.

I hereby also express my thanks to the Sponsors and Supporters, particularly Excellent Sports Company, the strategic partner for this Conference, and to all Arab Sports Federations which offered to host the upcoming events of this Conference.

Finally, I would like to thank the Society's Board of Directors which showed all support, encouragement and appreciation for transferring the sports law experiences to the Arab World and the Middle East and agreed to our request, at the Saudi Law Training Center, to organize the Annual Conference in the Middle East. The inception will be from Marrakesh, the city of history, culture , science and warm reception, hoping that the scientific program and workshops, through the best professional speakers in the world, will realize their objectives as well as those of the Sports Law International Society in order to spread the culture of the Sports Law, the importance and seriousness of which, for our Arab World, are increasing one day after another. Of course we do remember the suspension suffered by Kuwait, the case of the Asian Football Championship Final Match between Al-Hilal Club of Saudi Arabia and Al-Ahli Club of Emirates, the Egyptian sports and the Public Security, the dispute between Saudi Arabia and Palestine a stadium to host a match and other tens of cases and complaints under consideration by the Football International Federation Association (FIFA) and the Sports Arbitration Court. In many cases we lose due our non awareness of the relevant laws and lack of experts but not due to being not rightful.

As for the FIFA, we should confirm our trust in the Association which controls and manages the game in the world, and we are looking forward to a Chairman that will restore status, prestige and ability of FIFA. In our Society, we

will communicate with all the candidates to ensure their projects and ambition to fight corruption and to maintain sports judicial authorities' independence and neutrality at the national, continental, international and global leveIn the conclusion, we would like to announce that the Society and the Saudi Law Training Center will grant an annual prize to the Arab personality that best serves the sports law and judiciary in the Middle East in a gesture of thanks and appreciation and to urge and encourage those serving the sports law to develop and upgrade the same under the auspice of His Excellency/the Minister.

I would like to repeat my thanks and appreciation to all, and my apology for this long speech... Thanks for you all... Your Excellency and the Chairman are invited to honour the sponsors.

II Articles
From the 21th IASL Congress, Marrakech 1-2 November, Morocco 2015

PERSONAL AND ECONOMIC FREEDOMS AND FIFA REGULATIONS (LEX SPORTIVA)

Dimitrios P. Panagiotopoulos
Professor of Sports Law, University of Athens, Attorney-at-Law (Supreme Court)
President of International Association of Sports Law, Greece

Abstract: *In this paper, we face the implementation of FIFA regulations, as Lex Sportiva rules, examining the possible direct and indirect consequences in the personal and financial freedoms of the involved parts in sports action.*

First of all, in the content of FIFA regulations we note an "extension" to broader sectors –besides sports matters– such as labor relations, education and professional rights. Those provisions in the field of Lex Sportiva, as we have already mentioned in the past, exceed to sports reality by setting aspects that overlap the "pure" sports events (intra-sports settings) by emphasizing to personal and financial rights.

Those settings bind the involved parts in a "unique" way, by obliging them to solve their differences in an arbitrary –mostly controversial– way. Those compulsory principles, should be automatically adopted to national legal orders, imposing the exclusive jurisdiction of FIFA bodies (FIFA Disciplinary Committee's decision 17 Sept 2015).

FIFA's regulations for the above mentioned matters, in terms of Lex Sportiva, have been established in an autonomous way, having no legislative authorization by a supranational legal entity or any other public authority, as those principles haven't been modified into an international legal framework. As a result, the sense of fairness, the mutual interest of the involved parts and, in general, the proper safeguards of legal rights focused on sports activities can't be ensured (FIFPro, Sept 2015).

Consequently, to the extent that FIFA's regulations deal with financial or conventional relationships in football, we face a contemporary legal problem, as it has already been discussed to ILO (IASL Congress 2014) and has been judged before national and EU courts concerning the protection of personal and financial freedoms of football players, football managers and the other involved parts.

By this research is shown that there's an emergency for radical changes to the construction of international sports practices taking into account the principles of legality that may lead to the formation of a ***constitutional charter for sports****, including directing lines for FIFA regulations in the field of Lex Sportiva for the purpose of a "healthy" sports jurisdiction.*

Therefore, measures of delimitation to the preparatory stages about legislation should be dictated in the field of Lex Sportiva, by creating an international framework of legal

principles, as a legitimizing basis, a scope of legislative authorizations concerning the international sports institutions (see. FIFA). Those commitments in sports law area could provide the basis for the necessary legal rules not only for –strictly interpreted– sports and discipline matters but also for "peace enforcement" to the sports labour relations.

Keywords: Lex Sportiva, FIFA regulations, sports jurisdiction, professional rights, football players.

Introduction

In this paper, we investigate the problem of implementation of FIFA regulations, as Lex Sportiva rules. We do examine the direct, as well as the indirect, possible consequences in the personal and financial freedoms of the parts involved in sporting actions.

FIFA, imposes its regulations to the National Federations through adoption and mandatory acceptance or else their exclusion[1]. These regulations, also regulate some aspects that do not fall within their regulatory framework (working or economic relations, etc.)

Given the fact that FIFA puts pressure to the Greek Federation, threaten that will exclude it from all the events that are organized under FIFA's auspices, the Greek lawmaker, showed excessive yieldingness[2] despite the opposite regulations of the Sport Law[3] and sporting Legislation in general. Lately, after the corruption problems, the Greek lawmaker tried to limit this power/autonomy[4] and stipulated that the statutes and regulation of EPO (see HFF for Hellenic Football Federation) must be harmonized with the Greek Constitution and Legislation.

Therefore, *Lex Sportiva*, under the perspective of a pontential restriction of personal and economic freedoms both in National and International level, constitutes a scientific problem.

I. Coaches

According to the Greek Constitution, employment is a right of every citizen that is protected by the State, which shall ensure the creation of employment conditions for all of the civilians. This right established by Law of general terms and conditions of employment[5]. Within the Greek Sports Law, it is defined that the proffessional coaching practice, is only allowed to the licencee which is granted by the General Secretariat of Sport. The conditions, the rights and arrangements

[1]Article 9&10, FIFA 2015

[2]Ar. 29, par. 12, Gr. Law 3479/2006

[3]Gr. Law 2725/1999

[4]Gr. Law 4326/2015, Art. 15

[5]Greek Constitution Ar. 22

for excercising football coach profession, appointed by Sports Minister decision as "Footbal Coaches Regulation"[6].

In the Lex Sportiva framework, the conditions for excercising the profession of football coach are defined by the regulation for coaches of the Hellenic Football Federation (EPO). Such regulation includes several provisions that are contrary to the constitutionally established right to employment, as well as to the Ministerial Decision setting out the terms of excercising the profession of a coach. The regulation of EPO, obliges the Sports Science University graduate, in order for him to obtain recognition from EPO, to attend special seminars organized by EPO. The regulation mentioned above, provides equal rights of excercising the profession, to those who are holders of a diploma or a certificate from the EPO's coaching school and the recognized coaching schools of abroad (EPO regulation 2015), even without the distinction whether he is a national of EU member country or not.

The age limitations set by the regulation mentioned above, are in direct violation of the prohibition of discrimination of the EU Treaty[7].

This reasonably raises the question whether EPO as a body of private law, is entitled to place restrictions both in its members and in professional football in general, let alone third parties such as professional athletes and coaches when exceptions and limitations under the current status, can only be imposed by state laws. This is due to the fact that the Constitution enshrines the free development of one's personality, which includes its financial and professional freedom as well[8], such as the freedom to choose and exercise a profession. The restrictions therefore are constitutionally permissible when they are defined generally and objectively, justified on grounds of public or social interest, which, in each case, must be relevant to the purpose and nature of the profession.

Consequently, arrangements, such as the licensing of exercise the profession of coach and the required substantive and formal requirements for this licencing, even if self-imposed to football community by the lex Sportiva system, violate norms included in the constitution and state laws.

II. Football Players

In the Players' Status and Transfer Regulation of FIFA, there is an extension of regulations to broader sectors, besides sports matters, such as labor relations, educational and professional rights[9]. These regulations, in the field of Lex Sportiva, regulate many aspects of sporting activity, that sometimes go beyond

[6]See: Ministerial Decision 25533/31-5-2005, in Gov. newspaper 773/9-6-2005, issue B

[7]See par. 2 of Article 45 TFEU

[8]See Art. 5 Greek Constitution.

[9]FIFA Regulations, articles: 6, 17, 18.2, 3, 19 and 20

the pure sports event (intra-sports settings) concerning aspects of financial and personal freedom rights in football[10] .

Specifically, article 6: «Transfer periods with specific periods», time-limit the professional players freedom, with a tendency from FIFApro (the global association/union of professional football players) to reduce the limitation, according to which a professional football player may provide his professional services to another club. Articles 17, par. 3 and 64 of FIFA's disciplinary regulation, impose disciplinary penalties on the player, which is equivalent to a period of deprivation to provide his professional services in any club, in case of contract termination without just cause. The imposition of this penalty, is equivalent to disqualification while creates the paradox that the player is obliged to compensate the club, but it is forbidden to him to work in order to cover the expenses. According to jurisprudence, such a penalty, constitutes a violation of player's economic freedom without sufficient justification for such a restriction[11]. The disciplinary penalty imposed on clubs for the violation of these regulations is similar. In this case the club is considered as the main responsible for contracts termination without just cause. This constitutes a restriction on the free exercise of business and economic activity of the clubs.

The imposed time constraints in professional players contracts have a different nature, that the minimum and maximum period for which a player and a team may sign a professional contract is being defined. However, both restrictions are opposed to the freedom of contracts, especially when they are not imposed by a national legislature, but only by a private law association that has international action and without a legitimacy framework to do so. Also, the provisions of Article 18.3 for the sake of safeguarding of contractual stability, limit the right of a professional footballer negotiating with a club, only during the last six months of his contract, which is something that affects the personal freedom of professionals. Provisions concerning compensations[12], constitute a restriction of the workers free movement according to article 45 of the EU treaty. The European court, stated that article 45 of the EU treaty, do not forbid a regulation that in order to fulfill the objective of encouraging the recruitment and training of young players, guarantees compensation to the club which provided the training in the case the young footballer, during the expiration of his training period, signs a professional contract with a club in another EU Member State, provided that the regulation is suitable to ensure the achievement of that objective and does not go beyond what is necessary to achieve it.

[10]See Matildas World Sports Law Report, sept.15

[11]See 4^{A} 558/2011 Swiss Federal Court

[12]FIFA Reg. article 20 and index 4

III. Underaged Football Players

The European Social Charter specifies that the age of 15 is the minimum age for employment, while giving the possibility for younger children to be employed but only in light work that does not threat the children's health, morality or education.

In the relevant chapter of FIFA Regulation[13] there is a rule for the protection of under aged players, which prohibit transfers if the athlete is not over 18 years old.

Exceptions apply to this rule: a) Removal of the player's family b) the consent of both parties federations that host club or player's team are 50 km. from the border, and c) the transfer takes place within the European Union (EU) and provided that they are aged between 16 and 18 years of age, the new club ensures a minimum: 1) adequate football education 2) good academic or school or professional education with additional football training, 3) good living conditions by a host family or in accommodation facilities of the club, mentor appointed to the association, etc. and 4) the new club have to assure in writing the relevant federation that the above conditions for the player's transfer are met.

This regulation, although it has been set from FIFA in order to protect the minors, since before the ban, the transfer of minors (trafficking) favored through football, it still constitutes, in our opinion, an unfair restriction on athletes freedom as workers.

IV. Arbitration Clause

The mandatory submission of professional athletes disputes in mandatory arbitration systems, which is stated in the statutes of almost every international and national sports federations, is a major problem in ensuring the rights in sporting activity.

The arbitrational agreement is mainly checked for the following elements: 1) if both parties have the ability to choose arbitrators to ensure the objectivity of the court and 2) if the arbitrational agreement does not exploit the weakness of the weak party.

Legitimizing basis of arbitration is the autonomy of private will, and may be challenged in cases that the parties of the accession agreement have unequal bargaining and de facto power[14], as is the professional athlete in contrast to a sports club or SA.

Due to the hierarchical and monopolistic nature of the sports organization, the athlete is mandatory subject to the regulations of host Federation, in the content of which has no power to influence or change[15]. As a result, the athletes have no choice but to accept «a priori» those rules and regulations in order to

[13]Ibid Art. 19

[14]See Decision. No. 1 BvR 26/84 of 02/07/1990, published in BVerfGE 81, p. 242 (254) and NJW 1990, σελ. 1469

[15]See German Fed. Arb. BGH, decision no. II ZR 11/94 of 11/28/1994, published in BGHZ 128

participate in the championships organized by them, among which is included the above mentioned arbitration clause and the and waiver of resorting to court. Such a waiver from the natural judge is constitutionally legitimate and therefore valid, only when it takes place voluntarily. Therefore, if the arbitral jurisdiction is based on accession agreement and negotiating inequality between the parties, it is necessary to protect the weak party either the athlete or the team with the contribution of general clauses concerning morality, or of good faith and transactional ethics. In this case, according to the case law «the statute of Federation, to which the conventional placing of the player is referred to, must be subject to total control of its content in the perspective of the provisions of the General Trade terms» [16].

Therefore, given the mandatory nature of these rules for the athlete and his weakness to negotiate them or subject to them with his free will, has no other choice but to accept this status without the guarantees of national and international contractual guarantees concerning the right for a natural judge, i.e. the right to a proper «fair», objective and impartial trial.

It becomes obvious, that those settings bind the involved parts in a «unique» way, by obliging them to solve their differences in an arbitrary and often controversial way. It is a constraint mechanism that imposes automatic incorporation of legal rules into national law, imposing exclusive and binding jurisdiction of juridical bodies[17].

The regulatory arrangements of FIFA, for the above mentioned matters, in terms of Lex Sportiva, have been established in an autonomous way of its own authority having no legislative authorization by a supranational legal entity or any other public authority, as those principles have not been modified into an international legal framework. As a result, the sense of fairness, the mutual interest of the parties involved and, in general, the proper safeguards of legal rights focused on sports activities cannot be ensured[18].

The sense of unfairness is characteristically outlined on the initiative of professional athletes' associations to protect the interests of their members such as the FIFPro which –among others– a) seeks the 50% of the arbitrators in arbitrational process to be selected by themselves b) struggles to protect athletes from the exploitation of third parties c) struggles to protect athletes' image in media[19].

[16]See OLG Frankfurt/M., decision No. 19 U 46/73 since 26.4.1973, published in NJW 1973, 2209)

[17]See FIFA Disciplinary Committee's decision 17 Sept 2015

[18]See FIFPro, Sept 2015

[19]See http://www.fifpro.org

Conclusion

To the extent that FIFA's regulations deal with financial or conventional relationships in football, this constitutes an important modern legal problem, as it has already been discussed in the ILO (IASL Congress 2014) and has been judged before national and EU courts, concerning the protection of both personal and financial freedom of athletes, coaches and other involved parts and football stakeholders.

The research suggests that there is a need for substantial changes in the construction of international sports practices, taking into account the principles of legality and the general principles of law, as a constitutional charter for sports, including mandatory reporting of the FIFA Rules and other LEX Sportiva rules, for a «healthy» sporting activity and a valid sport jurisdiction.

On the basis of the above mentioned, arises the question of the delimitation of the law preparatory stages concerning legislation of the Lex Sportiva system operators as well as FIFA's, and the creation of an international framework of legal principles, as a legitimizing basis, as a legislative authorization concerning the international sports institutions (see. FIFA). Those commitments in sports law area, could provide the basis for the necessary legal rules, in order to make similar arrangements binding on the basis of those principles, to regulate not only the purely sporting and disciplinary matters, but also the rules of law required for «peace enforcement» in sports labor relations.

There is an international need for a common framework of sports law principles in international level sporting legality with transnational commitment that anticipate specific bodies for sporting disputes settlement, having as a main goal the ensuring of the fair, proper, quick and objective dispute resolution, an international Sports-Court, an «Athlodikeion».

LEGAL REGULATION OF THE FIFA CONFEDERATIONS CUP 2017 AND THE WORLD CUP 2018 (LEGAL AND CRIMINOLOGICAL PROBLEMS)

Peskov Anatoly
Head of Security Department, Russian International Olympic University, Advocate, Ph.D. in Law, Russia

Abstract:*The article is devoted to legal regulation of the FIFAConfederations Cup 2017 and World Cup2018.The author informs about the new legislation adopted by Russia on the eve of the FIFA World Cup. In particular, the article contains information about safety rules during sporting events, spectator's rules, anti-terrorism requirements for sports facilities.The article also deals with criminological, legal and financial problems arising in connection with this FIFA World Cup.*

Keywords: *criminal fanaticism, extremism,high-risk matches,fans, match-fixing, sports facilities, stewards, safety of sports events.*

Russia has won the right to host the FIFA Confederations Cup in 2017 and the World Cup FIFA in 2018, having received the absolute majority of votes of the FIFA Board members. It is a significant event for Russia. There were not such sports events in Russia and the USSR before. The Championship will be at 12 stadiums in 11 cities of Russia, namely: Moscow, Kaliningrad, St. Petersburg, Volgograd, Kazan, Nizhny Novgorod, Samara, Saransk and Rostov-on-Don, Sochi and Yekaterinburg. Opening of the World Championship will hold in Moscow at stadium «Luzhniki» One of the semi-final matches will be played in St. Petersburg, and the other - in Moscow. Two hundred and nine national football associations will take part in the World Cup in 2018. There will be 840 matches in the qualifying stage.

Russia is preparing for the World Cup with full responsibility. Organizing Committee «Russia-2018» was created for this aim. The Head of Organizing Committee's Supervisory Board is the President of Russia. The Organizing Committee «Russia-2018» coordinates activities of regional committees, which include heads of regional executive authorities in spheres of sports, finance, construction and property relations, transport, communications, tourism, health and police.

How goes the construction of stadiums for the FIFA World Cup? Stadiums in Moscow («Luzhniki») and Yekaterinburg («Central Stadium») are reconstructing. New stadiums are building in St. Petersburg, Sochi, Saransk, and Samara. All the stadiums must be ready by 2017. Coordinator of construction works is the

Russian Ministry of Sports. The program is financed from the federal budget and budgets of subjects of the Russian Federation, as well as private investments.

Some work has been done on the legal regulation of the organization of the World Cup. The state has adopted in this regard, a very large legislative act called "Federal law on the preparation and conduct in the World Cup FIFA 2018 and FIFA Confederations Cup 2017 in Russian Federation". This law establishes the powers of the organizational structures of the World Cup, procedures for building sports facilities and many other legal norms. Besides, the law provides significant preferences and privileges for guests, fans, players, members of sports delegations, national football associations and confederations of FIFA.

During the World Cup, spectators and competitors can visit Russia without a visa. It will be enough just to present their national passports. In addition, all fans will be guaranteed free travel by rail, suburban electric train and bus services between settlements where matches of the World Cup will be hold. In fact, a ticket to a football match will be a travel ticket. Summary schedule of trains and buses in accordance with the calendar of the matches of the World Cup FIFA 2018, FIFA Confederations Cup 2017 will be announced for the duration of these sports events.

Moreover, the state will regulate the cost of living in hotels. These prices have already defined by the Decree of the Russian Government, datedFebruary10.2016. In particular, depending on the categories of hotels and regions: the cheapest rooms will cost from 2250 rubbles to 4250rubles, the most expensive - from 26, 4 to 85 thousand rubbles per day. In Moscow, for example, the cheapest room will cost 3000 rubbles, St. Petersburg -4600 rubbles.

Serious changes have been made in Russian tax laws. FIFA, affiliated organizations of FIFA, football confederations and national football associations have not recognized already as taxpayers under Russian tax laws. What does it mean? For example, any FIFA partner could have revenue from advertising in stadiums 100 million US dollars. In addition, this partner will not to pay a single dollar to the budget of the Russian Federation. This applies to the salaries of all persons connected with FIFA. For example, a sport manager will be exempt from taxes, if his (or her) salary is 5 million US dollars and more for World Cup 2018.Allthese privileges allow FIFA to earn big money for World Cup in Russia,according to some estimates, in the amount of4 to6b ln US dollars.

It is interesting that this FIFApolicy of "fiscal dominance" and obtaining significant financial benefits carries out during all the FIFA World Cup. In Brazil, in this regard, even the riots broke outing many cities of the country in the summer of2013during the FIFA Confederations Cup. People opposed town reasonable costs and enrich FIFA officials .It is surprising,this happened in the country where football is very popular among the population.[1]

[1]«Confederations Cup may be canceled due to the unrest in Brazil»http://www.newsru.com/sport/21jun2013

It is very difficult to estimate the income the Russian Federation from this World Cup. Seems to me Russia will have mainly losses. Significant money will not coming in the budget of the Russian Federation due to the privileges granted FIFA. However, money does not determine everything. We should consider the World Cup as an opportunity to involve people for sports, especially young, to form a healthy way of Russian population's life. Seems, strengthening the nation's health would cover all Russian losses.

Russia pays special attention to the issue of security the World Cup 2018 and the Confederations Cup 2017. In particular, Russian Federation has already carried out extensive legal work on the preparation of legal instruments to combat terrorism, extremism and racism, the criminal fanaticism, match-fixing and other negative phenomena in sports. The new laws strengthened the responsibility of sports facilities owners and sports events organizers for ensuring safety. In this connection, our government adopted special rules to ensure safety during official sports competitions. There are many legal innovations. Now, owners of sports facilities in accordance with the decisions of the Government can ask spectators to show passport when they sell a ticket to an international football match. It allows identifying offenders on sports arenas. In addition, stewards can independently inspect luggage of fans at the entrance to the stadium. Previously, it was done by police only.

Now owners of sports facilities and sports events organizers obliged to establish special video systems and engineering controls in accordance with the requirements of the Ministry of Interior.They are responsible for bad security. If an owner of a sport facility would violate safety rules, he or she could be fined and their commercial activities can be suspended for 90 days. Besides, following the example of other countries, Russia has created the institution of so-called supervisors. In my opinion, it is better if we called them stewards in accordance FIFA regulations.

There is another important legal innovation. The Government has approved uniform rules of spectators 'conduct that legally binding for all territories of Russia. The rules stipulate rights and responsibilities of spectators and regulations of admission of luggage items. For example, it is forbidden to carry into sport facilities extremist and racist banners, alcoholic drinks, fireworks, megaphones with high capacity and so on. There is also the administrative responsibility for violation of these rules. In particular, the new article 20.31 Code of Administrative Offences appeared. Fans can be fined, arrested for 15 days and the court can prohibit them attending football matches for up to 7 years if they violated the rules of conduct.

We have another important issue of the legal regulation. It is racism in Russian sports. It should be recognized that wedid not have such problems in former Soviet Union. There was a concept of the unbreakable friendship of Soviet's

people. And this concept really functioned. Men and women of different colour of skin, any foreigners always felt friendly attitude from ordinary people in the streets of soviet towns. However, times are changing. Migrants flooded Russia from all over the post-Soviet territory. Many foreign players with different skin colour appeared in Russia's professional sports. Some groups of fans began to showthemfascist and nationalist feelings really. In this connection, FIFA has recently expressed concern over racism in Russian football. However, how FIFA fears justified? It appears this problem is not peculiar for Russia. We have the same problems in other countries. In addition, our anti-extremist laws are very severe.It was adopted the federal law "On Countering Extremist Activity" in 2002, in which extremism is defined as the propaganda of exclusivity, superiority or inferiority of a person on the basis of its social, racial, national, religious, linguistic or religious characteristics. This law prohibited the display of Nazi and other extremist attributes and use of social networks in order to make extremist activity. This law allows prosecutors to issue written warnings leaders of fan associations or suspend activity of fan associations.[2]

The Criminal Code of the Russian Federation criminalizes calling for extremist activities, the organization of an extremist community and the implementation of itself extremist activity. For example, the organization of an extremist community is punishable up to 3 years imprisonment. According to the explanation of the Supreme Court of the Russian Federation criminal responsibility for the creation of such a community comes from the moment ofits actual formation, for example, when some fans met and decided to prepare a banner with a racist slogan in order to humiliate the athletes during the match. It is also possible criminal liability for distribution via internet calls for extremist activities and riots at sporting events, including by means of so-called flash mobs.

Ordinary fans can also be arrested during sporting events, if made public calls for extremist activity (Article 280 of the Criminal Code), other actions aimed humiliation of human dignity on the grounds of gender, race, nationality, language, origin, religion, or membership of a particular social group. The law refers to public calls not only verbal, but also written applications, including the forms of SMS messages.In this case, the crime is considered over if, at least, will take place spread of one public appeal. It is important an evaluation of the objective side of this crime under Russian legislation. The person will be sentenced for the extremist activity, even if there are no riots generated by this extremism.[3]

[2]Federal Law dated25.07.2002 №114 (as amended on 29.04.2008) "On Countering Extremist Activity"

[3]Anatoly Peskov Racism, national and religious extremism for the Olympics and other sporting events (history and reality) (2014) Pandektis. International Sports Law Review Vol. 10, Issues 3-4, p. 400-407

In addition to the legal aspects should be taken into account and the socio-demographic situation in Russia. Russia is a multinational country. There are a lot of people of different faiths and nationalities. All people are living together many years. There are many multinational families. That's why the most Russians actively fighting against those who try to initiate hatred, hostility or humiliation on sex, ethnic and religious grounds. There is confidence that the guests and participants of sports competitions will feel in complete safety during the World Cup 2018 and the Confederations Cup 2017. Russian people themselves, without official powers and police, will not allow anyone to humiliate the dignity people on sex, ethnic and religious grounds. There are not dominated racists moods in Russian society like some countries. I am sure all extremist attempts will be firmly suppressed in our sports arenas.

Many words have been said about terrorist threats on the eve of the Olympic Games in Sochi. However, nothing happened. The level of security was the highest. It is a tradition of Russia to provide good security of sporting events. Such level was at the Olympics in Moscow (1980) and Sochi(2014) and, as we hope, will be in Moscow during the World Cup 2018 and the Confederation Cup 2017.

Nevertheless, Russia is taking additional measures to counter terrorist threats. Russia has adopted many legal acts to combat terrorism. For example, the Russian Government adopted a special decree called «On approval of requirements for the anti-terrorist protection of facilities of sports.» (2015) in accordance to this decree all sports facilities are divided into categories, on probability of terrorist attacks. For each category established special anti-terrorism regulations, standards, special equipment and access control. The day before each football match, every stadium is checked for compliance with safety standards. The three hours before each football match, every stadium is checked for the detection of explosive devices.

There is another problem – match-fixing. The new law established the administrative responsibility of the organizers of gambling and bookmakers in the case of reception of bets without registration of a player's passport. In addition, these persons will be punished if they do not inform sport federation and tax authorities about betting on official sporting event where the sports results are doubtful. The fine is one million rubbles. Significantly strengthen criminal liability for unlawful influence on the results of the official sports competitions. Some people can get up to 7 years in prison, if they commit such crime.

Russian Federation carries out quite serious measures both in the organization of the World Cup, and ensuring the safety of sports events. However, it would be wrong to say: there are no problems in Russian preparing for the World Cup.

First of all, it is concerning some guarantees that Russia has given FIFA. It seems that some of them do not correspond to the interests of Russia. In

particular at the request of FIFA Russia had to change its laws, and allowed advertising and sell alcohol, especially beer, in sports facilities during the World Cup. Previously, our Government banned the sale and advertising of alcoholic drinks at sports facilities, because we believed it hurts sports and health of the nation. It is very difficult to admit that the new decision is right. Moreover this decision contradicts the principles of WADA, considering alcohol as doping in some kinds of sports. Mean while, Qatar, which will host the FIFA World Cup 2022, has not been accepted such offer, and is going to create special courts for the fans drinking alcohol in public sports arenas.[4] Meanwhile, FIFA, allowing advertising and sale of alcoholic beverages at the World Cup, faced now with the problem of alcoholism of fans at sports arenas, and does not know what to do. In particular, at the World Cup 2014 in Brazil FIFA expressed a concern about drunkenness among many fans and in this connection the high level of violence and security in the stadiums.[5]

We also need to harmonize our legal acts in accordance with the requirements of FIFA.It's generally known that FIFA regulations are documents of direct action for World Cup. It is important that Russian national security standards comply fully with the requirements of FIFA. First of all, our national security standards should comply with FIFA Stadium Safety and Security Regulations. This document has priority over national laws. The requirements of this document should be performed on a priority basis. First of all, it concerns safety and security managements, stewards, maximum safe capacity of stadiums, structural and technical measures, crowd management, and emergency services.

Russia will have to make a large amount of legal work to bring security in accordance with FIFA standards. This work should be carried out in the field of stadium safety and security planning, contingency and emergence plans, agreement on responsibilities stewards, stewards training, access control, accreditation, functioning closed circuit television (CCTV)and Venue operation Centre (VOC) and so on. This work applies to both the current legislation and regulations. For example, anew hierarchy of positions in the field of sports safety should be created: Senior national security advisor, National security officer, Stadium security officer, Supporter liaison officer.

Considerable attention should be given to matches with so called “high-risk matches” under the article 62 FIFA Stadium Safety and Security Regulations. What does it mean “high-risk match”? It is primarily the responsibility of the host association to classify the matches and to determine whether a match is to be regarded as high-risk. The association shall inform the FIFA general secretariat

[4]“At the World Cup 2022 in Qatar fans will be waiting trial for alcohol “http://sport-weekend.com, 0902.2016г.

[5]«FIFA is concerned about the number of drunken fans at the 2014 World Cup stadiums» http://www.aif.ru/brazil2014/brazilnews/1199714

of its decision immediately after consultation with relevant stakeholders, and in particular, with the senior national advisor.

The following measures shall be implemented for matches classified as high risk:

a) Strict segregation of fans by allocating sectors other than those indicated on the match ticket (enforced segregation).

b) Creating and reserving empty stadium sectors between "dangerous" spectator sectors.

c) Increasing the number of stewards and/or police officers, particularly at entry and exit points in spectator sectors, around the field of play and between groups of rival supporters.

d) Assigning stewards to the visiting association/club to accompany the fans from the airport, railway station, port or bus/tram station and back. Where appropriate, police services may also be required.

e) Employing a stadium announcer from the visiting association/club.

f) Keeping spectators in the stadium at the end of the match until ordercan be guaranteed outside the stadium.

According to FIFA's standards the procedure hold fans must be carried out exclusively in a polite and delicate form. Match organizers should provide fans refreshments and appropriate amenities for retention period inform them of the time the output from the stadium, doing everything to make their waiting was pleasant and calm. It seems that these legal provisions will be useful in the future for the Russian Federation too.

Besides associations, confederations and event organizers shall report to the FIFA Security Division any information that may be relevant to illegal activity, illegal gambling or match-fixing. The FIFA Security Division retains the right to appoint an investigator or investigators to any match with high risk or event that is under suspicion of illegal activities, illegal gambling or match-fixing without prior communication with the association, confederation or event organizer. Associations shall cooperate fully with FIFA with regard to the above and, where requested, facilitate the investigator(s) attending the match and conduct interviews as required.

It would like not to see high-risk matches at the upcoming FIFA Confederations Cup 2017 and World Cup2018. I hope that all security rules would be implemented effectively and allow all the spectators and participants of these official sporting events to stay in safety and comfort.

It is necessary to take into account the fact that Russia has a lot of safety experience in Olympic Games, which can be used in full during the World Cup. In particular, some IOC standards, known as the "security policies", may be used during the World Cup. In our opinion, it is worthy policy of access to the Olympic facilities for persons with disabilities. In particular, the delicacy and

politeness, which are obliged to officials of the Olympic Games in relations with this category of persons. Officials had to show kindness, patience and restraint in such communication, refer to people with disabilities directly, rather than to the persons accompanying them, to give them time to express their thoughts, not to change the tone in conversation, do not touch them, do not take without their permission canes, wheelchairs and other accessories. We want much that the policy IOC "Access of persons with disabilities at the Olympic venues" will be realized for World Cup 2018 too.

There is reason to believe that another policy called "Access fin deciduas to Olympic venues» will be realized too. At the Olympic Games in Sochi (Russia,2014) all visitors, even underage children from 4 years, will be provided 100% inspection and verification in control areas. All persons were verified, even those artists, who participated in the opening and closing ceremonies, including those who belong to the category of so-called "costumed characters." If the visitor was wearing a burqa, hijab or any other national or religious clothing, the verification of such visitors was regulated by a special procedure: "Accounting for national and religious specificity during the personal search at the entrance to the object."

Transportation of personal belongings at the sports facilities regulated enough too. The list of prohibited items included their detailed description, as well as exceptions that were made for certain categories of client groups (legal entities and individuals). For example, it was allowed to carry explosives for authorized staff of anti-avalanche service, gas cartridges - police officers, water and soft drinks in thermoses and flasks - representatives of official sports delegations, etc. Particular attention was paid to examination of expensive television photographic equipment and telecommunication. This equipment should carefully examine, as far as possible do not touch the equipment and ask the owner to make the necessary manipulation, if it was needed. Procedures of carrying firearms by officers from federal agencies specifically regulated too. Weapons could be worn by these officers only in the execution of their duties. The officers of the FSB and the Interior Ministry could not go to the sports facility with their weapons without the consent of the authorized sports safety officers.

It appears that it is necessary to use not only the experience of the Olympic Games, but also improve the security forces management structure. It seems to me Russia needs also in certain structural and organizational measures in law enforcement agencies on the eve of the World Cup. In particular, in accordance with the requirements of international standards to establish a national football police unit under the Russian Interior Ministry. In addition, it is advisable to enter into the international system of informing about the fans registered by police as offenders.Russia should create the system of interaction between police agencies of different countries, participating in the World Cup2018 and

Cup Confederations 2017. Moreover, Russia should organize the reception of foreign police delegations and stewards, including them in the general plans of police force.

It is very difficult to pass by another problem, concerning corruption scandal with former FIFA President Blatter and the decision to choice Russia as the host country of the World Cup 2018. Now all know that the FBI and prosecutors in Switzerland have recently accused the FIFA leadership in corruption. Moreover, immediately there were rumours that the corruption occurred when choosing the World Cup in Russia and Qatar. This event was great public outcry.

All experts in the field sports law knew about corruption in FIFA. Even many books were published about the facts of corruption in FIFA. The press also reported periodically on these facts. Large and often no one monitored financial flows created the big football stage for financial abuse in FIFA. And so no one was surprised when in 2015 the corruption scandal broke in FIFA and 12 FIFA officials have been accused of bribery and financial abuses in the amount of US $ 200 million.[6] It was surprising, that no one involved in such investigations before. Seems to me it is no coincidence that the investigation began to be implemented in the period of strained relations between the US and Russia. All of us remember that the European Parliament June 11 2015 recommended not only dismissing Blatter, but also checking the legality of the choice of Russia and Qatar to host the FIFA World Cup in 2018 and 2022.[7]

It seems these events harm to the global sports movement. In addition, it is wrong, when only one or two countries deciding whether to prosecute or not leaders of international sport organizations. For example, according to the Russian legislation the criminal prosecution of members of the international organization is possible only with the consent of this international organization. It seems to me there is tabula rasa in international law concerning questions of immunity and criminal prosecution leaders of international non-governmental sports organizations. And we all need to think about the development of international law, to ensure not only protection of the leaders of international sports non-governmental organizations, but also control over their activities by the international community, in particular, such organizations as Interpol and Europol. May be, the international community and institutions should take under special financial control of the activities of international sports organizations. It may be advisable to consider using of independent international prosecutors and courts to investigate crimes in the field of sports. Sport should be free of financial embezzlements and abuses.

[6]8 "In the case of corruption appeared 16 new defendants in the FIFA"http://lenta.ru/news/2015/12/03

[7]"The European Parliament approved a resolution allowing Russia to take away from the 2018 World Cup"http://www.newsru.com/sport/11jun2015/europar.html

As is known, lawyer Gianni Infantino was elected the ninth president of FIFA in February 2016 at the last Congress FIFA. This Congress approved too the anti-corruption reform this international football organization. It is supposed to decentralize the management of FIFA, to deprive the FIFA Executive Committee certain administrative and commercial functions. FIFA President is obliged to limit the tenure of 12 years, report about his income in the first four years, etc.It is to be hoped that these measures really allow FIFA to function more effectively and to organize the fight against corruption and abuse not only within its ranks, but also in world football.[8]

I think that there is another aspect of these events associated with the aggravation of the international situation and the signs of the New Cold War. Unfortunately, politicians in both East and West at all times tried to use sport for political purposes. Remember how politicians blocked the Summer Olympic Games in Moscow in 1980 in the Soviet Union and Los Angeles in 1984 in the US. We can suggest that history may repeat again. Seems to me sport lawyers in all countries should say to all the politicians in the West and in the East: Hands off sports. It is the main goal of sports to unite humanity. Sport is an instrument of peace and friendship between people. Olympics and FIFA World Cups existed, exist and will exist. I also very much hope, that the FIFA Confederations Cup 2017 and World Cup 2018 will be held successfully in Russia.

[8]"FIFA approved the anti-corruption reform"http://www.rbc.ru/society/26/02/2016.

MEDICAL PROBLEMS IN FOOTBALL - RESPONSIBILITY AND MEASURES OF FIFA FROM A LEGAL PERSPECTIVE*

Klaus Vieweg

Professor, University of Erlangen-Nuremberg, Institute of Law and Technology, Germany

Abstract: *Sports federations and associations have the duty to promote the rights of their members. This means that federations and associations must pass adequate rules and regulations with regard to every aspect that is important for their members. Federations and associations can be sued whenever they fail to fulfil their duties, as illustrated by two class actions in the United States. In the medical sector sports federations and associations have to monitor accidents and injuries, document them and take appropriate preventive measures. Two problem areas are of special interest: sudden cardiac death (SCD) and concussion. Both put the health and even the lives of players at risk. In response to this, the FIFA Medical Assessment and Research Centre (F-MARC)implemented the pre-competition medical assessment and encouraged FIFA's members to familiarise themselves with the problem of SCD. Furthermore, the FIFA Medical Committee proposed new rules and regulations for the prevention of concussion. It is not clear whether these proposed amendments will be sufficient. A pragmatic step to avoid concussion could be a stricter interpretation and application of the rules of the game by the referees.*

Keywords: concussion – sudden cardiac death (SCD) – responsibility of sports federations and associations.

I. Introduction

At our congress last year in Athens I discussed the decisions and responsibilities of sports physicians.[1] Now I want to follow on from this topic by addressing the responsibilities of sports federations and associations. In particular, I am going to analyse the actions of FIFA aimed at coping with medical problems in football. Two problems in particular have received a great deal of media attention: sudden cardiac death (SCD) and concussion. The concussion problem was illustrated by the case of Christoph Kramer, a member of the German national football team. He collided with another player and was disorientated for minutes afterwards. In

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[1] **Klaus Vieweg** (2015). "The Decisions of Sports Physicians from a Legal Perspective", in: D. Panagiotopoulos (ed.), SPORTS LAW, 22 Years I.A.S.L., Lex Sportiva – Lex Olympica and Sports Jurisdiction, Athens, pp. 203–214.

the United States, SCD and concussion were brought to the attention of the public by the media.[2] Furthermore, both issues were brought before US courts. In order to receive an impression of the economic dimension of the problem, it is helpful to take a look at the settlement[3] between the National Football League (NFL) and 4,800 players[4], which was reached on 22 April 2015 and included the payment of 765 million US dollars.[5] The class action[6] against FIFA and some US football associations, brought on 27 August 2014 by parents of children who were playing football, did not primarily aim for damages but rather for rule amendments. The problem of concussion is also highly relevant in other contact sports like ice hockey[7].

In the following I will first – as background information – address the general responsibility of sports federations and associations for the health of their athletes (see II.) and the underlying facts of sudden cardiac death and concussion (see III.). Subsequently, I would like to present and comment on the measures of FIFA (see IV.).

II. Legal Responsibility of Sports Federations and Associations for the Health of the Athletes

1. General Duties and Responsibilities

Sports federations and associations are granted autonomy worldwide by the states[8] and the Olympic Charta[9]. They are allowed to pass and enforce their own

[2]The US film "Concussion" will be shown in German cinemas in February 2016, titled "ErschütterndeWahrheit".

[3]For details see https://nflconcussionsettlement.com/CourtDocs.aspx.

[4]More than 200 players opted out of the settlement, cf. http://edition.cnn.com/2015/04/22/us/nfl-concussion-lawsuit-settlement/.

[5]https://www.hon.ch/News/HSN/702276.html; http://www.reuters.com/article/us-usa-nfl-concussion-iduskbn0nd2b520150422; http://www.nfl.com/news/story/0ap1000000235494/article/nfl-explayers-agree-to-765m-settlement-in-concussions-suit.

[6]The class action complaint is available at http://hbsscreative.com/emails/downloads/08-27 14_FIFA_Complaint_Filed.pdf.

[7]The former professional ice hockey player Stefan Ustorf is suffering from long-term consequences of concussion, see Frankfurter Allgemeine Zeitung, 20.02.2016, p. 32.

[8]**Klaus Vieweg/Robert Siekmann**(2007). General Conclusions and Recommendations, in: K. Vieweg/R. Siekmann (eds.), Legal Comparison and the Harmonisation of Doping Rules, Duncker&Humblot: Berlin, p. 657 et seq.

[9]Article 25 of the Olympic Charta (Recognition of International Federations) reads: "In order to develop and promote the Olympic Movement, the IOC may recognise as IFs international non-governmental organisations administering one or several sports at world level and encompassing organisations administering such sports at national level. The statutes, practice and activities of the IFs within the Olympic Movement must be in conformity with the Olympic Charter, including the adoption and implementation of the World Anti-Doping Code. Subject to the foregoing, each IF maintains its independence and autonomy in the administrations of its sport."

rules and regulations. These rules and regulations, however, must be compatible with the rights of their (indirect) members. Whenever there is a conflict between the basic rights of federations and associations and those of their members, this conflict is solved in German law by the principle of practical concordance. This means that the proportionality test has to be applied, which requires balancing the conflicting interests of the parties involved.[10] With regard to the rules and regulations, it is also relevant whether the federations and associations have a duty to regulate and to decide. I have identified such a duty of federations and associations according to German law. This duty is based on the obligation to promote the rights of (indirect) members, e.g. the athletes. This obligation is derived from sec. 242 of the German Civil Code (Bürgerliches Gesetzbuch – BGB) and is very extensive, especially because of the single place principle, which creates a monopolistic structure within the federation system.[11] It is possible to deduce a duty to inform from the obligation to promote the rights of members, namely a duty to establish detailed rules for every aspect that is important for the interest of (indirect) members.[12] As a consequence, federations and associations cannot withdraw from their duty to inform and to decide on the matters of their members by refraining from regulation. These principles must also be adhered to in cases where the relationship between sport federations and associations and their members is a contractual one.

More research is required on the question of whether and to what extent such a duty also exists for international sports federations located in Switzerland, like FIFA. In any case, FIFA established this duty itself by deriving the right to regulate football comprehensively worldwide from its autonomy as a federation.[13]

2. Duties and Responsibilities with Regard to the Health of the Athletes

One main concern of athletes is avoiding injury while practicing their sport and not incurring health problems because of it. In my opinion, in order to meet this interest and to fulfil their own duties with regard to athletes, federations and associations derive the following duties from their obligation to promote the rights of their members and to inform:

[10]Cf. **Klaus Vieweg** (1990). Normsetzung und -anwendung deutscher und internationaler Verbände, Duncker&Humblot: Berlin, p. 192; **Konrad Hesse** (1988). Grundzüge des Verfassungsrechts der Bundesrepublik Deutschland, C.F. Müller: Heidelberg, para 72, 317 et seq.

[11]Supra fn.10, p. 244 et seqq.

[12]**Klaus Vieweg** (2010). "Vormitgliedschaftliche Rechtsverhältnisse eingetragener Vereine", in: M. Martinek/P.Rawert/B. Weitemeyer (eds.), Festschrift für Dieter Reuter, De Gruyter: Berlin, p. 395 (406 et seqq.).

[13]Article 2 of the FIFA Statutes (April 2015 edition) reads: "The objectives of FIFA are: to improve the game of football constantly and promote it globally … to draw up regulations and provisions and ensure their enforcement … to control every type of Association Football …".

- monitoring injuries, accidents and health problems within the sport they regulate;
- documenting and evaluating these injuries, accidents and health problems;
- taking measures to improve the situation by amending the rules of the game, and through education and research.

As illustrated by the aforementioned concussion lawsuit and the class action in the United States,[14] there is a risk for associations that they may be sued whenever they do not fulfil these obligations.

III. Risk of Injury and Health Risks in Football

1. Sudden Cardiac Death

Sudden cardiac death in football has the effect that a player suddenly becomes unconscious during the game and dies shortly after falling down. This is more likely to occur during very intensive exercise and during professional rather than during amateur games.[15] Furthermore, the phenomenon is more common amongst young athletes.[16] In more than 90 percent of cases the cause of death is a pre-existing cardiac abnormality and, most of the time, death is the first manifestation of the disease in the players' short lives.[17]

2. Concussion

The issue of concussion was broadly discussed after the incident involving the German player Christoph Kramer during the final match of the 2014 FIFA World Cup in Brazil. Kramer's head collided with Ezequiel Garay's shoulder. Kramer collapsed with his arms raised, a classic symptom of concussion called 'fencing response'. Kramer, however, was treated quickly and stayed on the pitch for 15 minutes before the referee noticed that he was confused. He was helped off the field.[18]

Luckily, the collision did not lead to severe permanent consequences for Kramer's health. However, the risk of a catastrophic outcome was existent:

[14]See infra IV. 2.

[15]**Karin Bille** et al. (2006). "Sudden cardiac death in athletes: the Lausanne Recommendations", Eur J CardiovascPrevRehabil, 859.

[16]Ibid.

[17]**Domenico Corrado** et al. (2008). "Pre-Participation Screening of Young Competitive Athletes for Prevention of Sudden Cardiac Death", Journal of the American College of Cardiology 2008, 1981.

[18]Frankfurter Allgemeine Zeitung, 07.08.2014, p. 28.

the danger of a second impact. Second impact syndrome[19] is a rare but severe complication occurring after a second blow to the head before complete healing of the first.[20] This second blow does not have to be as strong as the first or cause another concussion; even a blow to the chest can be sufficient.[21]

In the case of football it is important to know that the speed of a ball can exceed 100 km/h. Furthermore, a study showed that more than 50 percent of head injuries in football are caused by heading the ball or by upper limb to head contact.[22]

The dangers of American football were the subject matter of the class action brought against the NFL and NFL Properties. The plaintiffs, retired NFL professionals, sought to show that the NFL knew of the dangers of American football and intentionally concealed this information in order to continue profiting from the roughness of the sport.[23] The NFL contested these allegations. The questions were not decided in court because, on 22 April 2015, the lawsuit resulted in a settlement. It included three main aspects: firstly, every player is entitled to undergo baseline medical examinations at the expense of the NFL in order to detect damage caused by practicing the sport.[24] Secondly, the NFL is obliged to pay damages for specified neurone generative diseases (ALS, Parkinson's disease, Alzheimer's disease, dementia, early-onset dementia and chronic traumatic encephalopathy diagnosed after death) if they have already occurred or occur during the 65-year period of the settlement. The players do not have to prove that playing American football caused the disease.[25] Thirdly, the NFL will have to invest 10 million US dollars in preventive measures, especially

[19]There is a dispute about the causes of the symptom. Most experts suggest that the first blow already weakens coordination of the cerebral blood flow and as a consequence of the second impact the irritation of the blood flow leads to massive brain oedema (**Sönke Johannes/Rita Schaumann-von Stosch** (2007). "Grundlegende Aspekte der leichten traumatischen Hirnverletzung", in: Medizinische Mitteilungen, 74 (76)). Others doubt the existence of the symptom altogether and find other explanations for the rapid swelling of the brain (e.g. **Paul McCrory** (2001). "Does Second Impact Syndrome Exist?", Clinical Journal of Sport Medicine 11 (3), 144). For an example in ice hockey cf. Frankfurter Allgemeine Zeitung, 20.02.2016, p. 32.

[20]**Ruben Echemendia**(2007). "Die leichte traumatische Hirnverletzung – ein neuropsychologischer Ausblick", in: Medizinische Mitteilungen, 82 (87).

[21]Ibid; **Terry Zeigler**, Second Impact Syndrome, available at http://www.sportsmd.com/concussions-head-injuries/second-impact-syndrome/.

[22]**T. E. Andersen** et al. (2004). "Mechanisms of head injuries in elite football", Br J Sports Med (38), pp. 690–696.

[23]http://www.theguardian.com/sport/2013/aug/29/nfl-concussions-lawsuit-explained.

[24]The costs of the assessment will be born by the NFL for up to 75 million US dollars, cf. https://nflconcussionsettlement.com/FAQ.aspX, Questions 5 and 11 et seqq.

[25]Ibid, Questions 5 and 14 et seqq.

for education on concussion for players and medical personnel.[26]

American football is not the only sport involved in the concussion problem – concussion occurs in every contact sport.[27] At this point, we should think of John Wolohan, who concluded his presentation at the 2014 IASL congress in Athens as follows: "All contact sports need to take precautions to reduce or eliminate the health risks of concussion to players and create a comprehensive return-to-play protocol."

Consequently, we have to ask whether FIFA's actions are sufficient. If not, they could be held liable for damages.

IV. Measures of FIFA

1. Sudden Cardiac Death

Sudden cardiac deaths are shocking and give reason to take appropriate measures. So far, both the FIFA Medical Assessment and Research Centre (F-MARC)[28], founded in 1994, and the IOC Medical Commission[29] play an important role.

Under the umbrella of the IOC Medical Commission, the Lausanne Recommendations, which aim to assess the personal risk of every player for SCD as precisely as possible and give corresponding advice, were formulated on 20 December 2004.[30] This consensus statement recommends a two-stage procedure in order to test players for cardiovascular abnormality before they engage in intensive exercise. The first step consists of an anamnesis in relation to any early signs that may suggest a cardiovascular abnormality and of questions about family history of cardiac problems. This is followed by a 12-point ECG at rest. The second step is only performed in the case of positive results in the previous tests. It involves a specialist examining the player in order to check whether they are fit to play football. These tests should be repeated at least every second year, but they are completely voluntary.[31]

As a reaction to these recommendations, F-MARC developed a Pre-competition Medical Assessment (PCMA)[32] in 2006. This is a comprehensive

[26]Ibid, Questions 5 and 24.

[27]For ice hockey cf. Frankfurter Allgemeine Zeitung, 20.02.2016, p. 32.

[28]F-MARC was founded in order to develop scientific measures to prevent injuries in sport, cf. http://de.fifa.com/development/medical/about-us/f-marc/index.html.

[29]For more information see http://www.olympic.org/medical-and-scientific-commission?tab=mission.

[30]Lausanne Recommendations regarding Sudden Cardiovascular Death in Sport, available at: http://www.olympic.org/Documents/Reports/EN/en_report_886.pdf.

[31]See supra fn. 30.

[32]The PCMA is available at http://www.fifa.com/mm/document/afdeveloping/medical/01/07/26/86/fifapcmaform.pdf.

15-page questionnaire[33] which must be completed by every player before taking part in a competition.[34] The questionnaire covers the Lausanne Recommendations completely and even goes beyond them.

In 2013, F-MARC developed the FIFA Medical Emergency Bag (FMEB). It contains, among other things, an automated external defibrillator (AED). Each FIFA member received one in the same year in order to become familiar with the problem.[35]

F-MARC is also responsible for the FIFA Sudden Death Registry (FIFA SDR) established in 2014. So far 23 cases have been registered.[36] This measure is not a new one. At Saarland University, SCD cases have been registered in the Sudden Cardiac Death Germany (SCD-Deutschland) register since 2012.[37]

2. Concussion

FIFA took part in the International Conference on Concussion in Sport on the four occasions that it has been held.[38] These conferences were entrusted with formulating a definition of concussion, analysing the problems that may occur as a result and proposing amendments to the rules of the game. They covered not only football but sports in general, at the professional as well as the amateur level. The consensus statement from the fourth conference concluded that rule amendments in football with regard to heading could be effective.[39] The conference dealt with a study[40] showing that 50 percent of all head injuries in football are caused by heading and by upper limb to head contact. Furthermore, the consensus statements provide a detailed plan of action for the diagnosis of concussion on field and subsequent treatment, called the Sports Concussion

[33]FIFA.com, 28 May 2015, http://www.fifa.com/development/news/y=2015/m=5/news=third-medical-conference-focuses-on-prevention-2608795.html.

[34]The PCMA addresses competitions at the FIFA, confederation and national levels.

[35]FIFA.com, 31 May 2013, http://www.fifa.com/about-fifa/news/y=2013/m=5/news=sudden-cardiac-arrest-emergency-bags-sent-worldwide-2088881.html.

[36]**Jürgen Scharhag** et al. (2015). "F-MARC: the FIFA Sudden Death Registry (FIFA-SDR)", Br J Sports Med Month (49), 563.

[37]http://www.uni-saarland.de/page/scd.html.

[38]The consensus statements are available at: Br J Sports Med 2002 (36), 6–7 (1st conference); Br J Sports Med 2005 (39) (2nd conference); SAJSM 2009 (21), 36–46 (3rd conference); Br J Sports Med 2013 (47), 250–258 (4th conference).

[39]**Paul McCrory** et al. (2013). "Consensus statement on concussion in sport: the 4th International Conference on Concussion in Sport held in Zurich, November 2012", Br J Sports Med (47), 250 (254 et seq.).

[40]**T. E. Andersen** et al. (2004). "Mechanism of head injuries in elite football", Br J Sports Med (38), 690–696.

Assessment Tool (SCAT)[41], which enables a decision to be made on whether the player can return to the field.

In addition, F-MARC evaluated all head injuries occurring in 20 FIFA competitions from 1994 to 2014.[42] It came to the conclusion that head-to-head collisions and head-to-elbow/hand collisions pose a significant risk of concussion. It noticed that unfair use of the upper extremities was more likely to cause injury.[43] However, in most of the cases where a concussion was the outcome, the referee deemed the behaviour to be within the rules of the game.[44] Headgear was held to be only somewhat beneficial with regard to head-to-head-collisions between players.[45] This illustrates the need for a reform of the rules of the game and of the referee decisions. Referees should be encouraged to be stricter with regard to actions where players recklessly cause injury to another player's head.

In 2015, the FIFA Medical Committee recommended a rule amendment[46] for (suspected) concussion. The committee suggested a three-minute break for concussion testing whenever a player received a blow to the head.[47] Experts, however, claim that three minutes is not enough time to determine whether a concussion has occurred and that there should be specially trained personnel.[48] Briana Scurry, the United States' World Cup winning goalkeeper from 1999, recommends a new substitution rule: a player with a suspected head injury should be substituted without the substitute counting as one of the three permitted ones.[49]

Nevertheless, FIFA was sued for not taking enough measures with regard to preventing head injury or concussion. The class action was brought to court on 27 February 2014 and resembles the one brought against the NFL, but the

[41]The SCAT was developed by the 2nd International Conference on Concussion in Sport, cf. Br J Sports Med 2005 (39), 196 (199) and has been improved ever since. For the most recent version (SCAT3) see http://bjsm.bmj.com/content/47/5/259.full.pdf; for the ChildSCAT3 see http://bjsm.bmj.com/content/47/5/263.full.pdf.

[42]20 Years of F-MARC, http://resources.fifa.com/mm/document/footballdevelopment/medical/01/47/88/15/20yearsoff-marc_final_webversion_lowres_neutral.pdf, pp. 56 et seqq.

[43]20 Years of F-MARC supra fn. 42, p. 56.

[44]20 Years of F-MARC, supra fn. 42, p. 57.

[45]20 Years of F-MARC, supra fn. 42, p. 65.

[46]This rule is already incorporated into the rules of the game for the 2018 FIFA World Championship in Russia and the 2015 Teams World Cup in Japan, but not yet incorporated into the general rules of the game.

[47]FIFA.com, 23 September 2014, http://www.fifa.com/development/news/y=2014/m=9/news=fifa-s-medical-committee-proposes-new-protocol-for-the-management-of-c-2443024.html.

[48]**Martin Rogers** (2015). USA today, 10 June, http://www.usatoday.com/story/sports/soccer/2015/06/10/fifa-concussions-evaluation-breaks-substitution/71000800/.

[49] Ibid.

plaintiffs – parents of children who were playing football – did not primarily seek damages from FIFA and football associations in the United States.[50] They claimed for rule amendments and education on the matter of head injuries.

The class action complaint, 132 pages long, addresses three main points with regard to FIFA:

– FIFA's power to amend the rules of the game and therefore meet its duty to protect the players;[51]

– FIFA's power to influence, in particular the power to render its rules effective throughout the whole world;[52]

– FIFA's failure to provide an adequate concussion protocol.[53]

Details of the reasoning are:

– FIFA had knowledge of the results (in particular of the "Consensus Best Practices") as it has organised, hosted and taken part in the International Conference on Concussion in Sport four times since 2001;[54]

– FIFA failed to incorporate the Consensus Guidelines agreed upon at these conferences. In particular, the guidelines contain a Return to Play Protocol (RTP), describing a step-by-step process for return to play. The player can return whenever they are symptom-free, but not before taking at least one day off. Furthermore, the guidelines demand neuropsychological assessment of every player before every competition. Moreover, medical personnel must be specially trained to diagnose and treat concussion.[55]

All in all, the class action complaint demonstrates that FIFA must protect players through the rules of the game.[56]

The class action against FIFA was dismissed by the Federal Court of California (Oakland) on 17 May 2015. The court deemed itself not competent for the matter as FIFA has no connection to California and is located in Switzerland. Hamilton J deemed the plaintiffs to lack standing in the case as they would not have been able to show actual injury. Furthermore, FIFA would not be capable of amending the rules of the game as the competent body for this would be the International Football Association Board (IFAB). This outcome was welcomed by FIFA,

[50]The class action complaint is available at http://hbsscreative.com/emails/downloads/08-27-14_FIFA_Complaint_Filed.pdf. The other plaintiffs were the United States Soccer Federation (USSF), US Youth Soccer Association (USYSA), American Youth Soccer Association (AYSO), National Association of Competitive Soccer Clubs (US Club Soccer), California Youth Soccer Association (CYSA).

[51]Class action complaint, supra fn. 50, p. 62.

[52]Class action complaint, supra fn. 50, p. 70.

[53]Class action complaint, supra fn. 50, p. 74.

[54]Class action complaint, supra fn. 50, p. 74.

[55]Class action complaint, supra fn. 50, p. 77.

[56]Class action complaint, supra fn. 50, p. 62.

however, it was stated that FIFA would make an effort to improve concussion prevention.[57] D'Hooghe, chairman of the FIFA Medical Committee, claimed that the amendments to the rules proposed by the committee were not a reaction to the lawsuit.[58]

Nevertheless, the class action was not unsuccessful: a settlement with the other defendants, US football associations, was reached.[59] They declared that they would pass all the amendments to the rules demanded by the claimants in the class action. These include new substitution rules which make it possible to examine a player with suspected concussion, a ban on heading for children under the age of 11 and limited permission with regard to headings during the training of 11 to 13 year olds.[60]

V. Conclusion and Outlook

Sports federations and associations have committed themselves to protect their athletes (indirect members) from any avoidable health or injury risks associated with their sport. In order to meet this duty, they must provide adequate rules and make them effective.

With regard to the prevention of sudden cardiac death (SCD), the measures taken by FIFA are an important first step. FIFA's measures to protect against concussion, however, still show considerable gaps. In addition, referees could be criticised with regard to an interpretation of the rules not sanctioning contacts between one player's upper extremities and another player's head resulting from unfair play. Such deficiencies could lead to liability. This is illustrated by the class action against the NFL which has been settled by the parties involved.

[57]FIFA.com, 17 July 2015, http://www.fifa.com/development/news/y=2015/m=7/news=fifa-welcomes-us-court-s-decision-on-concussion-lawsuit-2665852.html.c

[58]The Guardian (2014).9 September, http://www.theguardian.com/football/2014/sep/09/fifa-concussion-three-minute-breaks-introduction.

[59]The settlement is available at http://www.sportscapp.com/wp-content/uploads/2015/11/FIFA_SettlementAgreement-2.pdf.

[60]US Soccer, http://www.ussoccer.com/about/recognize-to-recover/concussion-guidelines.

THE PROTECTION OF SPORTS FUNDAMENTAL RIGHTS AND LEGISLATION OF THE BASIC SPORTS LAW IN KOREA*

Kee-Young YEUN

Professor of Law, College of Law Dongguk University in Seoul, Hon. President, the Korean Association of Sports & Entertainment Law, Korea

Abstract: *'International Charter of Physical Education and Sport' has been approved and enacted in the general assembly of UNESCO held, November 1978, in Paris. Since when Sports right had officially been recognized in the European Charter of Sport for All adopted in 1975 by the Council of Europe, one can say that the enactment of the International Charter by a world-wide organization such as UNESCO has been playing an important role in promoting an international movement of Sport for All, as well as spreading and developing Sports right all over the world.*

This shows the worldwide recognition of Sports right, but this does not literally mean that the idea of Sport for All has fully been realized all over the world. Immediately after the Charter had been adopted by UNESCO,

*Here for you, I would like to show you "**Sports Right as Fundamental Human RightinConstitutions**".*

Sports Law should serve as the basis to stimulate such interchange and cooperation. The support of International Sports Law is essential in developing International sports industry that can benefit prosperity, using both human and material resources in the world. Through the acceptance of theSports Right as Fundamental(Basic) Right in Constitution, it is possible to prepare legal foundation that allows easy human and material exchange for humanity. Also, it is possible that each nations' governments understand other legal system and laws as well as that of other nations better thus promoting mutual understandings and cooperation.

It is required for all sports organizations to establish the identity of the International Sports Constitution Charter through introspection and rediscovery of the world. Despite the pluralistic circumstances in the world, it seems to be easy to create comparatively consistent norms in sports field. It is because sports, the object of sports law, have been formed as a part of general and universal culture of human being. Most of Autonomic Sports Law is world-widely consistent; Fundamental Rights of Sports consists of the right of pursuit of happiness which is one of the fundamental rights of human. It is necessary to broaden interchange and cooperation of human and material resources as well as sharing the legal information of each of the counties in order to unify and harmonize the Sports Law.

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Therefore, I would emphasize that we are under the very urgent circumstances to enact the Basic Sport Act. The follows are the reasons why we need the fundamental law of sport: 1) the improvement of current sport related laws to meet the realistic needs of civil lives; 2) synthesis of sport policies; 3) protection of sport right and sport autonomy; 4) collaboration between schools and communities for sport promotion; 5) normalization of school physical education and elite athlete bringing up; 6) contribution to the development of professional sport and sport industry; 7) legal and institutional improvement for the sport of the handicapped; 8) legalization of agency to resolve sport related disputes; and 9) need of legal foundation for international sport exchange.

The contents of Sports Right should be involved in 1) the protection of sport right for the people, 2) protection for the athletes, 3) synthesis of sport policies, 4) establishment of dignity for the sport related institutions, 5) normalization of school physical education, 6) appropriateness of sport facility installment and utilization, 7) efficiency of sport administration, 8) risk management for sport activities, 9) international exchange cooperation via sport, and 10) reasonable management of both material and human resources for sport.

Keywords: *Basic Right to Sports, Autonomous Rights of Sports, Sports Facilities., Constitutional Amendment, Principle of Cultural State, sports law, fundamental law of sport, fundamental law, promotion of sport for all, school physical education, Basic Sports Law.*

I. Introduction

Sports has a significant role and a function as an important element of our daily living in modern society. We get sports related news everyday through the mass media, we use sporting goods that are produced from the sports industry, and we watch sports games as well as play sports to maintain our health and fitness. The status quo defines mankind as Homo Sportivus - human playing sports. Today, we are living in an era that cannot be isolated from sports.

Because of its infinite value, sports have become a subject that should be treated at the level of the constitution. To achieve this, nations are establishing relevant regulations and carrying ahead various policies to foster and promote sports. Globally, sports are becoming a way of expressing national power. On the other hand, sports are utilized as a tool for interchange between nations. Furthermore, sports arebecoming more popular with regards to the development of sports by continuously expanding the base.

Sport policy is expected to be one of the national key policies. Nobody has doubt that sport has contributed significantly to the enhancement of national prestige through all sorts of international competitions including Olympic Games, national reconciliation, and elevation of life quality. In spite of these contributions, legal and institutional support for the development of national sport is appeared to be insufficient. Sport policy is not even considered as one of the 50 major tasks for the national policies. Sport related administrative services

are dispersed into several departments and thus it makes efficient policy planning and operation difficult.

Even if sport is being guaranteed as a basic right and is supported by the government at the constitutional level, it calls for improvement and construction of related laws and institutional support. Other developed nations and our previous experiences in holding and participating in international sports rallies could give a lesson to recognize the importance of sports from a new perspective.

II. Protection of the Basic Sports Rights in Korean Constitution

'International Charter of Physical Education and Sport' has been approved and enacted in the general assembly of UNESCO held, November 1978, in Paris. Since when Sports right had officially been recognized in the European Charter of Sport for All adopted in 1975 by the Council of Europe, one can say that the enactment of the International Charter by a world-wide organization such as UNESCO has been playing an important role in promoting an international movement of Sport for All, as well as spreading and developing Sports right all over the world.[1]

Many countries have accepted and started guaranteeing sport as a basic right from the late 20th century because of the recognition that health of people provides the base for national competitiveness, in the aging society. Adapting to the change of era, we should guarantee and upgrade the status of sport through constitutional amendment from the perspective that the health of people is the most important factor for the future of our nation. Sports become the basic right in Korean Constitution through the amendment.

1. Characteristics of Sports Rights as Basic Rights

Sports rights have a significant status as basic rights even though they are not listed on the constitution because they are indispensable rights for pursuing happiness. Basic rights have expanded from civil liberties to social rights.[2]

[1]SADAO MORIKAWA/EUIRYONG HWANG/ SANGOK SEO*, "Protection of Sports Right as of Basic Human rights and National Sport Promotion", The Korean Journal of Sports Law, Vol. 11 No.4, 2008, pp. 47-48.:Sport for All European Declaration, European Sports Ministers Conference, Brussels 1975.: Dimitrios P. PANAGIOTOPOULUS, "Legal Policy for Sports Law in the EU", The Korean Journal of Sports Law, Vol. 11 No.4, 2008, pp. 31-43: See Sport for All European Declaration, European Sports Ministers Conference, Brussels 1975, as well as the UNESCO, International Charter of Physical Education and Sport, 21.11.1978, Paris Articles.1-3 and the preamble. p.159..

[2]Sangkyum Kim, "The Constitutional Protection of Sports Rights" The Korean Journal of Sports Law Vol.1, , 2000., pp.75-76.: Alexandru Virgil Voicu, "Arguments for Promoting the Right to Practice Sports as a Fundamental Right", New Prospects of Sports Law(edited by Kee-Young Yeun), YR Publishing Co./Seoul, 2013, 281.

First of all, general characteristics of basic rights are required to review legal features of sports rights. The constitutional basic rights werecreated as defense rights against state power, and have since extendedto the domain of the right to participate and the right of claim. Sports rights can be considered as both traditional civil liberties and as social rights depending on the point of view. Thus, legal characteristics can be problematic.[3]

Sports rights pertain to the freedom of sports activities. For that reason, the liberty of sports activities should be guaranteed. Sports activities are a way to enrich life and it should not be forced by the nation. Hence, the liberty of sports activities is a freedom that is not forced against one's will. Furthermore, the liberty of sports activities includes organization and the administration of sports associations as well as autonomy of theseassociations. Therefore, sports rights basically have civil liberty characteristics.[4]

However, the liberty of sports activities is not the only thing at stake here. Sports today include all kinds of activities required for human development designed to improve the individual's social adaptations. Thus, constitutional guarantee of sports rights cannot be fulfilled by the freedom of activity. Today, sports are utilized for individual leisure, promotion of health and/or training. Sports are a job for the professionals; national effort is required. As anelement of culture, sports can be thought to have constitutional social rights because it can be a way or a tool to manage human life.[5]

Sports rights have various characteristics. Also, assorting legal characteristics is a matter of no great importance because sports rights can be embraced in many different clauses. It can be said that sports rights have strong liberty characteristics. This is because sports area human centered activity, sports rights are based on the liberty of sports activities, and choosing and playing sports are undertaken of one's own free will. The right to live and exercise sports rights is becoming important as well.[6]

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[3]KYUNGKEUN KANG., "The Location of Sports Clause in Korean Constitutional Law", The Korean Journal of Sports Law, Vol. 11 No.4, 2008, pp. 154-159.

[4]SANGKYUM KIM, "Constitutional Amendment and the Guarantee of Basic Rights to Sports", The Korean Journal of Sports Law, Vol. 11 No.4, 2008, p. 87: KYUNGKEUN KANG., Ibid, 154-157: YONGTAEK YOON, "The Study of the placement of sports clause in the Constitution", The Korean Journal of Sports Law, Vol. 11 No.4, 2008, pp. 176-179.

[5]YUNCHUL BAEK, 'A Study on the Obligation of Nation and Local provinces for Sports Right Guarantee", The Korean Journal of Sports Law, Vol. 11 No.4, 2008, pp. 199-200.. Sangkyum Kim, "The Constitutional Protection of Sports Rights" The Journal of Comparative Law Vol. 1, Institute of Legal Culture & Comparative Law Dongguk University, 2000, pp. 82-85.

[6]European Sports Charter', 7th Conference of European Ministers Responsible for Sport, Council of Europe: Rhodes 13th – 15th, May 1992, In: International Sports Law Review PANDEKTIS 1:2, 1992, pp. 333-336.

2. The contents of sports rights

The contents of sports rights that must be defined by the international sports constitution as follows: assurance of human sports rights, athlete protection, harmony and unification of sports policies, proper status establishment of sports associations, normalization of school sports, installation and rationalization of sports facilities, independent organization efficiencies, sports safety and measures in case of accidents, international cooperation and world peace through sports, logical management of visible and human resources, welfare systems for sports people, and sports dispute settlement bodies.[7]

All human beings have the following basic rights.

1. The right to pursue happiness through sports
2. The right to be informed of necessary sports knowledge/information
3. The right to be educated through sports
4. The right to claim to be provided with sports facilities
5. The right to organize and run sports related associations

III. Acceptance of Regulations in Sports Fundamental Rights

1. Examples of Countries with Regulated Sports Rights under Existing Constitution

Issues related to sports rights are difficult to examine; the evolution of fundamental rights regarding sports itself really began to settle in people's lives universally in modern society. In that sense, lawmaking examples in foreign countries showed changes in the field of fundamental rights when many countries established or revised their constitutions after the Second World War. Sports rights gradually emerged as a constitutional right; these rights were being considered at the constitutional level before and after the 1970s.[8]

Greece is a typical country that has regulations regarding sports in the constitution. Greece already had provisions for sports regulations in the constitution in the 1970s. In Article 16 of the constitution of Greece, section 1 defines the arts and academic freedom, and section 2 defines sports in terms of education by stating «Education constitutes a basic mission for the State and shall aim at the moral, intellectual, professional and physical training of Greeks.» Section 9 states «Athletics shall be under the protection and the ultimate supervision of the State. The State shall make grants to and shall control all types

[7]KEEYOUNG YEUN, "Structure for the Enactment of Fundamental Law of Sport in Korea", The Korean Journal of Sports Law, Vol. 11 No.4, 2008, p. 131.; SANGKYUM KIM,"A Study on Protection of the Right of Athletes in the Constitution", The Korean Journal of Sports Law, Vol. 10 No.4, 20087 pp. 159-166.

[8]YUNCHUL BAEK, 'A Study on the Obligation of Nation and Local provinces for Sports Right Guarantee", The Korean Journal of Sports Law, Vol. 11 No.4, 2008, p. 204.

of athletic associations, as specified by law. The use of grants in accordance with the purpose of the associations receiving them shall also be specified by law.»

Portugaldefines sports in the chapter of fundamental rights, wheresports are systematically defined in the chapter of social rights and obligations in the constitution of 1976/82. Section 2, article 64 of the constitution states:healthyencouragement of sports activity in school education by stating «The right to health protection is to be met by the promotion of physical fitness and sports in schools and among the people.» Section 70, defining protection of young people, defines leisure-time, physical education and sports as their rights. Also, section 79 states that everyone has the right to physical education and sports, and it is the duty of the State, in conjunction with the schools and sports associations and groups, to promote physical education and sports.

Spain also stipulates sports rights by defining the right to health protection, public authorities of fostering sports, and utilization of leisure in article 43 in the amendment of 1978. Article 48 mentions sports as the condition for the free and effective participation by the young in political, social, economic and cultural development. Characteristic of the constitution of Spain is acknowledgement of sports rights as one of the fundamental rights in health and culture, defining sports as a matter of national tasks linking sports rights with leisure.

Unlike the other countries discussed herein, Switzerland mentions sports linked with the environment and education in the constitution. In article 58d of the Swiss federal constitution, emphasis is placed onthe environmental and educational effects of sports by stipulating «The federal Government must develop eco-friendly sports and basic principles for sports training in school should be made.»

Many other countries also mention sports in the constitution but they see it as a duty of the state to promote sports rather than guaranteeing access and provisions in terms of fundamental rights. Section 3, article 22, in the constitution of the Netherlands of 1983, for example, only defines obligation of the state and public authorities to promote leisure. Article 59, constitution of Turkey of 1982 takes measures to develop sports and shall protect successful athletes. In addition, Algeria defines sports education within health rights in section 2, article 67 of the constitution. Lastly, the Universal Declaration of Human Rights stipulates equal opportunity for active participation must be given on the equality of the sexes.

In reference to stipulations of sports rights in the constitution, Germany shows distinct characteristics as a federal state. There is no regulation in sports in federal law but they stipulate sports rights in the constitution. Specifically, states that joined the Federal Republic of Germany from Eastern Germany created a new constitution and stipulated sports rights. In states of former Western Germany, they stipulate sports development in section 1, article 18 of the constitution of Nordrhein-Westfalen and section 3, article 18 of the

constitution of Berlin. States in former Eastern Germany have sports regulation. Brandenburg stipulates «Sports is a part that is worth the development of life.» in article 35 of the constitution and in section 1, article 11, constitution of Sachsen, section 1, article 36, constitution of Sachsen-Anhalt, section 1, article 16, constitution of Mecklenburg-Vorpommern, and section 3, article 30, constitution of Thüringen stipulate sports rights in the constitution by regulating obligations to the development and protection of sports by the state and local government.

2. Sports-related Regulations in Countries without constitutional substantive enactments of sports rights

As we have discussed in the previous chapter, sports-related provisions can initially be found in the area of the fundamental rights because sports are defined as based on human physical activities.

There are no substantive enactments stipulated in the current constitution. Though sports-related provisions are not prescribed in the constitution, they need to be created, as long as they do not come into conflict with other constitutional matters.

In most of democratic countries in the world, a constitution declares that all citizens have the right to enjoy the dignity and value of man and that they can pursue a happy life by both mental and material satisfaction. As human beings seek to live a good life and maintain health by participating in sports, we can deduct rights to sports through these constitutional provisions. [9]

3. The Introduction of Sports Fundamental Rights in Various Countries

Stipulating sports fundamental rights is needed with regards to a revision of the constitution. [10]

Since sports became a significant constitutional issue in people's lives, not introducing this in fundamental rights regulations will create negative results, culturally and socially.

Knowing that many nations acknowledge sports rights as fundamental rights and provide for them the in constitution, it is not too much to say that the sports fundamental rights in the present constitution carry a great deal of weight.

Sports today have constitutional values which cannot be limited to the freedom of physical activities. You cannot realize the constitutional value of sports rights by simply drawing the grounds from the existing constitutional rights regulations - not when the values of ethicality and education of sports but also the social and

[9]KYUNGKEUN KANG., Ibid, 154-168:YUNCHUL BAEK, Ibid, pp. 205-207.

[10]Referring to the examples of Latin American countries Constitution, see Karel L. Pachot Zambrana," El Deporte y su Tratamiento en las Constituciones Políticas de los Países Comentarios a las Leyes del deporte en América Latina"*servicios.conade.gob.mx/DOCS_NORMATECA/148_199578FC4B494FA7BF57C978AADB1BAF.doc: see too,* YONGTAEK YOON, Ibid, pp.180-185.

economic values have increased. Thus, stipulating sports rights has a significant meaning. It is important to consider whether these rights should be treated – and thus enacted – as fundamental rights. Special consideration must be made for characteristics regarding how sports are introduced to the constitution.

Many elements that shape sports rights have the features of freedom rights, however, when looking into the whole, social basic rights need to be supported withcare and promotion by the states. Legislation by government forces is of course necessary. Even if it is provided for in the constitution, there will be differences concerning legal force. Interpretation of legislation will be the key for going forward; the way rights are interpreted will become increasingly important.

4. Proposal for the Amendment of the Korean Constitution

At the moment, discussion about Korea's Constitutional revision is being developed at the National Assembly level. This is reasonable from the perspective of the constitutional status of the National Assembly which represents the people. The discussion on constitutional revision definitely should not be only done in the National Assembly. There should be a process where the people's ideas converge as they are the final decision maker of as supreme right holders. This is the usual procedure of constitutional amendment to secure the democratic justice in that constitutional revision should undergo from the perspective that people have the power to amend to the constitution as well as the principle that people have the final rights.[11]

The subject focused in the discussion on the constitutional revision introduced by the academics, citizens, and government has been the structure of the political power including the governmental type. However, it is the people's fundamental rights that the discussion on the constitutional revision should continue as they are the most important part of constitution.

Although the current constitution may have well adopted the structure and core content of the people's fundamental rights under the structure of democratic legal nation, it is difficult to say that all the rights equivalent to the social change are well modified and built among the current constitution of over two decades. For instance of the European Union Constitution, even though protection of the personal information is not effective as not all the member nations finalized the ratification procedure yet, it is perceived as a basic human right, adopted in the statute and it is necessary to stipulate the appearance of the new basic rights. Accordingly, positioning the substantive enactment depending on the ideology of constitution and that mind, agrees the basic rights maximum guarantee.

In this light, it is necessary to adopt the sports Fundamental Rights at the coming amendment to the constitution. As already seen in the former instance, it

[11]SANGKYUM KIM, "Constitutional Amendment and the Guarantee of Basic Rights to Sports", The Korean Journal of Sports Law, Vol. 11 No.4, 2008, pp. 91.

will be against the present demand not to adopt the sports Fundamental Rights as a basic right in the constitution as far as it emerged as an important constitutional issue for the people's lives. Given that many nations adopt the sports Fundamental Rights as a basic human right, it is clear how much importance it assumes from the perspective of the reality of the constitution.

Today, sports have a constitutional value that does not limit to the simple liberty of physical movement. Given that the socio-economic value as well as ethical and educational value coming from the character of sports themselves grows on a daily basis, the constitutional value of sports right cannot be realized by simply deriving the foundation from the existing human rights related articles in the existing constitution. Therefore, adoption of the sports rights into the constitution is of importance.

There remains an important issue of what kind of human rights we will define the sports rights even after we decide to adopt the rights into the constitution. Even though the sports right has the characteristics of the liberal rights in many ways, it should be taken into account that it is one of the social rights in that national will of active support and promotion should be followed from the perspective of big picture. It is needless to say that the national lawmaking policy activity is prerequisite for the active implementation of the sports rights. Nonetheless, if the sports right is adopted into the constitution, there will be huge difference in the legal effectiveness from the present when we rely on the translation as there is no specific articles in the constitution. [12]

For example we will be able to introduce the sports rights into the constitution as follows.[13]

Article (Rights of Sports) 1) People have the right to enjoy the sports. 2) Government shall make an effort to grow and promote the sports. Furthermore, it will be desirable to include the specific content on the sports rights follows in the Basic Sports Act adopted under the constitution.

IV. Legislation of the Basic Sports Act in Korea

Sport policy is expected to be one of the national key policies. Nobody has doubt that sport has contributed significantly to the enhancement of national prestige through all sorts of international competitions including Olympic Games, national reconciliation, and elevation of life quality. In spite of these contributions, legal and institutional support for the development of national sport is appeared to be insufficient. Sport policy is not even considered as one of

[12]SANGKYUM KIM, Ibid, The Korean Journal of Sports Law, Vol. 11 No.4, 2008, pp. 91

[13]SANGKYUM KIM, Ibid, The Korean Journal of Sports Law, Vol. 11 No.4, 2008, pp. 92-93.

the 50 major tasks for the national policies. Sport related administrative services are dispersed into several departments and thus it makes efficient policy planning and operation difficult.[14]

Therefore, the author would emphasize that we are under the very urgent circumstances to enact the Basic Sport Act. The follows are the reasons why we need the Basic Sport Act: 1) the improvement of current sport related laws to meet the realistic needs of civil lives; 2) synthesis of sport policies; 3) protection of sport right and sport autonomy; 4) collaboration between schools and communities for sport promotion; 5) normalization of school physical education and elite athlete bringing up; 6) contribution to the development of professional sport and sport industry; 7) legal and institutional improvement for the sport of the handicapped; 8) legalization of agency to resolve sport related disputes; and 9) need of legal foundation for international sport exchange and unification between South and North Korea via sport.[15]

The contents of this Act should be involved in 1) the protection of sport right for the people, 2) protection for the athletes, 3) synthesis of sport policies, 4) establishment of dignity for the sport related institutions, 5) normalization of school physical education, 6) appropriateness of sport facility installment and utilization, 7) efficiency of sport administration, 8) risk management for sport activities, 9) national(South and North Korea) and international exchange cooperation via sport, and 10) reasonable management of both material and human resources for sport. [16]

Conclusion

Sports have become a field that needs to be treated at the level of the international constitutional charter because of its boundless value. Nations should provide fundamental rights in the constitution and forge relating legislations and promote all sorts of policies scientifically for the cultivation and development of sports. Sports are making a contribution towards peace and happiness for humanity and it is in an important charge of the exchange and cooperation between nations.

Countries need to stipulate and assure fundamental rights related to sports in the constitution by accepting these international constitution contents, and organizing sports-related legislations to establish an overall policy.

Collaboration between people and nations must be realized at the international sports level. Fundamental rights of man must be assured by developing sports industries with the overall goal of promoting happiness and health.

[14]KEEYOUNG YEUN, "Structure for the Enactment of Fundamental Law of Sport in Korea", The Korean Journal of Sports Law, Vol. 11 No.4, 2008, pp. 115-118.

[15]KEEYOUNG YEUN, Ibid, pp. 121-127.

[16]KEEYOUNG YEUN, Ibid, pp. 127-139.

VICTIM MANAGEMENT IN THE HUNGARIAN FOOTBALL SPORT

András Nemes
Prof., Lex Sportiva Hungarian Society of Sport slaw, Hungaria

I. Introduction

I will present a summary of a 16 years long hungarian sportslaw research project about the protection of personality rights of athletes. For this presentation I will focus on the football cases only.

Following the millennium manifested a new, unknown phenomenon in the sports health-literature: the sudden cardiatic death. What is that? There is a common opinion, that the cause of sudden cardiatic death for hidden heart problems and increased effort together. (so the unlucky effect of several circumstances) Because of regular exercise increased heart weight. This is the so-called "sports heart". The increased heart pumps blood more; In the heart formed new capillaries, but later the growth of capillaries can not follow the growth of the heart, causing myocardial infarction. We met during our research such opinion, that these should also contribute to doping, but they could not prove it. On the end of my presentation I show you a surprise about it! The long-term injury of health is often comes together with professional sport. In the history of football there are several examples, when the football player suffers an injury and could returning back to the world of sport after some shorter- longer time only. We also can mention cases, when the football player fall down on the football field and lose his life. These cases are examined differently by the sports health-care as the sports manager or the sports lawyer. Examining the cases from the aspect of risk analysis we have to mention, that there is a possibility to typifying the injuries. In this research we have had proposals to the Government, how and with what kind of efficiency could the injuries have been treated, what kind of solutions offers the Hungarian sport government for the victims. According to the risk management I asked to build up a special social network that is to care sports injuries, the aftercare and the protection of interests of athletes.

II. Methods

The research started with data-collection and continued with risk analysis within the framework of risk management. We can mention here the reveal and typifying of causes, the finding of common risk factors. I will show you some case-types in my presentation.

III. Main Part

There are much more cases of course, than what I present now, these things are relevant because the dispute them on the sportslaw higher education of our University (or my law firm was interested in it...) I haven't time enough to tell you every cases in detail and it is not too important in our point of view. But excepcioanally let me start with this **third type** of injury, if someone hurts one other athletes intentionally: this is a most frequent reason of the injury unfortunatelly. May I show you for example this second case: on the football match between FTC and Vác the defender of FTC, Mr. Keller kicked on the head of the player of Vác, Mr. Romanek with an intentional karate movement. Due to the accident Romanek suffered an open jaw bone fracture. Injured player initiated an action for damages but he could not prove the willfulness in the civil court. His football career finished, he could not return to the football field as a result of the seriousness of his injury. Imagine: Where was him protection of interest? (a jung talented sportman) he stayed alive, but they are the true victims. For them, and like them have had to make proposals to our govenment; I collected 27 cases, but belive me dear collegaues these not a simple cases, There are tragedies! Tragedy for the sport society, tragedy for their familie first of all, for collegaues, for everyone, for us;

That's why we investigated the reasons and the solutions of sports injuries. The research project regard to the protection of personality of the athlete concentrated on the Hungarian publications, articles and studies earlier for my PhD, and after my habilitation project, that covers the changes of 16 years legal practice. The main algorithms of the research you can see on this slide

We hypothised, that top athletes deserve a higher level protection of personality regarding to the social surplus value, that they represent.

Since 1928 to the present days the immaterial damage compensation wrote down a special Gauss curve to the restitutions procedure, that replaced it. There was assistance, ban and tolerance in it. Judicial practice tried to elaborate the common base of immaterial damage. Two aspects were in competition: The first tried to make disadvantages much bearable, the second treated the immaterial compensation as a private fine.

Following the SWOT-analysis of the two theory we can see that both had advantages and disadvantages. The main merit of the Private Law Code of 1928 was, that the immaterial compensation came into play, but 25 years later this developpment stopped with the appearance of the Decree of the Supreme Court in 1953. (I was one years old only, so I do not remember, I just learned, that immaterial compensation was ideologically incompatible with the existing social order in our early Socialism. This situation also took almost 25 years, because the Novelle of 1977 was the positive sequel of the process. Here connects the Directive no.16 of Supreme Court, which elaborated the immaterial damage in details. Among the aspects there were values such as the lifestyle of the injured

party, his/her age, the financial load bearing capacity of the society etc. Beside the several disadvantages it was an undaubt advantage, that the judicial practice was predictable. After lot of changes of our Civil Code and the earlier mentioned Suppreme Court Directive ensured a consolidated practice until 1992. To save the timelimit of my presentations the deatails I don't really like to tell you now.

Ladies and Gentleman! Immaterial damage has no money equivalent, we cannot speak about „compensation" in a strict sense, just about the equilibration of the suffered loss by ensuring a financial service that gives the injured party a different kind of advantage as a balance of the suffered injury and pain.

This is a new regulation, just for one and a half year: ani person whose rights relating to personality had been violated, shall be entitled to restitution for any immaterial violation suffered; so that is a good news, and the second one aswell: apart from the fact of the infingement no other harm has to be verified for entitlement to restitution: unfortunatelly it is a 3. Paragraf with this: the curt shall determine the amount of restitution in one sum; it is not really good solution;

There is one other probleatic point; We have a presumption for the consent of the injured party in the Hungarian civil law. The prior exclusion and limitation of liability and the consent of the injured party into a known concrete damage does not mean the same. The judicial practice was quite interested in the problem of the injury of an athlete suffered in the heat of the game (e.g. the consent of the athlete to the injury caused by smaller faults in the heat of the game). The consent expands to all of the cases, when the infringement of the rule-book (lex ludica rules) was intentional, but there was no explicit intent to cause injury (the intent was missing). The presumpted consent does not expand to the behaviour, of which aim is to cause injury.

Our excellent collegaue, Mr. Tamás Lábady was a vicepresident of the Hungarian Constitution Court. He was the opponent of mine, and after my graduations project a collegaue of mine on the Pázmány Péter Catholic University. This Professor writes in hes Comment of the Hungarian Civil Code, that 'Dogmatically the consent of the athletes can be evaluated as a declaration, that exludes liability mutually, by implicit conduct, based on paragraph this and this, but - because the physical integrity of the athlete can be injured - the application of the rule of the consent of the injured party is necessary, because the athlete can give a consent to the injury of his/her physical integrity in deed: in this case it can not be sanctioned in the absence of illegality.

Otherwise: the contractual clause that exludes or limitates the liability for the injury that injures physical integrity or health is null and void. We can refer to the will of the legislator for doping.

If you remember yet, In my introduction I promised you a surprise: Lot of sportdoctors diagnistized the cause as the overdose alloved performance enhancing drugs. Behind the world-wide several hundreds of sudden heartattacks experts found the overdose of soya. Of course it is a very-very siensitive reason

yet, because of world interest of the industrie of alloved performance enhancing drugs.

Lot of report confirmed, the comprehesion, that sudden cardiac death is not really more frequent in athletes, than in other populations. (but you know, death of traders, farmers rarely can see on the television screen, but similar situation of the athletesis often seen inTV viewers, so there are much more shocking, then death of lawyers).

It is really True? To do Sport dangers the life? No, Ladies and Gentlemann, it is not a simply Yes-or No question! It is commonly known, that human muscle cells can get 20 as much more blood in a sport career project based on a wellbuilt training schedule as in the sportless control group. It is also true, that not rarely a 38, 40 pulse can go up to 240 and go back in a normal time but it is not my task to talk about these controlled spiroergometrical experiments held on a treadmill.

IV. Conclusions

The protection of personality of the athlete (life and health) is particularly important.

The voluntary result of the injury does not serve neither the interest of the sport, nor the interest of the athlete. Professional athletes are need for an effective protection of interest. The project has to be started with a full risk analysis and continue with risk management. There must elaborate the conditions of the full insurance umbrella. It is necessary to build up a social network for the injured athletes. For this task there is need to ensure governmental funds. There must organize the aftercare of the injured athlete and the care allowance. Ladies gentleman, It was my short summary of our research, I am affraid, my time is up, Thank you for your attention!

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VI. Függelék:

Serious injury on match	Death case on training	Death case on match
Maafi Dárius (his spleen broke off) (Csepel U19)	Kiss László (1938-1967)	Fehér Miklós (1979-2004)
Szirányi Bence (jaw fracture) 19 Sept 2014	Zsiborás Gábor (1957-1993)	Lapath Iván (1980-2003)
JarmoAhjupera (double shin fracture) Győri ETO 2014/15	Szucsányi András (1941-1970)	Dárdai Balázs (1979-2002)
Bruno Moraes (double forearm bone fracture) Újpesti TE 2012/13		Kovács Gábor (1972-1993)
Véber György (shin fracture) 21 March 1998		Staller Tamás (1978-2003)
Tornyi Barnabás (skull fracture) 21 March 1998		
Romanek János (jaw bone fracture) 1992		

INTELLECTUAL PROPERTY RIGHTS IN SPORT WITH A VIEW TO FOOTBALL

Dr. Nader Shokri

President of Sports Law committee in NOC. of IR. IRAN,
Bord of Director in International Association of Sports Law(IASL),
President of Iranian Scientific Association of Sports Law (ISASL), Iran

Abstract: *Intellectual rights include rights that give its owner authority to use interests of human idea with monopoly; [1]these kinds of rights have economic value and capable for trading but the subject of these rights isn't material object, it is the production of mankind thoughts. These rights recognize as the right to control coping the work and other uses of it for a limited time in several country's legal system and internationally.*

Formation of protection of Sport industry in the frame of intellectual rights is a new scope. This article wants to study several examples of intellectual property in sport with a view to football and its importance.

Keywords: *intellectual property rights, sport, football, humankind thought.*

A) What is intellectual property?

Intellectual rights include rights let its owner to benefit from innovative activities and ideas, these kinds of rights have economic value and capable for trading but the subject of these rights isn't material object. Copyright, patent, right to the customer, the right of businessmen to their trademarks is some examples of these kinds of rights.

Some authors offer "intangible property" instead of "intellectual property", because of the source of this kind of rights that is idea from the thought of mankind, but we prefer the word "intellectual property" because some kind of rights like right to the consumers isn't from mankind thoughts and since it is not material, consider it in this scope. The common features of all kinds of intellectual property are: untouchably, monopoly, legality and limited to the special area.

B) Why intellectual property rights important in sport?

One of the aspects of intellectual property that is vague for many of people even between directors is intellectual property in sport. If it looks impossible, but intellectual property and professional sport is closely related. Basketball players, footballers, baseball players and other kind of sports involved with subjects like: use of their photo in advertising and absorbing customers ..., thus many of them sign agreements include property right like copyright.

[1]Katozian, Naser, properties and ownership, Mizan publication, 16th edition, 1386, P.63.

The relationship between intellectual property and sport mentioned when for example someone watching sport program like football match in TV. In this program athletes wear football league shoes and T-shirts, or you look Roger Federer make advertising. All of these cases are considered as intellectual property. Intellectual property includes many of commercial activities that consider sport and its consumer. Any time a commercial advertising intend absorbing consumers from broadcasting athlete's face or naming a stadium or a football player go to gridiron to play football, several problems of intellectual property is mentioned.

C) Types of intellectual property rights relation with sport

Sports events including achievements like: transfer the players, send out coach, concession of competitions TV broadcasting, competitions surroundings advertising, photo right and so on. The question is disputed that which examples of these products and achievements have necessary conditions to protect in intellectual property system.

Nowadays examples like: name, voice, image, signature, the number of sportswear, signs, domicile, slogans of competition or stadiums, players clothes' design, betting, absorb of tourists and sponsors in sport scope, attract many attentions and study these matters in intellectual property system is basically considered.

1. Examples relation with natural person in sport:

1.1. Sport techniques: natural person in sport recognize with titles like: player, referee, coach….what important in intellectual property rights in sport is theirs techniques and reputation. Athletes to achieve victory and higher points besides reliance on high physical power need to creativity to use their physical power. With attention to exist creativity criteria, athlete in the competition besides the training exercises frequently do special exercises accidently. In the other hand sports methods invent by sport experts and give to the athletes. Legal protection of these methods can be considered as a special protection of law from sport skills. Robert Kunstadt and two of his partners offer legal protection from sport motions by intellectual property rights in an article in American National Law Journal in 1996 (Kunstadt,1996, P.431). In this article high motivation of athletes for protection of their motions to create legal monopoly and catch point from competitor, victory, earn more money are mentioned as reasons of this debate, also judicial procedure tend to protect these achievements. Register the (I-Bone) system in American football in American copyright register office in 1985 is an effort of athletes to protect their sport motions.[2]Protection of sport

[2]Registration number: txu215.357, date registration: 15 0ct. 1985.

motions by copyright law considered as the first way of protection for these kinds of motions. Right to general performance either in a direct shape in stadiums or in an indirect shape with any device like TV channels is belonged to the owner. Besides of this right copyright and the right to produce derivative works like produce sport music and sport motion pictures that sometimes show as cartoons, are material rights of creator. Athletes as a creator of sport motions are the main owner of rights derivate from it, but may be clubs mentioned as the other claimant for ownership of these motions and on the other hand the coaches attempts in create new sport motion not to be ignored. When a football player signed a contract with a famous football club, is considered as an employee and the club is an employer, thus the club is the owner of innovative creation of player, but by the way intellectual property rights of innovation belongs to the athlete. Protection from sport motions from patent nowadays increased. American arena football league is only league in America that registers its special method as an innovation (Spengler and others, 2009, P.232). Other ways like: publicity right, traditional knowledge and Know-how and show how can be used to protection of sport techniques.

1.2. Athlete reputation: of other examples of intellectual property rights that relation directly to natural person in sport are the examples related to its personality. Increasing grows of mass media like: TV, websites and so on, result in public know special persons better and this because of public interest to athletes that when show their photos, peoples' minds unaware absorb to their interests. Athlete names are examples of reputation. Name of persons is part of their civil personality and nobody doesn't have right to use it without its consent even without ill will (Gardiner, 2006, P.HH6). Eric Cantona famous French football player in 1980 decade, register "Cantona" name as trademark (Gardiner, 2006, P.446). This shows the importance of athletes' names and its commercial value, also athlete's photo is other examples of reputation, voice and signature of athletes are other examples of reputation. Another example of athletes' reputation is number of their sportswear in competition. In case number 1010/3/84 in Tehran Shahid Beheshti trail one of famous football player bring an action for damages of illegal use of his sportswear's number in Iran football national team. in Iran law because of not suitable solution to protect reputation as an intellectual right, some trials invoke to unjustified enrichment(about illegal use of any kinds of athletes reputation) which in some articles like article number 301 and 306 of Iranian civil law be pointed, protect persons reputation. Also article number 48, 53 of privacy bill number 29265/28511 in 10/5/1384 approved by cabinet of I.R. of Iran protect some examples of reputation. Economic value of examples of reputation and usage of it disclose the necessity of foundation special right with reputation or publicity right title. In common law system based on Sweat of brow theory and labor theory of John lock (Hekmatnia, 1386, P.202) famous persons has this right.

2. Examples relation with natural sport organization:

Sport clubs, league organization, executive committee of sport competition like Olympic International Committee are the examples of sport organization that discuss about them in frame of intellectual property rights in sport.

2.1. Television and radio broadcasting right:

Television and radio broadcasting of sport competition because of general interest, has a large share in sport industry, and because of this, legal nature of television and radio broadcasting right and its ownership is important. In Common Law illegal possession of property, license violation, unfair competition are legal basis to explain nature of television broadcasting (Berry and Wong, 1993, P.713). In Roman Germanic system another situation is governed, in many countries broadcasting of sport competition stays besides related rights on and explains special rules about it. In Iran's law, broadcasting of work from television or radio or other devices, is one of material rights of creator. Also article 102 of American copyright law, protect audio and visual works. In some countries, based on

Special rules, grant a percent of television broadcasting right value to the players. In Brazil Pele Law grant 20 percent of broadcasting right value to the players being present in the events. Base on article 28 of this law, players as employee and the club as an employer sign agreement in which determine both sides' rights and duties. Since sport clubs provision the competitions and management of clubs known as owner of production of sport competition. In professional football league of Iran, article No. 1, 2 and 3 of professional football league provision explain the division of money earn from television broadcasting (ramezani, 1387, P.249). In this division the most percent of earnings divide between all the present teams equally. Team's rank in the end of season and their portion in the television broadcasting are the other criteria to gain more percent from incoming.

2.2. Signs of sport organization:

Other examples related to sport legal entities are signs of clubs, sport leagues and international sport organization like: LOC. However general sport signs, like GOLF word couldn't be protected as a sport trademark, but descriptive trademarks that describe goods, size and consumer type like: Quantum Fitness phrase means physical readiness that body building club use it as trademark, be protected by trademarks rules. Also words, signs and marks that not related with product, can use as trademarks. Marks, symbols, signs and sport clubs' domiciles are be attended by intellectual property. In litigation between American National Football League and one of New Jersey's local team, trial recognizes similarity of defendant team's name with the domicile of claimant club, a kind

of sign violation. The other example of trademark is commercial shape of sport accessories, for examples in competition between Iran and America in 1998 world cup of France, director of television program showed slowly Iranian goalkeeper that on his gloves there was a design like bat feet. Authorities of Puma Company sponsored Iran national team in world cup, claimed the breach of contract and recognized meritorious to receive damages (Vatane Emroz, 3/5/1388, P.1.).

Conlusion

Examples of sport industry which is related to intellectual property divided in two branches, first related to sport individuals and second related to sport entities. In first section examples of sport methods and motions, also samples related athletes' personality like: name, photo, voice, signature and even the number of athletes' sportswear are protected by intellectual property rights. In second section sport events television broadcasting right and also sport signs and marks like: symbols, signs, name and domicile of sport clubs, sports events' names, slogans, design of teams' sportswear as examples related to sport entities are protected by intellectual property rights. This article is as an introduction to intellectual property right in sport industry. These examples are not the only examples be protected by intellectual property right and surely with advancement of technology, another samples enter in this scope. Intellectual property right has many interests for sport industry, thus sport organizers should attempt to codification new national and international rules about this problem.

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MINORS AND DOPING

Anna Di Giandomenico[*]
Assistant Professor (PhD),University of Teramo, Italy

Abstract: *The achievement of significant results at a competitive level requires an early approach to the practice of discipline, although in almost every sport the competitive maturity ordinarily coincides with the age of majority: what you lose in terms of reflexes readiness and physical energies' resilience, you gain, in fact, in terms of himself managing during agonistic trance.*

Now, in the face of claims of performance more and more higher, it's undeniable how the access to doping by underage athletes also increases.

This is a question that needs a careful thought, considering the specific condition of minors: a question that doesn't seem to receive the attention due at a regulatory level (state or sports rule).

It being understood, in fact, the unavoidable disqualification of results ex officio of the result achieved in altered states, the system of penalties disposed for underage athletes doesn't seem to change much if compared to that one put in place for adult athletes.

All this reveals a paradox, in my opinion, little studied: I wonder, in fact, how much is taken into account the intrinsic legal incapacity of minors. Not only I wonder which legal relevance can be recognized at any consent provided by the minor: better, may the given consent constitute a condition of culpability? Which, instead, the responsibility profiles of involved adults?

Keywords: *Doping, Consent, Minors, Legal Theory.*

The achievement of significant results at a competitive level requires an early approach to the practice of discipline, although in almost every sport the competitive maturity ordinarily coincides with the age of majority: what you lose in terms of reflexes readiness and physical energies' resilience, you gain, in fact, in terms of himself managing during agonistic trance.

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[*]Phd and Assistant Professor at University of Teramo

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1. Early sport practice, early access to doping?

Undoubtedly, the early approach to the competitive sport practice is spreading more and more, even if in almost all sports the competitive maturity is reached by the age of majority:[1] all that you lose in terms of reflexes readiness and physical energies' resilience, you gain, in fact, in terms of himself managing during agonistic trance.

It is a phenomenon whose spread has several critical profiles.

First of all, it emergesa distortionof the nature of sport because the mainly social andeducationalfunctionattributedto the sportfades into the background, emphasizing instead its competitive feature.

Remember how the social and pedagogical function is a featurealmost unanimouslyrecognizedat the international level. In this sense, there are certain significant UNESCO documents, where it's highlighted the importance of physical education and sport as useful tools that "should make a more effective contribution to the inculcation of fundamental human values underlying the full development of peoples";[2] as well as "should seek to promote closer communion between peoples and between individuals, together with disinterested emulation, solidarity and fraternity, mutual respect and understanding, and full respect for the integrity and dignity of human beings".[3]

In the same directiongoestheTreaty ofLisbonwhen, explicitlyrecognizingthe competenceof the European Unioninthe sphere of sport, outlinesaEuropean model ofsportasan educational toolforthe promotion of social harmony anddemocracy, as well as a tool particularly suitable for action against pathologies and deviance, particularly at youth level.[4]

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[1]In this sense, sports like artistic gymnastic and/or rhythmic gymnastic are significant exceptions: in these sports the young age is, instead, an advantage for the higher agility of the body, hardly preservable with growing up of the age.

[2]*Preamble* of the UNESCO *International Charter of Physical Education and Sport* (Paris, November 21st, 1978)

[3]*Ibidem*

[4]Remember how the art. 165 stipulates that "the Union shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function" (pt. 1, para. 2), because the action of EU is aimed at "developing the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting

So there is an increasing elision of the sports educational function, caused by the above mentioned emphasis of the competitive dimension: an emphasis that ends in amore and moreexasperated requestof the victory, withthe consequentpressures exertedon athletes. This is a distortion that is even more serious if we consider that those involved are minors, that is to say persons still being formed.

Not only, in this process of distortion of sport, where the pursuit of victory becomes the only objective, there emerges an increasing recourse to doping that ends up making this juvenile activity a cast of the sport practiced in adulthood: namely an activity where the pursuit of victory replaces that search of the limit of itself in the continuous and cooperative comparison with the opponent;[5] an

the physical and moral integrity of sportsmen and sportswomen, especially the youngest sportsmen and sportswomen" (pt. 2 para. 8). Not only, the European Commission observed that "sport has a strong potential to contribute to smart, sustainable and inclusive growth and new jobs through its positive effects on social inclusion, education and training, and public health. […] It contributes to social cohesion by breaking down social barriers, and it improves the employability of the population through its impact on education and training. Voluntary activity in sport can contribute to employability, social inclusion as well as higher civic participation, especially among young people." (*The societal role of sport*, in *Developing the European Dimension in Sport*, COM(2011) 12 final - Brussels, 18.1.2011).

[5]About the cooperative feature of sports competition, Keating observed that "careful analysis has revealed that sport, while speaking the language of competition and constantly appearing in its livery, is fundamentally a co-operative venture. The code of sportsman, sportsmanship, is directed to facilitating the co-operative effort and removing all possible barriers in its development" (J. W. Keating, *Sportsmanship as a Moral Category* (1964), in W. J. Morgan – K. V. Meier (ed.), *Philosophic Inquiry in sport*, Human Kinetics Publishers,Champaign, 1995, p. 148). In this sense, Reid proposed a conception of competitor as a friend, affirming that "philosophical athletes, at least, are seeking to understand and improve upon ourselves. We use sport as an arena in which we can recognize our imperfections and seek to attain excellence or virtue. Now, if our general drive as human beings is also toward excellence and perfection, then a friend would be someone who helped us to achieve that. Since excellence requires admission of imperfection and striving to do better, friends are people who point out our imperfections and challenge to do better. A true friend will tell you if your prom outfit looks ridiculous. In short, a true friend challenge us to do our best, but then that's the mark of a good competitor also. On this view, the best competitors are ideally our friends" (H. L. Reid, *The Philosophical Athlete*, Carolina Academic Press, Durham NC, 2002, p. 171). In the same way, Boxill affirmed that "in these human competitions there is certainly an 'other', an 'other' that opposes and contend, but the 'other' is not an 'enemy' to be destroyed. He or she is simply a means of challenging another to achieve excellence. Thus, competitors test their capabilities against each other in a mutual challenge to achieve. The emphasis is not on defeating the opponent, but on striving for excellence, even if it requires the competitors strive to win" (J. Boxill, *The Ethics of Competition*, J. Boxill (ed.), *Sports Ethics. An Anthology*, Blackwell Publishing, Oxford, 2003, p. 109).

activity where the opponent becomes a rival; an activity where the body too becomes a rival to force and dominate, enslaving it to his thirst for success.[6]

2. Specific profiles of the doping penalty system regarding minors

The effects of the pervasiveness of the competitive dimension appear, therefore, evident; equally evident is the correlated alarm for recourse to doping at a young age. Now I wonder if it the phenomenon receives attention from a regulatory point of view; even better, if it receives due attention. In this perspective, what are the specificities of the penalty system of rules about doping in minors? What the legal issues?

In considering the specific aspects of the regulation of sanctions, we have to proceed in a different manner depending on whether the case is considered in the sports legal system or in a state legal system: an appropriate distinction, given the difference of legal significance that this case may assume in each of these jurisdictions.

a) The regulation of minors doping in sports legal systems

Remember how the sports legal systems are established to regulate competitions, in order to guarantee their fairness (namely in order to realize the s.c."level playing field")[7]. Better, the integrity of sports competitions is the *Grundnorm* of these legal systems, constituting their basic principle, around which these regulations are structured, assuming the features of ethical legal systems.[8]

[6]In this sense John Hobermann, affirmed that "my own point of departure is the idea that modern high-performance sport is a global monoculture whose values derive in large measure from the sphere of technology. […] The body of athlete has become, quite literally, a laboratory specimen whose structure and potential can often be measured in precise quantitative terms. This is the materialistic interpretation of the sportive body, whose machinelike dimension is its accessibility to rational analysis." (J.M. Hoberman,*Sport and the Technological Image of Man*, in W.J. Morgan, K.V. Meier (eds.), *Philosophic Inquiry in sport*, cit., pp. 202-203).

[7]It's important to recall how the s. c. "level playing field" is a concept, borrowed from the economic sphere, where it indicates a market or industry in which all participants compete under the same conditions. This is a principle underlying most of the European economic policy, aimed at preserving a condition of the free market, where it's secured the principle of competition and may be countered the establishment of oligopolies. In the sport field, this principle is structured in order to ensure fairness in competition, remembering how sports legal orders was established just to guarantee the regularity of competitions, that is to say that rules, environmental and instrumental conditions, and requirements (sex, age, eventually weight, and so on) must be equal for all participants. By this way the other prerequisite of sports competition, given by unpredictability and/or e uncertainty of outcome, is fulfilled too.

[8]Theintrinsically ethical nature of sports legal system emergerges as soon as it's noted that their *Grundnorm* consists not so much in protecting the rights of individuals, but rather in safeguarding of fairness in competition.

This characterization in an ethical sense has two consequences. On one hand, there is a compression of individual rights, which become recessive towards the supreme good of the fairness in sports competition. On the other hand, there emerges the inherent illegality of doping, because of its undermining just this *Grundnorm*.

All this justifies the severity of sanctions and penalties provided for the case: rules that, as regard the sports Federations that have adopted WADA Code, result in:

a) The annulment *ex officio* of the result achieved in altered conditions (as well of all the possible consequences, deriving from these results): annulment implying the rewriting of the ranking and the return of medals, cups and prizes that may be won;[9]

b) The infliction of a disqualification ranging from a minimum of one year up to a lifetime ban.[10]

Not only, the characterization in an ethical sense of this legal systems fully justifies the considering as doping:

a) the presence of metabolites and / or markers, indicators of the assumption of substances, that may be considered masking agents;[11]

b) the avoiding of anti-doping controls;[12]

c) the mere possession of doping substances.[13]

Until now the general discipline of doping: a legal framework that doesn't seem to present significant differences if the parties involved are minors, who are punishable, therefore, with the same penalties provided for adult athletes. The only exception expressly disposed is that provided for ascertaining of *No Fault or Negligence*, where is disposed that "*except in the case of a Minor*, for any violation of Article 2.1, the athlete must also establish how the Prohibited Substance entered his or her system."[14]

[9]"An anti-doping rule violation occurring during or in connection with an *Event* may, upon the decision of the ruling body of the *Event*, lead to *Disqualification* of all of the *Athlete's* individual results obtained in that *Event* with all *Consequences*, including forfeiture of all medals, points and prizes, except as provided in Article 10.1.1" (art. 10.1 – Disqualification of Results in the Event during which an Anti-Doping Rule Violation Occurs, 2015 WADA Code).

[10]See in this sense the articles 10.2 and 10.3 of the WADA Code.

[11]This is the result of the combined provisions by Articles 2.1 and 4.3.2 ("A substance or method shall also be included on the Prohibited list if Wada determines there is medical or other scientific evidence, pharmacological effect or experience that the substance or method has the potential to-mask the use of other Prohibited Substances or Prohibited Methods.")

[12]As established by Articles 2.3 - *Evading, Refusing or Failing to Submit to Sample Collection*, 2.4 - *Whereabouts failures*, and 2.5 - *Tampering or Attempted Tampering with any part of Doping Control*.

[13]In this sense see Article 2.6 - *Possession of a Prohibited Substance or a Prohibited Method*.

[14]Appendix 1 – *Definitions*, WADA Code, p. 137. The same is disposed in case of *No Significant Fault or Negligence*

However, the WADA Code pays particular attention to minors, when it finds in young people the preferential target of its educational activities.[15]

Not only, it's possible to find a particular consideration of their condition when it's disposed to open *ex officio* investigation against the staff of the minor if they are positive to doping control;[16] as well, when we find a protection of their privacy, by the provision of an exception to the obligatoriness of Public Reporting.[17]

b) The regulation of minors doping in state legal systems

All that just told about the discipline of doping within sports legal systems varies considerably when we examine the doping regulation in state legal systems: a difference having inevitable outcomes on the regulation of sport and offencesrelated to it.

Without claim to examine the question in an in-depth and detailed manner, first of all, just remember how state legal systems are characterized by a coercibility of its laws, that acts *ergaomnes*:[18]a coercibility that differentiates them from the sports legal systems, whose distinctive feature is given by their

[15]"Prevention programs shall be primarily directed at young people, appropriate to their stage of development, in school and sports clubs, parents, adult athletes, sport officials, coaches, medical personnel and the media." (Art. 18.2, para. 3).

[16]The National Anti-Doping Organizations are obliged "To conduct an automatic investigation of athleteSupport Personnel within its jurisdiction in thecase of any anti-doping rule violation by a Minorand to conduct an automatic investigation ofany athlete Support Person who has providedsupport to more than one athlete found to havecommitted an anti-doping rule violation." (Art. 20.5.9)

[17]In this sense the Article 14.3.6 states that "the mandatory Public reporting required in14.3.2 shall not be required where the athleteor other Person who has been found to havecommitted an anti-doping rule violation is a Minor. Any optional Public reporting in a caseinvolving a Minor shall be proportionate to the facts and circumstances of the case."

[18]About the essential relationship between Law and force remember how Rudolf von Jhering affirmed that "the law is not mere theory, but living force. And hence it is that Justice which, in one hand, holds the scales, in which she weighs the right, carries in the other the sword with which she executes it. The sword without the scales is brute force, the scales without the sword is the impotence of law. The scales and the sword belong together, and the state of the law is perfect only where the power with which Justice carries the sword is equaled by the skill with which she holds the scales." (R. von Jhering, *The Struggle for Law* (1872), The Lawbook Exchange Ltd, Clark NJ, 2006, p. 2). An essential relationship reaffirmed by Hans Kelsen, when observed that "the first characteristic, then, common to all social orders designated by the word 'law' is that they are orders of human behavior. A second characteristic is that they are *coercive orders*. This means that they react against certain events, regarded as indesirable because detrimental to society, especially against human behavior of this kind, with a coercive act; that is to say, by inflicting on the responsible individual an evil – such as deprivation of life, health, liberty, or economic values – which, if necessary, is imposed upon the affected individual even against his will by the employment of physical force." (H. Kelsen, *Pure Theory of Law* (1960), University of California Press, Berkley, 1967, p. 33).

inherent conventionality, to which follows a void of competence against those not belonging to them;[19] a coercibility, whose fundamental premise is in that separation between Law and morality now definitely consumed.[20]

The combination of these two elements results in the identification of an essential limit to the normative discipline of the state, that ordinarily abstains from entering in the private sphere of citizen. From here a substantial indifference of the state legislation for those fields deemed not falling in the general interest: for this reason not all states believe that sport may fall within their area of legislative competence.[21]

And in those states believing that sport falls within their regulatory competence, the rules put in place will never take those inherently ethical characteristics, typical of sports rules, even if are cases as doping and sports fraud to be regulated.

[19]In this sense Foster, making a distinction between International Sports Law and Global Sports Law, argued that "global sports law […] may provisionally be defined as a transnational autonomous legal order created by the private global institutions that govern international sport. Its chief characteristics are first that it is a contractual order,with its binding force coming from agreements to submit to the authority andjurisdiction of international sporting federations, and second that it is not governedby national legal systems. It would be in Teubner's phrase truly a 'global law without a state.'It is a sui generis set of principles created from transnational legal norms generated by the rules, and the interpretation thereof, of international sporting federations. This is a separate legal order that is globally autonomous.This implies that international sporting federations cannot be regulated by national courts or governments. They can only be self-regulated by their own internal institutions or by external institutions created or validated by them. Otherwise theyenjoy a diplomatic-type immunity from legal regulation." (K. Foster, *Is there a Global Sports Law?*, in R. C. R. Siekmann - J Soek (eds.), *Lex Sportiva: What is Sports Law?*, T.M.C. Asser Press, The Hague, 2012, p. 37).

Without examining in-depth all the historical process of separation between Law and Morality, here it suffices remember how Kant, introducing his distinction between Law and Moral, affirmed that moral imperatives are categorical imperatives, namely absolute and unconditioned imperatives, that must be obeyed in all circumstances and is justified as an end in itself, while legal imperatives fall within hypothetical imperatives, namely a kind of imperatives that applies only conditionally: because of this distinction, Law acts in the s.c. *external forum*. In fact "duties in accordance with rightful lawgiving can be only external duties, since this lawgiving does not require that the idea of this duty, which is internal, itself be the determining ground of agent's choice; and since it still need an incentive suited to the law, it can connect only external incentives with it." (I. Kant, *The Metaphysics of Morals* (1797), Cambridge University Press, Cambridge, 2003, p. 21).

[21]*Ex pluribus* see Germany, where the autonomy of sport is sanctioned by the Civil Code (Art. 25), which states the general principle of self-determination ofthe societies and the right to constitute an internal system as the essential expression of the freedom of association, sanctioned by Art. 9, para.1 of the Fundamental Law dated May 23, 1949, amended with Federal Law dated October 27, 1994.

As regards doping, moreover, a further limitation is constituted by the increasingly widespread affirmation of the principle of self-determination, which makes rather difficult to find a rationale that justifies its prosecution.[22]

In case there are minors involved, however, this limit will diminish considerably, due to the essential legal incapacity that distinguishes them. In this sense it appears emblematic the regulation put in place in US, where, in face of a substantial indifference as regards doping in adults, there is a very detailed federal regulation, aimed at combating the spread of use of steroids among minors.[23]

Despite the limitations just outlined, many states considered appropriate to classify the case as acriminal offence. In particular, some states treat sportsmen as passive subjects, considering them, therefore, not punishable unless they are theselves manufacturers, dispensers or traffickers of doping substances.[24]In this case, it emerges, obviously, how being minors is a further legitimation of the condition of passivity.

Other states, instead, chosen to identify profiles of direct responsibility for athletes.[25] In this case, without prejudice to the aggravating circumstances and/or profiles of specific responsibility of the adults involved, the condition of

[22]Remember how, within the tendency to a progressive emancipation of individual in therapeutic relationships, so that an almost total acknowledgment of a right to self-determination is reached. This is a consolidated tendency that assigns primacy to will, particularlyin the controversies regarding actions taken on one's own body. In the USA, this acknowledgment has led to the emanation of the *Federal Patient Self-Determination Act*, approved on November 5th,1990 and enacted as of December 1st, 1990. In Italy this right to self-determination touches a constitutional level in the Italian legal system, having been founded on Art. 32 of theConstitution.

[23]It's interesting to observe how in US there are no specific rules that expressly condemn the use of doping in adults. Sanctions are provided only if the doping substances fall within controlled substances and only against those being in possession, or distribute or produce these substances, saying nothing against those using them (in this sense see the provisions of the *Controlled Substances Act*, contained in the Title 21 United States Code - Chapter 13 - *Drug Abuse Prevention And Control*)**.** But there are detailed and specific provisions about the *distribution to persons under age twenty-one* (§ 859 USC), as well about the *distribution or manufacturing in or near schools and colleges* (§860), and about *consecutive sentence for manufacturing or distributing, or possessing with intent to manufacture or distribute, methamphetamine on premises where children are present or reside* (§860a). These are rules that we may apply to doping substances, considering that anabolic steroids are considered a class of drugs falling into Schedule III of the Controlled Substances Act.

[24]In this sense it may be interpreted all that disposed by the Ley Orgánica 3/2013, de 20 de junio, *de protección de la salud del deportista y lucha contra el dopajeen la actividaddeportiva*, especially by article 23, in which it's stated that athletes may be sanctioned with a suspension of their federal licenses, as well as with monetary fines.

[25]Besides the Italian law, which states that athletes can be punished with imprisonment up to 3 years (article 9 of the law 376/200), antidoping French rules go in the same direction, since they establish prison sentences from 1 to 5 years (article 232-26 of the Code du Sport) for those athletes who incur in conduct prohibited by article 232-9, prohibiting use and possession of doping substances.

minors should receive special consideration because of their constitutive legal incapacity. Now, examining the state legislations that have chosen the latter solution, it is interesting to observe how, if on one hand it is possible to identify an orientation almost unanimous in identifying aggravating circumstances as regards those involved adults, on the other hand a worrying legislative silence about minors responsibility may be observed.

3. Legal issues

The analysis of the specific profiles of the anti-doping regulations, as implemented in the sports legal systems and in those state ones, reveals some legal issues about which it seems appropriate to think in a more detailed manner than hitherto.

a) Sports legal systems

It has seen how, in sports legal systems, the specificity of the conditions of minors is acknowledged only partially. This is an attention emerging from the disposition of a stronger protection of their privacy, as well as from the provision of an opening *ex officio* of investigations against adults of the staff, in case of detection of a violation of anti-doping rules by an underage athlete.

This is an attention that, however, already raises some perplexities: *quidius* if these adults don't belong in a structured manner to the sports legal system?

Furthermore, it is a particular consideration that stops to these provisions: in fact, it is not provided for any further differentiation in the rest of the regulation.

Now, if it seems appropriate the annulment *ex officio* of the result achieved in altered conditions, as well as the annulment of all consequences deriving from this result, I wonder whether it is equally justified the provision of penalties ensuing the violation of anti-doping rules laid down in Articles 2.3 (*Evading, Refusing or Failing to Submit to Sample Collection*), 2.4 (*Whereabouts failures*), 2.5 (*Tampering or Attempted Tampering with any part of Doping Control*), as well as Article 2.6 (*Possession of a Prohibited Substance or a Prohibited Method*).

In effect, these are provisions and sanctions that are justified by the ethical nature of the sports legal system, and made possible by its conventional nature; but, above all, these seem justified if those involved are adults, who consciously adhere to such significant restriction of freedom.

Then, I wonder *quid ius* in the case of minors, whose membership is made through a third party: what legal relevance can be recognized to their will, considering their constitutive legal incapacity? Again, always because of their specific state, what significance may be attributed to the avoiding the obligation to undergo to the controls? What significance in case of possession?

In a word, I wonder if we are in the presence of an evident contradiction, considering their subordination to the will of adult, exercising the legal protection.

b) State legal systems

Passing to the examination of legal issues emerging in the state legal systems, preliminarily remembers how, as regards doping, the state power of sanctioning towards sportsmen is essentially limited by the right to self-determination.

As already noted, examining the regulations it seems to be confirmed that this limit acts effectively, inducing states to consider athletes as passive subjects, especially when doping is a criminal offence.

Again, always in this context, it should be noted how the specificityof the conditions of minors require particular protection: from here the emerging of an obligation to safeguard their health, so that the right to self-determination appears recessive than the dutifulness of psycho-physical welfare.

This is a specificity that doesn't seem, however, to find an adequate regulatory acknowledgment. On the one hand, in fact, in almost all state legislations, introducing a minor to doping practices constitutes an aggravating circumstance.[26] On the other hand, however, there is no adequate differentiation between adults and minors with regard to the regulation of the liability regime.[27]

It could be argued that this would be a superfluous differentiation, because the state legal systems have often (but not always) specialized juvenile courts, dedicated to prosecution of minors in an appropriate manner.

Can we consider this sufficient? Maybe yes. But a further element has added, given by the adoption of the UNESCO International Convention against Doping in Sport,[28] which could make inadequate even the provision of this specialized jurisdiction.

Remember, in fact, how the Convention has adopted the definition of doping contained in the WADA Code in force at the time, so that an anti-doping rule violation may consist in the "(a) the presence of a prohibited substance or its metabolites or markers in an athlete's bodily specimen; (b) use or attempted use of a prohibited substance or a prohibited method; (c) refusing, or failing without compelling justification, to submit to sample collection after notification as authorized in applicable anti-doping rules or otherwise evading sample collection; (d) violation of applicable requirements regarding athlete availability for out-of-competition testing, including failure to provide required whereabouts information and missed tests which are declared based on reasonable rules; (e) tampering, or attempting to tamper, with any part of doping control;

[26]Almost all legislative provisions consider the involvement of a minor as an aggravating factor: see, for example, what disposed by art. 9, para 3, of Italian Law 376/200; the same happen in French legislation (article 232-26), as well as in Spain (articles art. 27, para 5 – e); and 24, para 1 – a); 25, para 2 – b); 26, para 1 – b)).

[27]None of the known laws establishes differentiated regime for minors and adults.

[28]*International Convention against Doping in Sport*, Paris October 19th, 2005 – entered into force on February 1st, 2007.

(f) possession of prohibited substances or methods; (g) trafficking in any prohibited substance or prohibited method; (h) administration or attempted administration of a prohibited substance or prohibited method to any athlete, or assisting, encouraging, aiding, abetting, covering up or any other type of complicity involving an anti-doping rule violation or any attempted violation."[29]

Now, *nullaquaestio* for those states that assign to sports organizations the whole management of the actions aimed at combating doping, considering it, therefore, a typically sports illicit. As well as *nullaquaestio* for those states that consider doping as a civil offence.

But problems arise for those legal systems where doping is a criminal offence: there are critical legal issues having a general nature, as well a specific one.

Critical issues having a general nature arise, above all, because those legal systems give an ethical character to their regulations: an ethical feature that is difficult to reconcile with the statehood of the rulesput in place.

An in-depth examination of what's established by the Convention reveals more specific issues. So, how to reconcile the right to no self-incrimination with the prohibition of circumventing the controls? Again, how to justify the assimilation of attempted doping to the consummated crime? Finally, how may we justify the assimilation of possession to the use of prohibited substances and methods?

The perplexities highlightedin a general wayare amplifiedas soon asit is observed that for minors there are no exemptions from responsibility for events and/or actions not chargeable to their will (even merely because their will has no legal significance).

What is worrying is that there is a growing trend by states to characterize doping as criminal offence:[30] a trend that, instead of promoting effective actions aimed at combating the widespread of doping, leads to a disapplication *de facto* of the rules, because of their objective criticality in terms of justice.[31]

[29]Article 3.

[30]There is a general pressure to insert the doping among criminal offences: what is surprising is that this pressure seems to be successful in some states where there is a consolidated tendency excluding that discipline of sport falls within the state competence. In this sense, Germany seems to be rapidly approaching a turnaround. It is in progress, in fact, the discussion of a draft law regulating doping following the example of what has already been disposed in Italy and France. Similar pressures are being recorded in the UK.

[31]It is interesting to note that in Italy, after an initial multiplication of legal proceedings the attention of the Court has gradually turned off, probably due tothe finding of alack of differentiation of responsibilities that ended up penalizing athletes (considering that Italian law does not provide for them any kind of attenuating circumstances, regardless of any collaborative attitude and willingness).

4. Final considerations

Given that doping is a very serious violation of the basic principles of sports competition and, therefore, can not be justified in any way, I proceeded to examine the regulatory profiles of this case, from a legal theory point of view, considering in a separate way sports legal systems and state legal systems, because of their essential difference.

Now, considering the sports legal systems, the discipline of doping is extremely severe, how result from the sanctions provided by the WADA Code: a severity whose foundation and justification lie without doubt upon the characterization in an ethical sense of these legal systems; a severity that appears unquestionable if those involved are adults.

But, as soon as we focus on the doping sports regulation, as provided when the involved subjects are minors, we have seen how a picture rich of chiaroscuros emerges. On one hand, in effect, there is a special attention paid to youth, highlighted by the identification of young people as the preferential target of pedagogical initiatives, aimed at educating to a sport properly understood; as well as by the identification of special measures aimed at safeguarding young athletes from potentially harmful influences of adult members of their staff.

Might we consider that this suffices? I think not, even considering that, except the above mentioned measures, there is no further trace of a differentiated treatment of minors, thus ascribing to them responsibilities, of which they can not respond constitutively.

We have even seen how all that argued as regard the sports legal systems, doesn't necessarily apply in state legal systems, because of their intrinsically different nature. So, having detected how not all countries consider appropriate to regulate expressly doping, we have observed that, among states that have done it, some chose to place doping within criminal offences and other have considered it as a civil illicit.

Now, even when states rule doping expressly, some critical points emerge: these are critical issues, that give rise to greater perplexities, especially if doping is a criminal offence.

Not only, we have seen how the adoption of UNESCO Convention constitutes a further critical factor, because of its introduction of an ethical dimension in the state regulations, that, instead, should be devoid of it.

Within this framework, the position of minors appears to be underestimated even more of what happens within the sports legal systems, despite the recessivity of the right to self-determination, that constitutes a significant limit to the power of regulation of the states in this matter.

Finally, we may conclude that in sports legal systems as well in state legal systems an adequate consideration of the condition of minors isn't detected. In fact, minors are the subjects of some measures aimed at safeguarding them, but it doesn't seem

to be enough. In a word, it's no sufficient to provide for increases of responsibility of involved adults, as well as it isn't sufficient to identify youth as the preferred target of educational campaigns. What's lacking in both types of legal system is, in fact, a focus on their constitutive legal incapacity: a consideration to be developed coherently (courageously?), that will be able to identify not only specific sanctions, but even exemptions cut out on their condition. When a reflection in this sense?

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A CHANGE IN INTENT: THE 2015 WORLD ANTI-DOPING CODE

Daniel Gandert*

Clinical Assistant Professor, Northwestern University School of Law, USA

Shortly before the 2008 Summer Olympic Games, the swimmer Jessica Hardy tested positive for the prohibited substance clenbuterol.[1] The positive test was a result of her taking the supplement Advocare, which she believed that other swimmers were taking.[2] Despite contacting other swimmers, the product's distributor and manufacturer, and members of her governing body and not learning anything negative about the product, Hardy learned that the Advocare that she ingested was contaminated.[3] Hardy received a one-year suspension for the offense, the prescribed penalty under the World Anti-Doping Code ("WADC") at the time and was unable to compete in the Olympic Games later that year.[4]

The WADC was revised in the following years. Among the revisions was the addition of a *Contaminated Products* category which allows athletes who inadvertently ingest a prohibited substance through a contaminated product to have their suspension reduced to a reprimand.[5] The WADC has a huge impact on the lives of athletes. Overall, the 2015 WADC makes it much more difficult for those with inadvertent doping offenses to get caught in the system. However, there are some instances, such as athletes who intend to take a prohibited substance but do not intend to cheat, where the penalties are harsh for the athlete's offence.

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*Clinical Assistant Professor, Northwestern University School of Law

[1] *World Anti-Doping Agency (WADA) v. Jessica Hardy & United States Anti-Doping Agency* (CAS 2009/A/1870) at 4.

[2] *United States Anti-Doping Agency v. Jessica Hardy* (AAA No. 190 00288 08) at 6.

[3] *Id.* at 6-7.

[4] *Id.* at 16.

[5] *See* Article 10.5, 2015 *World Anti-Doping Code - Final Redlined to 2009 Code*, at https://wada-main-prod.s3.amazonaws.com/resources/files/wada-redline-2015-wadc-to-2009-wadc-en.pdf for an illustration of the addition of the Contaminated Substances category.

The Origins of the World Anti-Doping Code

Doping was regulated by a variety of institutions with different procedures, rules, and penalties during the 1990s.[6] Differences between the rules of organizations from different countries as well as between the rules of International Federations and National Governing Bodies brought about issues.[7] After major discoveries of doping related to the 1998 Tour de France, it was determined that a separate agency to deal with doping issues was needed.[8] In 1999, the International Olympic Committee ("IOC") held the World Conference on Doping in Sport which led to the formation of the World Anti-Doping Agency ("WADA").[9] The agency composed the WADC which standardized the anti-doping policies and took effect in 2003.[10]

The first version of the WADC brought about harsh penalties for doping offences along with zero tolerance.[11] The standard penalty for a first doping offence became two years of ineligibility and the standard penalty for a second offence became a lifetime ban.[12] Athletes were responsible for monitoring everything that they ingested in order to prevent accidental contamination.[13]

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[6]Jessica K. Foschi, *A Constant Battle: The Evolving Challenges in the International Fight Against Doping in Sport,* 16 DUKE L.J. 457; David R. Mottram, DRUGS IN SPORT, 3RD ED. (2003) at 322; *See National Wheelchair Basketball Association (WNBA) v. International Paralympic Committee (IPC)* (CAS 95/122).

[7]*Id.* Also, *see National Wheelchair Basketball Association (WNBA) v. International Paralympic Committee (IPC)* (CAS 95/122) for an example of an issue that came about because of the differences in rules.

[8]Jin-kyung Park. 2005. "Governing Doped Bodies: The World Anti-Doping Agency and the Global Culture of Surveillance." *Cultural Studies Critical Methodologies*, 5, no. 2: 177.

[9]Albert D. Fraser, *Doping Control from a Global and National Perspective*, Ther Drug Monit, Volume 26, Number 2, April 2004: 172 and Dick Pound, Inside the Olympics: A Behind-the-Scenes Look at the Politics, the Scandals and the Glory of the Games (2004) and *A Brief History of Anti-Doping*, at https://www.wada-ama.org/en/who-we-are/a-brief-history-of-anti-doping.
Fraser, *supra* note 4.

[10]John Mendoza 2002"*The War on Drugs in Sport: A Perspective From the Front-Line.*" 12 Clinical Journal of Sports Medicine 254-258 (2002) and Paul J. Green, *Analyzing the Latest Version of the World Anti-Doping Code* at http://www.globalsportsadvocates.com/analyzing-the-latest-version-of-the-world-anti-doping-code/, Oct. 17, 2014.

[11]*See* 2003 World Anti-Doping Code.

[12]Article 10.2, 2003 World Anti-Doping Code.

[13]Daniel Gandert, *Gasquet and the Career-Killing Kiss: A Precedent for No Fault or Negligence*, XXVI IASL World Congress 2010 Proceedings, Sports Law: Lex Sportiva, National Sports Law, and International Sports Law (2010) at 386.

Past Versions of the Code and Inadvertent Doping

Criticisms came about that that the strict rules and adjudication system for violations were unfair to athletes. Among them was that laboratories were prohibited from letting personnel testify as part of an athlete's defence.[14] There was a presumption of validity for laboratory work and scientific tests as well as that the tests had been administered correctly.[15] Cases came about where arbitrators were uneasy about the harshness of the penalties for an athlete's inadvertent doping offense.[16] According to former USOC ombudsman John Ruger, "two, three, five people every year who [were] not intentionally cheating" were swept up by the anti-doping system.[17]

Eventually, change came about through the Court of Arbitration for Sport ("CAS") case *Purta v.International Tennis Federation*. Believing that it was his cup, the tennis player Mariano Puerta accidentally drank from his wife's water cup and ingested a miniscule amount of his wife's menstrual medication.[18] The International Tennis Federation Tribunal panel initially hearing the case determined that it fell into the *No Significant Fault or Negligence* category.[19] As this was Puerta's second doping offence, the panel determined that under the WADC, the appropriate penalty was eight years of ineligibility.[20] Puerta appealed the case to CAS where the appellate panel found it to be one of the "rare cases" for which the rules of the WADC do not provide a proportionate and just sanction and reduced Puerta's suspension to two years of ineligibility by applying the principle of proportionality.[21]

The arbitrators found that Puerta's case fell into a lacuna in the code and wrote that they hoped that that the code would be fixed by future revisions.[22] In 2009, the second version of the WADC came into force.[23] Among the changes

[14]Michael Hiltzik, *Athletes' Unbeatable Foe*, LA Times, http:// www.latimes.com/news/la-sp-doping10dec10-story.html, Dec. 10, 2006.

[15]2003 World Anti-Doping Article 3.1.2.

[16]Michael Hiltzik *Athletes See Doping Case Appeals as Futile Exercise*, LA Times, http://articles.latimes.com/2006/dec/11/local/la-me-doping11dec11, Dec. 11, 2006 ; *See Tori Edwards v. International Association of Athletics Federations (IAAF) and USA Track and Field (USATF)* (CAS OG for 04/003) for an example.

[17]Hiltzik, *supra* note 14.

[18]*Puerta v. International Tennis Federation (ITF)* (CAS 2006/A/1025) at 8.

[19]*Decision in the Case of Mariano Puerta* (International Tennis Federation Anti-Doping Tribunal).

[20]*Id*.

[21]*Puerta*, *supra* note 18 at ¶11.7.23.

[22]*Id*.

[23]*2009 World Anti-Doping Code, WADA, at* https://www.wada-ama.org/en/questions-answers/2009-world-anti-doping-code, accessed Oct. 14, 2015.

was the inclusion of a chart to be used to calculate the penalty for second doping offenses, which took into account the category of both offences.[24]

Additionally, the code expanded the category of *Reduced Sanction for Specified Substance*.[25] *Specified Substances* are substances "which are particularly susceptible to unintentional anti-doping rules violations because of their general availability in medicinal products or which are less likely to be successfully abused as doping agents."[26] Under the 2003 WADC, only substances specifically listed as specified substances fell into this category.[27] Under the 2009 WADC, all substances, except for those falling into specific categories or specifically noted as not falling in to this category on the *Prohibited Substances* list, fall into this category.[28] Under both codes, athletes with *Specified Substances* violations could have their suspensions reduced to a "reprimand and no period of *Ineligibility*" at an arbitrator's discretion.[29] The 2009 WADC also added an *Aggravated Offences* category with a penalty of four years of ineligibility.[30] These changes helped bring the code in the direction of penalizing true cheaters while reducing the penalty for inadvertent dopers.

Issues with the 2009 Code

Although changes made the 2009 code more fair than the 2003 code, it still contained many opportunities for inadvertent dopers to be caught in the system. According to former USOC Ombudsman John Ruger, between forty and sixty percent of positive doping test results were from inadvertent dopers.[31] One area where many inadvertent doping offences occur is in contaminated or mislabelled nutritional supplements.[32]

[24]The changes can be found by viewing 2009 WADC Article 10.7. In the chart, the penalties varied depending whether each offence was a Standard Offence, *No Significant Fault or Negligence* offence, *Reduced Sanction for Specified Substances*, *Filing Failure and/or Missed Tests* offence, *Aggravated Sanction*, or sanction for *Trafficking or Attempted Trafficking*.

[25]Daniel Gandert, *Puerta: Applying the Principles of Justice to the World Anti-Doping Code*, Sports Law: 15th IASL Congress Proceedings (2010) at 52.

[26]2003 World Anti-Doping Code, Article 10.3.

[27]Gandert, *supra* note 25.

[28]2009 World Anti-Doping Code, Article 10.3.

[29]*Id*. and 2003 World Anti-Doping Code, Article 10.3.

[30]*See New Code Gives Drug Cheats Four-Year Bans,* The Sunday Times (London), November 18, 2007, Sport; Pg. 24.

[31]*Lie Detectors and Anti-Doping—Who's Kidding Who?*, The Conversation, *http*://theconversation.com/lie-detectors-and-anti-doping-whos-kidding-who-12898, Mar. 19, 2013.

[32]*See* Olivier de Hon and Bart Coumans, *The Continuing Story of Nutritional Supplements and Doping Infractions*, 41 Br J. Sports Med. 800-805.

Many athletes take nutritional supplements which are not prohibited.[33] Athletes have reported feeling that they may be at a disadvantage if they do not take the non-prohibited supplements that their competitors take.[34] This is understandable as in many sports, hundredths of a second can determine an athlete's place on the medal stand. Nonetheless, the 2009 WADC made it clear that athletes who test positive because of contaminated or mislabelled supplements were not allowed to have their case fall into the *No Fault or Negligence* category.[35] This led to athletes having to make the difficult decision of whether to take a supplement that although not prohibited had the risk of bringing about contamination and thus a future doping offence, or not taking the supplement and feeling at a disadvantage against athletes who have taken the supplement.[36]

Fortunately for the athletes taking supplements, the 2009 code allowed arbitrators to reduce their suspension down to a reprimand if the supplement was contaminated with a *Specified Substance*.[37] In addition to establishing the way that the substance entered in to his or her body, an athlete had to establish that he or she did not intend to enhance his or her performance by taking the substance.[38] The second requirement has been interpreted differently by two different lines of CAS cases.[39]

Under the *Oliviera* line of cases, "an athlete's lack of knowledge that [a] product he ingested contained a prohibited substance is by itself sufficient to establish that the athlete had no intent to enhance his sport performance or cover the use of another prohibited substance."[40] Thus, athletes can have their suspensions reduced to a reprimand as they did not intend to enhance their performance through the use of the prohibited substance. In contrast, under the *Foggo* line of cases, the lack of knowledge that a *Specified Substance* is present in a product does not establish a lack of intent.[41] If the athlete had the intention of enhancing his or her performance by taking the product, the athlete is deemed as having intent and thus cannot have his or her suspension reduced through the *Specified Substances* category.

[33]Mottram, *supra* note at 335.

[34]*See* Brian Corrigan and Rymantas Kazlauskas, *Medication Use in Athletes Selected for Doping Control at the Sydney Olympics (2000)*, 13 Clinical J. of Sport Med. (2003) 33-34.

[35]2009 World Anti-Doping Code, Comment to Articles 10.5.1 and 10.5.2.

[36]Gandert, *supra* note 13 at 414.

[37]2009 World Anti-Doping Code, Article 10.3.

[38]*Id*.

[39]Richard H. McLaren, *The Development of Article 10.4 of the WADA Code*, https://law.marquette.edu/assets/sports-law/pdf/Marquette%20-%20Final%20PowerPoints.pdf, accessed Oct. 14, 2015.

[40]*Dimitar Kutrovsky v. International Tennis Federation (ITF)* (CAS 2012/A/2804) at 8.4.

[41]*Id*.

Penalty for Standard Doping Offence Increases to Four Years of Ineligibility

In addition to there being concerns about inadvertent dopers receiving too harsh penalties, there have been efforts to increase the penalties for athletes engaged in cheating. At the IOC executive board meeting in 2008, the "Osaka Rule" was introduced which prohibited any athlete with a suspension of greater than six months from competing in the next Olympic Games, regardless of whether the suspension was already completed by the start of the games.[42] This brought about disproportionately high penalties for some athletes.[43]

Among the athletes with an issue from this rule was LaShawn Merritt, a runner who purchased a product called ExtenZe at a convenience store that contained a prohibited substance.[44] Merritt was given a reduced penalty under the *No Significant Fault or Negligence* category; however, because his suspension was for greater than six months, he was going to be ineligible to compete in the 2012 Olympic Games despite his suspension being complete.[45] Merritt's case was considered by CAS in *USOC v. IOC*, where the panel found the "Osaka Rule" to be invalid because it was inconsistent with the WADC.[46]

Following the decision, an attempt was made to include the rule in the revised WADC. The first draft included a prohibition against athletes with doping offences competing in the next Olympic Games; however, it excluded *No Significant Fault or Negligence* and *Specified Substances* cases.[47] Comments from stakeholders illustrated that most were against incorporating the rule into the code, although some wanted to add the rule for their own events.[48]

The rule was replaced with four years of ineligibility for standard doping offences.[49] On its face, the rule appears to be harsh. For example, instead of a need for an aggravated offence to be established for a four year suspension, this

[42]Daniel Gandert, *The Battle Over the Osaka Rule*, 1-2 Int Sports L. Journal (2012).

[43]*Id*.

[44]Daniel Gandert, *The Battle Before the Games: The British Olympic Association Attempts to Keep its Lifetime Ban for Athletes with Doping Offenses,* 32 Nw. j. Int'l L. & Bus. 53A (2012) at 72A.

[45]*Id*. at 72A-73A.

[46]*United States Olympic Committee (USOC) v. International Olympic Committee (IOC)* (CAS 2011/O/2422) at 19.

[47]2015 World Anti-Doping Code, Draft 1, Article 10.15, *available at https://web.archive.org/web/20130125185057/http://www.wada-ama.org/Documents/World_Anti-Doping_Program/WADP-The-Code/Code_Review/Code%20Review%202015/Code-Draft-1.0/WADA-Code-2015-Draft-1.0-EN.pdf*

[48]*2015 World Anti-Doping Code, draft v. 1.0 to draft v. 2.0 Summary of Major Changes*, Canadian Centre for Ethics in Sport (last accessed Oct. 19, 2013), *http*://www.cces.ca/files/pdfs/2015Codedraftv2-SummaryofChanges-E.pdf.

[49]...

can now be viewed as the default penalty. However, the other sentencing rules make the new code fairer as they provide protections that make it less likely for inadvertent dopers to become caught in the system.

The four year suspension is only for cases for which the doping offence is determined to be intentional, regardless of whether there is a *Specified Substance* involved.[50] The *Specified Substances* category is used to determine which party has the burden of proof.[51] For cases involving *Specified Substances*, the anti-doping organization has the burden of establishing that the violation was intentional.[52] For cases where a *Specified Substance* is not involved, the athlete has a burden of establishing that the doping violation was not intentional.[53]

Athletes whose cases do not involve *Specified Substances* who are able to establish that their violation was not intentional receive a two year suspension,[54] which is what the standard violation penalty was under the 2003 and 2009 codes.[55] It is likely that for many of these instances, these athletes' cases will also fall into the category of *No Significant Fault or Negligence*. If this is the case, the athlete's suspension can be reduced to a minimum of one year of ineligibility, which is again consistent with past codes.[56] While it is difficult to imagine a case where an athlete commits an unintentional offence and is not significantly at fault, there could be cases where athletes do not intend to enhance their performance but act in a significantly negligent manner, thus still receiving two years of ineligibility. An example of this might be an athlete ingesting a nutritional supplement while taking minimum precautions.

The *Contaminated Products* Category

As described earlier, under the past codes, athletes who ingested nutritional supplements that were contaminated with a prohibited substance were specifically prohibited from having their case fall into the *No Fault or Negligence* category, even for cases where the athlete exercised due diligence in trying to ensure that the product was safe.[57] Fortunately, under the 2015 WADC, athletes can have their suspension reduced down to a reprimand if their case falls under the *Contaminated Products* category.[58] An athlete's case falls into this category

[50]2015 World Anti-Doping Code, Aricle. 10.2.1.

[51]*See Id*.

[52]*Id*.

[53]*Id*.

[54]*Id*., Article 10.2.2.

[55]*See* 2003 World Anti-Doping Code, Article 10.2 and 2009 World Anti-Doping Code, Article 10.2.

[56]2015 World Anti-Doping Code, Article 10.5.2.

[57]*See* 2009 World Anti-Doping Code, Comment to Article 10.5.1 and 2003 World Anti-Doping Code, Article 10.5.2 Comment.

[58]*See* 2015 World Anti-Doping Code, Article 10.5.1.

when he or she establishes *No Significant Fault or Negligence* and that the contaminated product is the source of the prohibited substance.[59]

The inclusion of the *Contaminated Products* category is probably the biggest improvement to the code in terms of minimizing the number of athletes committing inadvertent doping offences and getting caught up in the system. The code defines a contaminated product as "[a] product that contains a *Prohibited Substance* that is not disclosed on the product label or in information available in a reasonable Internet search."[60] This definition is important as most inadvertent offences regarding contaminated products are likely to fall into this category. In the second version of the 2015 code, the definition was "a production which an *Athlete* or other *Person* could not have known contained a *Prohibited Substance*."[61] This definition was broad enough that it arguably could include almost all instances of contaminated products and required limited due diligence of athletes. The third version of the code added "with the exercise of care appropriate in the circumstances."[62] The issue with this wording is that it is difficult to determine what constitutes appropriate care as it could almost always be argued that the athlete could have taken additional steps to prevent contamination. In contrast, the final draft of the code is fair in that it describes the steps that are expected of an athlete to avoid ingesting a contaminated supplement that does not fall into this category. Also, the steps of checking the ingredients on a label and conducting an Internet search are not too cumbersome for an athlete.

However, it should not be expected that all inadvertent cases regarding contaminated supplements will fall into the *Contaminated Products* category. It is likely that there will be cases where athletes do not check the label of a product carefully enough, where the label is in another language, or where the athlete does not recognize the name for a substance that is used on a label as it is different from the name used on the Prohibited Substances List.[63] Additionally, the code does not specify what constitutes a reasonable Internet search and exactly what an athlete needs to do to meet this requirement.

[59] *Id*.

[60] 2015 World Anti-Doping Code, Appendix 1.

[61] Version 2 of 2015 World Anti-Doping Code, *available at* https://web.archive.org/web/20130622203418/http://www.wada-ama.org/Documents/World_Anti-Doping_Program/WADP-The-Code/Code_Review/Code%20Review%202015/WADC-2015-draft-version-2.0.pdf.

[62] Version 3 of 2015 World Anti-Doping Code, *available at* https://web.archive.org/web/20140803033454/http://www.wada-ama.org/Documents/World_Anti-Doping_Program/WADP-The-Code/Code_Review/Code%20Review%202015/WADC-2015-draft-version-3.0-redlined-to-version-2.0.pdf.

[63] Since the *Contaminated Products* category is new, it is unknown precisely how these cases will work.

The 2015 Code Ends the Split in *Specified Substances* Case Law

Another important change in the code relates to the *Specified Substances* category. As described earlier, under the 2009 WADC, athletes who established that their offence was unintentional and that that a *Specified Substance* was the cause of their contamination could have their suspension reduced to a reprimand.[64] In contrast, under the 2015 WADC, this is only the case where there is also *No Significant Fault or Negligence*; other cases where athletes can establish that their offence was unintentional and that it resulted from a *Specified Substance* bring about a two year suspension.[65] Cases that fall into this category will likely be rare, however, they are foreseeable. An example could be an athlete who takes medicine for an illness that contains a *Specified Substance* that did not exercise due diligence in attempt to avoid contamination prior to taking the medicine.

If the athlete took the substance to enhance his or her performance instead of to treat an illness under the old code, then one would arrive at the split in case law between *Foggo* and *Oliviera* in how to handle the case. The 2009 code resolves the split. Under the 2015 code, "the term 'intentional' is meant to identify those *Athletes* who cheat. The term, therefore, requires that the *Athlete* or other *Person* engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded the risk."[66]

This rule does away with the split and moves closer to following the *Oliviera* standard than the *Foggo* standard.[67] Additionally, the rule applies the standard to *Prohibited Substances* that are not in the *Specified Substances category* in addition to specified substances.[68] If an athlete took a product to enhance his or her performance and ingesting the product resulted in the athlete becoming contaminated but the athlete's case did not fall into the *Contaminated Products* category because he or she did not perform an Internet search which would have educated the athlete about the product having a history of being contaminated, the athlete's case would likely not be considered intentional under the 2015 defi-

[64]2009 World Anti-Doping Code, Article 10.4.

[65]*See*2015 World Anti-Doping Code, Articles 10.2-10.6.

[66]2015 World Anti-Doping Code, Article 10.2.3.

[67]Many of the situations where the *Foggo* versus *Oliviera* split might have occurred in the past are likely situations where under the 2015 code, the *Contaminated Products* rule would apply. If there is *No Significant Fault or Negligence* and the *Contaminated Products* rule applies, the definition of the word "intent" does not matter. However, for cases where the athlete can establish a lack of intent but cannot establish that he or she acted with *No Significant Fault or Negligence*, this definition is important. This is also important for where athletes establish that they acted with *No Significant Fault or Negligence* and the lack of intent to take a prohibited substance but where the substance falls into neither the *Specified Substances* nor *Contaminated Products* category.

[68]*See* 2015 World Anti-Doping Code, Article 10.2.3.

nition. However, the definition states that an athlete can be deemed as acting in an intentional manner if he or she manifestly disregards a significant risk that is likely to result in a doping violation.[69] This has the potential to bring about four year suspensions for some athletes who do not intend to dope but take significant risks which leads to a positive doping test result. It will be up to CAS to determine what behaviour falls into this category.

The Intent to Dope Versus the Intent to Cheat

Allowing suspensions to be reduced through the term "intentional" helps the 2015 code prevent inadvertent dopers from receiving the severe doping penalties that are meant for cheaters.[70] However, the severe penalties seem to apply for athletes who intentionally commit a doping offence but do not intend to cheat. One could question whether a four year suspension is overly harsh for this type of offence. While this scenario may not be common, there are situations where this could occur. One is where an athlete takes medicine for something not related to his or her athletic performance but does not fill out the proper Therapeutic Use Exemption ("TUE") paperwork or it is determined that the athlete's condition does not allow him or her to become eligible for a TUE. For this type of case, if it is shown that the athlete could not have received an advantage or masked another substance with the use, one may question the fairness of the four year penalty.

Marijuana usage is another situation where a four year suspension can be considered overly harsh. Tetrahydrocannabinol ("THC"), the active ingredient in marijuana, is a prohibited substance during competitions; however, its use is not prohibited outside of competition.[71] Version 2 of the 2015 WADC included Article 10.4.3, which allowed athletes who tested positive because of their dependency on recreational drugs to receive rehabilitation instead of ineligibility.[72] However, the article did not make the final draft of the code.[73]

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[69]*Id.*

[70]*See 2015 World Anti-Doping Code Changes*, http://www.usada.org/resources/2015code/ -Phase/ (accessed October 14, 2015) for WADA's assertion that the revised WADC makes things "Easier for Clean Athletes…Tougher on Cheats."

[71]Paul Waldie, *Marijuana Use Leaves Olympics Doping Officials Striving for Balance, The Globe and Mail,* http://www.theglobeandmail.com/sports/olympics/no-positive-drug-tests-reported-in-sochi-as-acceptable-marijuana-levels-raised/article16914247/, Feb. 15, 2014.

[72]*World Anti-Doping Code Review: UK Anti Doping Comments on World Anti-Doping Code, Version 2.0 (2015)*, http://ukad.org.uk/assets/uploads/Files/Code_Review/March 2013/UKAD_Final_Code _Review_Submission.pdf, Mar. 1, 2015.

[73]*Comment: Recreational Drugs and the World Anti-Doping Code*, http://www.e-comlaw.com/world-sports-law-report/article_template.asp?ID=1605, Nov. 11, 2013.

Prior to the 2014 Olympics, the threshold for THC was increased to 150ng/mls.[74] This makes it more unlikely for athletes who have inhaled second hand marijuana or smoked a small amount before the Olympics to test positive.[75] However, athletes can still face a four year suspension for positive tests that result during competition.

For positive tests, marijuana falls into the *Specified Substances* category.[76] According to the 2015 WADC, the use of a *Specified Substance* that is only prohibited in-competition where an athlete can establish that the use was outside of competition is presumed to be unintentional.[77] This will likely reduce the athlete's penalty to less than four years of ineligibility for cases where an athlete's positive test results from usage outside of competition.

Following the expulsion of judo athlete Nicholas Delpopolo from the 2012 Olympic Games, Mayo Clinic doctor Michael Joyner was quoted as saying "it's hard to imagine how smoking a joint or eating marijuana brownies is going to help someone in judo."[78] However, experts have determined that marijuana can be helpful in some sports, thus meaning that it could provide athletes with an advantage. Marijuana has been found to reduce anxiety, help muscle relaxation, and improve sleep time and recovery.[79] According to Arne Ljungqvist, the head of the IOC Medical Commission, "marijuana can be a performance enhancing stimulant and it is therefore forbidden in relation to a competition."[80] As such, it may not seem unfair for the drug to be treated the same way as any other substance on the *Prohibited List*.

[74]Waldie, *supra* note 71.

[75]*Id*.

[76]2015 *Prohibited List.*

[77]For prohibited substances that are not *Specified Substances* that are only prohibited in-competition, athletes also have the ability to have their offence classified as unintentional by establishing that the use took place outside of competition if the substance was not related to the athlete's performance in sport. However, the code does not mention a presumption for this instance. It is unlikely that this difference will have any real impact for most cases. However, there is another difference here between the rules for *Specified Substances* and other prohibited substance, which is that for *Specified Substances*, there is no requirement that the substance has to be used in a context that is note related to the athlete's performance in sport.

[78]Kate Kelland, *Performance Enhancing Dope: Should Sports Ban Cannabis*, Reuters, http://www.reuters.com/article/2012/08/06/us-oly-dop-cannabis-day-idUSBRE87519120120806, Aug. 6, 2012.

[79]Mateus M. Bergamaschi and Jos*é* Alexandre S. Crippa, *Why Should Cannabis be Considered Doping in Sports?*, 4 Frontiers in Psychiatry 1 (2013).

[80]Waldie, *supra* note 71.

Conclusion

Overall, the 2015 WADC is an improvement over past codes. It provides arbitrators with increased discretion and makes inadvertent dopers less likely to get caught in the system. The new *Contaminated Products* category makes it harder for athletes who exercise caution but still become contaminated from receiving career ending consequences.

There may be some instances, such as a four year suspension for cases where athletes intend to take a prohibited substance but do not intend to cheat, where the penalties under the new code are severe. The upcoming years of CAS case law will likely determine whether this ends up being the case. Issues with the 2015 code will likely be looked into the next edition of the World Anti-Doping Code is drafted.

FOOTBALL COACHES IN THE INTERNATIONAL LEGAL PERSPECTIVE FIFA REGULATIONS - TAS/CAS JURISPRUDENCE

+ Lucio Colantuoni,
Prof. Avv. Italy

Introduction

When discussing legal relations in the world of professional football. Most attention is drawn towards the legal relationship between the clubs as its players due to the main reason that it has been a common understanding that players are seen as assets of the club. Human assets that reflect value and sport performances that are seen as the cornerstone of a professional football organization. Everyone is familiar with the current system in which players are bounded by contracts to the clubs and normally can only change clubs in the situation in which clubs agree on a paid transfer sum or when a player's contract has ended. From this aspect it is interesting to see what the role of a coach is in this system. Is a coach deemed to be seen the same as a player? Namely being it a person which has to be seen as an asset of the club and therefore when looking at a contractual relationship between a club and a coach, treating it the same way as a player? Or is a coach deemed to be seen as an ordinary employer like in other professional services not being sport? When looking at the daily football business one would suggest that as it seems highly uncommon that transfer fees are being paid in "transfers" of football coaches. Coaches have a different treatment than professional football players. However, in order to answer this question it is important to examine the relevant football regulations and jurisprudence in order to provide a clear answer on how the legal football institutions deal with this matter.

The definition of a coach

Perhaps the first question to answer is what the definition of a coach is? It is rather confusing that the person who is responsible for the first team has different names in different countries. In England for example the commonly used term is that of a manager. That suggests that this person is dealing with the management side of the first team, being it the transfer of players, employment contracts etc. In other, mainly being it western European countries, the term coach or trainer is being used. Suggesting it the person that leads the training sessions and is responsible for the true training part of the squad. In order to reflect these different terms in how they work in the football world.

However different terms are being used in different countries, the true interpretation of the tasks of a coach/manager/trainer etc. (hereafter simply referred to as "coach") depends on the contract in which the tasks of a coach have been agreed upon between the club and coach. When a coach has a double role and also acts as a technical director of a club, which is often the case in clubs active in the premier league one could argue that the term manager is more applicable. However in countries where the term manager is not being used but in which a coach is nevertheless responsible for the technical operations for a club, the term coach is nevertheless being used.It is a vague line and therefore in order to determine what the responsibilities of a coach are, it is not sufficient to look at the job title but it is necessary to the specific tasks agreed upon in the contract.

In the FIFA regulations[1], no difference is being made between the different terms but there is simply a reference made to the term "coach" without providing a clear definition on the term.

Situations that may lead to legal consequences

The first reference that leads to a first indication that a coach is subject to the same treatment as players is that coaches are specifically mentioned in the FIFA regulations on employment-related disputes:

Article 22 **Competence of FIFA**

Without prejudice to the right of any player or club to seek redress before a civil court for employment-related disputes, FIFA is competent to hear:

a) disputes between clubs and players in relation to the maintenance of contractual stability (articles 13-18) where there has been an ITC request and a claim from an interested party in relation to said ITC request, in particular regarding the issue of the ITC, sporting sanctions or compensation for breach of contract;

b) employment-related disputes between a club and a player of an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs has been established at national level within the framework of the association and/or a collective bargaining agreement;

c) employment-related disputes between a club or an association and a coach of an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings exists at national level;

d) disputes relating to training compensation (article 20) and the solidarity mechanism (article 21) between clubs belonging to different associations;

e) disputes relating to the solidarity mechanism (article 21) between clubs belonging to the same association provided that the transfer of a player at the basis of the dispute occurs between clubs belonging to different associations;

f) disputes between clubs belonging to different associations that do not fall within the cases provided for in a), d) and e).

[1]FIFA Regulations on the Status and Transfer of Players (2012) article 22 sub c.

Therefore FIFA regulations apply in the situations in which a club decides to terminate the contract of a coach and when a coach decides to cease activities for a club. But only in situations in which there is an international dimension. For example when the club and coach have the same nationality, national football regulations apply on further legal procedures.

Employment related issues between clubs and coaches are not the only subject in which a coach is liable for legal consequences. It is not uncommon that coaches are subject of sanctions for misbehaving during competition games, interviews etcetera. In this scenario national football regulations apply when this misbehavior is connected to national football competitions. When looking at international football competitions, the disciplinary regulations for the relevant competition apply. For European competitions as the UEFA Europa League and UEFA Champions League, the UEFA Disciplinary Regulations apply.

These regulations apply to (UEFA Disciplinary Regulations (2012) article 3):

a)the member associations and their officials;

b) the clubs and their officials;

c) the match officials;

d) the players;

e) all persons charged by a member association or club to exercise a function on the occasion of a match.

As you can see this definition is extremely broad and covers all persons belonging to a club, including the coaches.

Jurisdiction

This presentation has a focus on the legal consequences between a coach and a club with an international dimension. In such as situation as discussed earlier, FIFA regulations apply[2]. However there is one remark that has to be made. FIFA is competent to rule on such cases unless an independent arbitration tribunal guaranteeing fair proceedings exists at national level. In order to provide members with information on how such arbitration tribunal should function. FIFA has made a standard form of regulations that should apply to a certain arbitration tribunal with mainly articles on the independency of the arbitrators[3]. However in the majority of the situations, such an independent arbitration tribunal does not exist so most of the cases still end up at the judicial body of FIFA.

[2]Article 22 RSTP

[3]See for the regulations: http://www.fifa.com/mm/document/affederation/administration/drc_regulations_en_33736.pdf

Article 23 RSTP sub 1:

The Players' Status Committee shall adjudicate on any of the cases described under article 22 c) and f) as well as on all other disputes arising from the application of these regulations, subject to article 24.

In the case of an employment dispute between a coach and a club which has an international dimension, it is in first instance the Players' Status Committee that rules on the case. In simple cases in which the problem and facts are straightforward, it is possible that a single judge is appointed to rule over the case. In more complex situations, three members are appointed that rule over the case:

Article 23 RSTP sub 3:

The Players' Status Committee shall adjudicate in the presence of at least three members, including the chairman or the deputy chairman, unless the case is of such a nature that it may be settled by a single judge. In cases that are urgent or raise no difficult factual or legal issues, and for decisions on the issue of a provisional ITC in accordance with Annexe 3, the chairman or a person appointed by him, who must be a member of the committee, may adjudicate as a single judge. Each party shall be heard once during the proceedings. Decisions reached by the single judge or the Players' Status Committee may be appealed before the ***Court of Arbitration for Sport (CAS)***.

Once FIFA's Players' Status committee has reached a verdict, parties can either agree on it or appeal the verdict to the Court of Arbitration for Sport (CAS).

Article 67 FIFA Statutes

1. Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question.

Please note article 67, sub 3C:

3. CAS, however, does not deal with appeals arising from:

c) Decisions against which an appeal to an independent and duly constituted arbitration tribunal recognized under the rules of an Association or Confederation may be made

Once CAS reaches a verdict there is only one appeal left and that is to bring the case in front of the Swiss federal tribunal. However such an appeal can only made on limited grounds:

Article 190 Swiss Federal Statute on Private International Law

2 The award may only be annulled:

a) if the sole arbitrator was not properly appointed or if the arbitral tribunal was not properly constituted;

b) if the arbitral tribunal wrongly accepted or declined jurisdiction;

c) if the arbitral tribunal's decision went beyond the claims submitted to it, or failed to decide one of the items of the claim;

d) if the principle of equal treatment of the parties or the right of the parties to be heard was violated;

e) if the award is incompatible with public policy.

Such cases are extremely rare and mostly do not apply on the merits of a case but on procedural errors. Only a handful of cases brought to the Swiss Federal tribunal have been annulled.

Conclusion

As seen in the relevant case law it is important that all the terms and conditions are stipulated in a contract in order to protect both parties for a situation in which a contract is terminated. Examples of considerations:

- A clear section with the specific tasks and responsibilities of the coach. If this is stipulated incorrectly it is possible that the club can downgrade the tasks of a coach without providing the coach the option to terminate his contract and seek opportunities elsewhere.
- Clear remuneration of the contract. As seen in the Corinthians case, the coach was unsuccessful in claiming the majority of its remuneration in front of CAS when a third party is responsible for paying this part of the remuneration.
- A coach should bear in mind that just as the club cannot dismiss the coach without paying damages, a coach cannot leave the club for a better opportunity elsewhere without paying damages towards the club. The background is the contractual stability which FIFA pursues in the world of football:

"Contractual stability is of paramount importance in football, from the perspective of clubs, players, and the public. The relations between players and clubs must therefore be governed by a regulatory system which responds to the specific needs of football and which strikes the right balance between the respective interests of players and clubs and preserves the regularity and proper functioning of sporting competition" **FIFA Circular letter 768**

IMPACT OF GLOBALIZATION ON TEACHING INTERNATIONAL SPORTS LAW

Larisa A. Petruchak
Doctor of science (Law), Professor) Prorektor for Academic and Educational work of the Kutafin Moscow State Law University[*]*,*
Moscow, Russia

Olga A. Shevchenko
Doctor of science (Law), Professor,General Secretary of the International Association of Sports Law[**]*,*
Moscow, Russia

DEDICATED TO OUR FRIEND LUCIO COLANTUONI GRIEF AND SORROW! LOVE AND REMEMBER!

Words can't express how saddened we are to hear of this painful loss.

Words are never adequate in moments like these. We will say though, that we are honored to remember the joyous memories that we are privileged to have been knowing our dear Lucio/ our friend Lucio. Our hearts go out to you, and we pray the love of God enfolds you during this difficult time.

May his soul rest in peace.

Remember, love, continue his work.

Abstract: *This article considers the impact of globalization on the subject matter and methodology of teaching international sports law in the context of ongoing changes in the public and political life of the country. The authors note that the processes of integration and globalization have a particular influence on the legal culture. During the analysis, the authors put forward proposals on unification of the teaching methods and on participation of the international sports federations and Court of Arbitration for Sport in the teaching. Specialization in the legal sphere, particularly in sports law, is regarded as promising. Therefore, it would be appropriate and reasonable to learn the foreign experience of teaching sports law in higher educational institutions , as well as the experience of INEFC and Kutafin Moscow State Law University (MSAL) in creating a unified International Master Degree – "International Sports Law".*

Keywords: *law, globalization, cultural identity, legal culture, sports law, sports law teaching.*

[*]The author is Doctor of science (Law), Professor, Prorektor for Academic and Educational work of the Kutafin Moscow State Law University, Honorary Worker of Higher Professional Education of the Russian Federation, member of the Russian High School Educational and Methodological Association (EMA) for Education in Law (9, Sadovaya-Kudrinskaya st., Moscow, 123995, Russia e-mail: LPetruchak@msal.ru)

[**]The author is Doctor of science (Law), Professor of sports law, labor law and social security law of the Kutafin Moscow State Law University, General Secretary of the International Association of Sports Law (9, Sadovaya-Kudrinskaya st., Moscow, 123995, Russia e-mail: oashevchenko@msal.ru)

Introduction

Rapid integration and globalization at the present stage of development of our society make the problem of interaction between legal cultures particularly important.

Globalization impacts the public and legal sphere of the society, where law plays a special role. A number of scientists already dedicated their research to the link between the law and globalization (Marchenko, 2008). Legal Globalization appeared as a new discipline of general theoretical knowledge. It studies the impact of globalization on law and national statehood (Sorokin, 2009).

Globalization has a broader scale than the reception of law, and it is more definite than integration and internationalization of law; it is distinguished by all-inclusiveness and speed of implementation of international norms, processes, standards into the legal structure of the subjects of globalization. Globalization is a process of rapid change and irreversible modernization.

Therefore, globalization can be defined as an ever-growing impact of various factors of international importance on social reality in some countries, and an objective, most visible and dominant trend of current global development.

Essential Provisions

Many researchers noted the globalization included two opposite processes going on in parallel. They are integration and disintegration, and the latter is based on well-known humanistic values of Western European rationalism. Globalization consolidates international relations of the peoples, yet rigidly divides the planet into elite countries and countries – suppliers of raw materials; it aggravated the opposition between the rich and the poor; sharpened environmental problems; exacerbated the confrontation of civilizations.

Professor V.V. Sorokin has quite a categoric opinion and distinguishes between the globalization of the world (the process) and the globalism (a program of this process). He considers globalization of the world to be a neutral category, but globalism to be a negative phenomenon. According to this author, globalism is an aspiration towards the global power, global domination; it is a behavioral model for all the countries to become standard, to get one "common denominator". V.V. Sorokin defines globalism as "theory and practice of building a global totalitarian dictatorship based on the ideas of hedonism, racism, fascism in the interests of those who were the outcast of the traditional society." (Sorokin, 2009, p. 9). He believes that the legal culture virtually dies during globalization and gives way to a continuous juridization of public life. "Globalism destroys the continuity in the development of national legal systems. The project of globalization provides is a project for obstruction and removal of national legal cultures" (Sorokin, 2009, p. 69).

He paints a terrible picture where aggressive social culture inspired by the ideals of consumerism, competition and emancipation leads to escalation of

various global conflicts. Whatever is beneficial in a given moment will become legitimate, and it will destroy the legal culture (Sorokin, 2009, pp. 69-70).

It should be noted that the system of values originating in the globalization, just like globalization itself, is also contradictory and ambiguous. On the one hand, the idea of human rights is one of the key concepts of globalization. On the other hand, globalization brings the idea of seeking economic benefits, profits and enrichment at any cost, which can be best illustrated within the economic sphere. It becomes a key value contradicting the system of human rights. One manifestation of this is massive violations of labor and social rights of workers, lack of protection for workers against the tyranny of employers.

Legal globalization is not only about change in spatial (quantitative), but also in qualitative – constitutional characteristics of social and legal life. It increases the share of the common and universal in the legal standards of modern civilization. What is especially important is that legal globalization is a reflection of trends of juridization and deeper legal normalization of the main spheres of social reality. But this is only one side; the other one is that legal globalization is a reaction to the emergence of new XXI century global threats to humanity such as international terrorism, natural and manmade disasters, environmental and energy crises.

I.I. Lukashuk, a Russian specialist in international law, noted correctly that globalization of law was expressed in "new legal relations, legal institutions and norms" (Lukashuk, 2000, p. 173). Thus, globalization is considered to be a process, not a completed stage of development.

New social priorities raised the following questions about the system of legal education: what should be the model of legal education, what is particular in the modern content of the education, what values of the legal culture should become personally meaningful, what methodology will be appropriate for the current model of legal education of an individual, and whether training and retraining of teachers meet modern requirements?

It needs to be emphasized that currently there are two, as is often the case, polar trends in legal education:

1. Positive role of legal education.

2. Crisis in education.

The solution to this paradigm largely depends on the legal framework.

1. Positive role of education.

For example, there are special government programs and educational institutions for gifted students in the USA. Ministry of Education, universities, colleges, local governments, and numerous community organizations are involved in development of such programs.

It is interesting that the United States Department of Education is one of the youngest ministries. It was founded in 1979 and it is one of the smallest

ministries in USA, its functions are heavily reduced, since education, like many other areas in US, is strongly decentralized.

Various practices and methods to teach gifted students are used in the USA: a) accelerated learning (early admission to school, two-year program in one year, training in specialized classes); b) enrichment (more disciplines, quicker advancement to higher educational levels); c) interdisciplinary approaches (global topics for education, highly intensive studies); g) mentoring ("mentoring" is an obsolete term for coaching, frequently used as an ironic synonym for sermon), or guiding (a mentor acts both as a counselor and a consultant and, if necessary, plays the role of a critic, teaches leadership and social skills, encourages creative achievements).

Similar programs in Austria widely employ scholar and extracurricular resources, specialized classes and an extensive network of academic competitions.

Gifted students receive support through conventional classes in the UK. In addition, each school receives additional targeted public funding to support this category of students.

There are special schools and training programs for gifted students in Belgium, Greece, Ireland, Italy, Portugal, France, Sweden, Denmark and Norway. Interestingly, such programs are implemented within private initiatives and are not regulated by law.

Germany has a special summer program for gifted students – German School Academy. Its main objective is to create favorable conditions for the development of children and their enrichment through communicating with other children with the same high potential for intellectual development.

Every university in China, Korea, Thailand and Singapore has a school for gifted students.

Information technology plays a special role in education of gifted students. It helps in self-education, improves motivation and encourages students' independence and responsibility.

2. Crisis in education.

In autumn 2013, just before the new academic year, bad news came to many parents in New York. The academic results of their children looked quite decent in the previous year, but when the state government compared them with a more rigorous common test standard, their marks worsened. The new standard brought many additional changes. A teacher has no way but to pay much more attention to the quality rather than all the other issues. This, in turn, will inevitably raise questions about the number of students in the classroom, as well as about the quality of the teacher's qualifications.

Education quality was paid much attention to in Russia in all historical periods.

Education quality in the Moscow State University was the responsibility of the university. Its issues were resolved by the school's collegiate body – the

Board of Professors. The eighth paragraph of the "Project for Establishment of Moscow University" (1755) stated: "None of the professors should willingly choose a system or an author for himself and teach the science accordingly, but everyone is required to follow the order and the authors suggested by the Board of Professors and by the curators." (Lukashuk, 2000, p. 19). Requirements to educational procedures and quality were set forth by the general university statutes (dated 1804, 1835, 1863, 1884.), nevertheless they did not contain clear rules, unlike the pre-revolutionary regulations of the school education.

Great attention was paid to education management, uniformity, criteria for education quality during the Soviet period. The state was a monopolist in higher education, it conducted a unified state policy in the sphere of higher professional education.

By joining the Bologna Declaration in 2003, Russia assumed certain obligations in this sphere, one of which is to introduce a two-tier system of higher education.

To fully participate in the Bologna process Russia is taking a number of measures. In particular, it creates conditions for:

- Two-tier system of higher professional education;
- System of credits for recognition of learning outcomes;
- Quality assurance system for educational institutions and educational programs of universities aligned with the requirements of the European Community;
- Internal quality control systems in higher education – and involvement of students and employers to the external evaluation of universities; as well as conditions for the introduction of diploma supplements similar to the European supplements, and for improvement of academic mobility of students and teachers.

Federal Law No. 273-FZ "On Education in the Russian Federation" dated December 29, 2012.

The state:

- Guarantees free higher education on a competitive basis if a citizen obtains higher education for the first time (p. 3 of Art. 5 of the Federal Law);
- Establishes federal state educational standards and supports various forms of education and self-education (Russian Federation; p. 5, Art. 43 of the Constitution of the Russian Federation, 1993);
- Develops, approves and implements state programs, federal target programs, implements international programs in the education sector (federal authorities in the field of education (subparagraph 4, p. 1, Art. 6 of the Federal Law);
- Approves federal state educational standards, defines federal state requirements (federal authorities in the field of education; subparagraph 6, p. 1, Art. 6 of the Federal Law);
- Licenses educational activities (federal authorities in the field of education;

subparagraph 7, p. 1, Art. 6 of the Federal Law);

- Defines the procedure for development, approval of the federal state educational standards and amendments.

Some national governments do not standardize education so broadly as the US and Russia. The authorities' attempts to set certain minimum requirements to the quality of education received a negative evaluation and a rebuff from the leading educational institutions (including calls for a national strike) in some countries, for example, in the UK. Educational institutions claimed that their autonomy was encroached.

Thus, education plays a positive role at the level of individuals, while the entire education system is in crisis. These issues are present practically in all the countries.

We would like to take international sports law as an example and to consider the following peculiarities of the legal education in the world.

1. Today we see the global educational space emerging. The system of higher professional education uses new organizational forms of learning, such as competence-based approach, system of credits, rating system to assess students and so on. This process is not instantaneous, but difficult and objectively necessary.

2. Legal education and its process require teachers be masters of both modern categorical legal apparatus and pedagogical skills. This undivided process is directly influenced by the real social and cultural situation prevailing in the society in the given historical period.

While the content of legal education seems to be adequate, methods of teaching legal disciplines are still not up to par. The question is "why". Because in practice those who deliver lectures and teach classes at the law faculties are great professional lawyers, excellent practitioners who are not always familiar with modern innovative teaching methods. Teacher's mission is not only to be an intermediary between academic science and students. He also must acquaint them with the most recent achievements of legal science. One of the main factors affecting the quality of the educational process is the professional competence of the teacher. It is a system of knowledge, skills and abilities that form the basis of his professional work as a teacher and scholar.

3. We have not observed sufficient integration and development of the International Sports Law discipline in the system of higher professional legal education in Russia. Some fragmentary exceptions appear because of the effort of initiative enthusiasts (in Russia: S.V. Alekseev, V.V. Blazheev, K.N. Gusov, D.I. Rogachev and several others) lecturing at several universities, in particular, at the Moscow State Law University.

Sports law is a new progressive field meeting the needs of the modern society. Government's interest in this area is associated with the prestige of the Olympic

Games, achievement of good results, as well as with the prevention of destructive social phenomena.

Therefore, we consider appropriate and reasonable to learn the foreign experience of tertiary education in sports law.

The principles of teaching sports law in the different training centers have a lot in common. It is also typical for the methodology and organization of the Russian educational process: a unit of lectures is complemented with the unit of seminars and internships, and is thereafter completed with an examination.

However, we need to take into consideration also the organization of the educational process, educational forms, disciplines taught, and emphases in training.

The course objective is to acquaint students with the legislation in the field of sports. The course contains an overview of the typical legal issues and basic court decisions. These issues are considered within the framework of the national sports legislation.

Let's take the program of Sports Law course ***in Sweden*** (Soloviev, 2010) as an example. The educational program includes the following milestones:

– Basic legal aspects of organization of sports activities and sports marketing, skills to analyze sports law;

– Issues of ethics and morality in sport, analytical skills and know-how;

– Structure of legal regulatory foundations of sports, sports rules and their application, analytical skills and know-how;

– How to formulate and solve simple legal problems, to analyze the regulatory and legal acts, other legal texts, to understand legal consequences of resolutions;

– Conditions for continuous professional self-improvement in the area of sports law and sports ethics.

The course focuses on the problems of legal regulation of sport, and touches broader problems (sociological, economic aspects of sport, values etc.).

Subjects to study include sport regulations, legal environment of sport associations, discipline and responsibility in sport, justice, sport transfers, fight against doping in sport and sports hooliganism. Regulation of sports is considered in the light of problems of professional growth and globalization. The module also acquaints with the heritage of ideas and views about sports.

The course includes many forms of learning such as lectures and workshops, diverse tasks aimed at the goals and objectives of the course. To cope with them, students need to cooperate with each other and with teachers. Evaluation of students takes many forms, the most common of them being marks for specific tasks (course works, essays, written tests; solutions, explanation and analysis of legal problems). Graduation is preceded with a written exam.

The experience of Sweden is very representative. But let us get back to the peculiarities of teaching international sports law and take a look at France, the UK and the USA.

For example, sports law education was purely theoretical in France for a long time. It became more practical only in the two recent decades. Along with universities or law schools, special legal practice courses and schools appear in France. They introduce students into the practice of their future profession. Students attend courts and organizations and prepare a number of written works under the guidance of experienced, best lawyers. Practical classes include rehearsal repetition of the course content, critical study of authors, judicial decisions and legal practice.

In the UK, every student enrolled by one of the colleges of Oxford or Cambridge university may attend the following lectures: 1) lectures held at his college, 2) intercollegiate and 3) university lectures. Collegiate lectures are more elementary, while high-level parts of science are taught by the university professors, not collegiate or intercollegiate ones. A student chooses professors and subjects that he wants to study. Students study under the supervision of curators.

Naturally, such a procedure is hardly desirable for education in international sports law. Transformation of professors into curators checking the performance of students would only worsen the quality of university teaching. Introduction of the institute of curators to help professors is undesirable because the curators are more concerned with the examination requirements of individual professors than with science. A British curator is different, because he is obliged to know the sections that are particularly important for the exams.

The oldest Harvard University in the USA, for example, practices instruction methods that are definitely energetic and immediate. The lectures are very few, while discussions and debates are very frequent. A professor leads and coordinates the students in their work. In addition, legal sciences are often taught through reading court cases in class under the guidance of the professor, as well as through sample pleadings, where the roles of judges, lawyers, witnesses, etc. are distributed among the students. But the main peculiarity of the American universities is the selective system. It is based on voluntary selection of subjects to study. This system eliminates dilettantism, and, as a result of the strict supervision by the faculty, excludes the possibility of wrong choice of courses. Only a limited number of sciences is studied, but fully and comprehensively.

Sports Law Department was established at Kutafin Moscow State Law University in Russia (It is the only one in the CIS countries.). This is a unique project in Russia, undertaken particularly in anticipation of the major competitions organized in our country – Winter Olympics 2014, the FIFA World Cup 2018 and others. Members of the department and its students collaborate closely with the Russian Sports Ministry, Russian Olympic Committee (ROC), leading sports federations and sports leagues.

Most of the necessary educational materials are provided to the students in electronic form, there is an opportunity to participate in the annual international

conference on sports law and round tables in the Federal Assembly of the Russian Federation. Students can actually influence drafting of legal acts and regulatory norms in sport.

Students learn the regulation of sports sponsorship, TV coverage, fight against doping, resolution of disputes in sports arbitration, security issues and procedure for organization of sports events, employment contracts of athletes and coaches, sport sanctions, etc.

One of the topical problems in the quality of teaching of international sports law is generalization and unification of international legal regulations and their relation to national laws.

Teaching the basics of sports law should be based not only on international standards and national laws, but also on the analysis of regulatory acts of international and national sports federations.

There is a number of serious problems in teaching international sports law. Some of them are insufficiently unified terminology, approaches, conceptual apparatus; incomplete definitions, lack of adequate theoretical developments; impossibility to explain the entirety of specifics of international sports law using an example of one sport; insufficient use of enforcement practices; the need to use lectures as the main form of teaching.

Educational programs in international sports law should be developed with account for the following peculiarities and trends:

1. Unification of law that is understood as "introduction of uniform rules to the legal systems of different states";

2. Principles of law should be studied as regulators of social relations. As globalization continues, law is becoming a more complex system. Since it is impossible to foresee everything in law, the role of judicial practice gets inevitably more important in addressing a number of issues;

3. Role and importance of judicial law, its sources – precedent and case law, as well as the decisions of court of arbitration for sports;

4. Ethical rules in sports and rules of justice.

"Global law" becomes an increasingly common term in the legal literature. If we admit the possibility of the "global law" to appear and function, it will not be a special system of rules of conduct. The ability to develop a global law through the corresponding interaction depends on the prospects of forming a single *global legal culture*. Today, with certain reservations, we can recognize the existence of universal human values that emerged as a result of inter-ethnic interaction. But it is too early to speak about the global culture as a systemic phenomenon. Typological incompatibility of existing legal cultures counteracts the processes of globalization, in particular the emergence of a global culture.

It is not just about cultural pluralism. On top of that, non-European legal cultures usually reflect another historical epoch. Sometimes it complicates

intercultural cooperation, harmonization of global legal norms, principles, institutions and procedures (Kisidi, 2003, p. 76).

Cultural interaction, exchange of ideas and information is a necessary condition for the development of modern world. A common approach to teaching sports law could help to overcome intercultural interaction.

We will continue by examining an issue of vital importance in the teaching of international sports law. Sometimes this issue is the determinant, sometimes it is caused by other important problems that need strategic solutions.

Educational organizations need to establish and maintain constructive interaction with potential employers, to develop it in line with certain principles of cooperation between academic and professional communities. The purpose of this activity is to ensure the quality of legal education, and hence to safeguard the rights of both students and those citizens and organizations to which law graduates will provide legal support in future.

For example, the Russian Education Act lists the following specific forms for the employers to participate in the educational relationship:

- Professional and public accreditation of educational programs by employers and organizations authorized by them;
- Teaching methodology associations together with the representatives of employers;
- Final state certification in main professional educational programs together with employers or their associations.

Are these forms sufficient for training of future lawyers? The answer is undoubtedly no.

The professional community clearly states that the outcome of the educational program in international sports law must be the readiness of the lawyer for practical work and corresponding skills he acquired in international sports organizations and federations.

In our opinion, a different model of interaction should be developed.

First, the international sports federations and the court of arbitration for sports shall play a more active role in student internships, helping to develop professional competencies and skills of students. Employers often accuse the vocational education system in lagging behind the realities of the modern labor market. Speaking about legal education, this problem can be defined as the need for a quality law graduate to know firsthand about the real work of public authorities and other organizations in the legal space. Ideally, he shall have a possibility to become a member of their teams, at least temporarily and on legitimate grounds.

Second, additional training of a law graduate, which can and should be carried out by the employer as a party in relations in education field, is de facto the next level of non-formalized education. Such training shall improve the

skills the graduate will need to work in the professional sports field. Educational organization, regardless of its instruction peculiarities, cannot replace an employer in this case. The employer can minimize its costs only by active participation in the educational process.

It is regrettable to recognize that many employers lack even basic information about the way the system of law education works, not to mention the peculiarities of its structure.

A circumstance of particular concern is that the professional community does not understand the essence and, what is the most important, the purpose of getting a master's or philosopher's degree in law schools.

Today the market of legal services in the field of professional sports is evolving rapidly. Experts with specialized professional competence, able to account for changes in various sports, regulatory acts, national and international law are in permanent need. This situation gives an opportunity to future employers (international sports federations and international organizations), on the one hand, to realize their staffing needs quickly and, on the other hand, to react timely by maintaining close cooperation with educational institutions. No doubt, cooperation proposals will be of great interest to the schools.

INEFC and Kutafin Moscow State Law University (MSAL) created a common International Master Degree in International Sports Law. This example shows that contractual forms of interaction between universities and cooperation with international sports federations and sports arbitration court are a highly efficient management mechanism. It has important legal value and shall be used in implementation of Jurisprudence educational programs.

Implementation of the program will include the following activities:

- Common development and implementation of educational programs and their parts, training courses;
- Participation of representatives of international sports federations and referees of the Court of Arbitration for Sports in qualifying examinations, including diploma works, exams, work of state examination committees;
- Internships for students;
- Academic competitions and other competitive activities (contests, business games, etc.), in which representatives of employers act as problem generators, jury members, etc.

In turn, the university can provide expert support to international sports community and (or) implement additional professional education programs for their employees.

Conclusion

As suggested by experience, any constructive interaction of interested parties in the field of legal education, in particular in programs of international sports law leads to positive results. They appear immediately after the cooperation starts. The key is to keep this cooperation mutually beneficial and bilateral.

This article does not list all the problems of the legal education by example of international sports law. They are many more and they are equally important. Therefore, pedagogic community need to unite their efforts (not only central universities, but also countries that lie far away from each other) so as to discuss and resolve the vital issues of higher legal education. If we take a look on how the universities of Western Europe created their successful educational processes and rethink these ways creatively, it will help improve the competitiveness of the education in question in the global educational space.

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b. Research Papers

LIMITS OF INTERVENTION AND IMMUNITIES OF INTERNATIONAL SPORT: CASE STUDY OF FIFA ISSUE IN 2015

Olga A. Shevchenko
Doctor of science (Law), Director of the International Cooperation Office of the Kutafin Moscow State Law Uni\versity, Russia[*]

Igor V. Ponkin
Doctor of science (Law), Professor of the chair of sports law of the Kutafin Moscow State Law University, State Professor, Russia

Alena I. Ponkina
Ph.D. (Law) ,Lecturer of the chair of sports law of the Kutafin Moscow State Law University, Russia

Abstract: *This article deals with vital and complex issues raised by the arrest of a number of FIFA officials on May 2015 charged with corruption.*

Keywords: *autonomy of sports, international sports, public policy, autonomous normative sports policy, legal immunity of an international sports organization, corruption in sports, FIFA, application of foreign law.*

May 27, 2015, seven high-ranking functionaries of the International Federation of Association Football (Fédérationinternationale de football association) were arrested by the police in the city of Zurich (Switzerland) upon the request of US judicial authorities. The latter requested Swiss authorities to extradite these persons.

The International Federation of Association Football suffered a reputational blow. They put into question the fundamental autonomy of the organization, including substantivity (its independence of existence and operation, above all – political), self-reference in the organization, protection of its autonomous extralegal normative order. Legal standing of any (not only football) international sports organizations is henceforth a very big issue.

In this article, we do not assess objectivity, relevance and legitimacy of evidence presented by the US, especially because the US justice authorities have

[*]Author is Secretary General of the International Association of Sports Law, Executive Secretary of the Committee of the Sports Law of the Association of Lawyers of Russia

given very detailed information on charges against the arrested individuals[1]. We neither attempt to justify corruption that erodes and destructs sports. Corruption should be fought as an evil phenomenon.

However, the developments with FIFA high-ranking officials raise a number of complex and controversial issues.International sports bodies should certainly enjoy a certain immunity from interference in their activities by the public authorities of individual States.

According to Ken Foster, one of the principles of international sport says the activities of international sports federations cannot be resolved by national judicial authorities and national public authorities of certain states because of the autonomy of sports normative order. This researcher points out that international sports federations enjoy certain immunity (akin to diplomatic immunity) of such intervention including legal regulations[2].

Ken Foster also notes that the immunity from international sports federations, national legal regimes stems from their international nature and the nature of their governance. Justifying this argument, the researcher cites an international sports organization that has many elements of diplomatic immunity enshrined in international customary law, the International Olympic Committee, which, in his opinion, operates almost as a *quasi-state* and states are of course does non-triable in national courts by virtue of international law[3].

According to Michael Beloff, Tim Kerr and Marie Demetriou the role of national courts must be as low as possible in order to resolve of international sports disputes, otherwise the development of appropriate mechanisms for international sport will be difficult[4].

Ken Foster also points out that the regime of global governance in sport is immune and non-triable to national courts, thus there is a private transnational regulatory system that is not subject to national government control[5].

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[1]См.: FIFA Indictments // <http://www.nytimes.com/interactive/2015/05/27/sports/soccer/document-fifa-indictments.html?_r=1>.

[2]*Foster K.* Is There a Global Sports Law? // // Lex Sportiva: What is Sports Law? / Ed. by R.C.R. Siekmann, J. Soek. – The Hague: Springer Science & Business Media, 2012. – 391 p. – P. 35–52. – P. 37. <http://www.springer.com/cda/content/document/cda_downloaddocument/9789067048286-c2.pdf?SGWID=0-0-45-1293560-p174256763>.

[3]*Foster K.* Is There a Global Sports Law? // // Lex Sportiva: What is Sports Law? / Ed. by R.C.R. Siekmann, J. Soek. – The Hague: Springer Science & Business Media, 2012. – 391 p. – P. 35–52. – P. 47. <http://www.springer.com/cda/content/document/cda_downloaddocument/9789067048286-c2.pdf?SGWID=0-0-45-1293560-p174256763>.

[4]*Beloff M.J., Kerr T., Demetriou M.*Sports law. – Oxford: Hart Publishing, 1999. – xi; 309 p. – P. 257.

[5]*Foster K.* Global Administrative Law: The next step for Global Sports Law? // Sport and the Law Journal. – 2011. – Vol. 19. – № 1. – P. 45–51. – P. 46. <http://www.britishsportslaw.org/resources/2012626122152_BASL_VOL19_ISS1_Foster.pdf>.

However, the question of whether the United States could thus intervene in the affairs of FIFA remains debatable from a legal point of view.

Jessica Tillipmen, Assistant Dean of Law School at George Washington University, said that the jurisdiction of the United States could extend to acts of foreign nationals where an aspect of the crime took place within the jurisdiction of the United States, «There has to be some sort of touch point for the United States»[6], and this requirement is formally met[7].

Jessica Tillipmenalso noted that once charges are filed, it is not necessarily the case that a foreign government has to take action against the accused. In the case of FIFA, it seems as though the United States and the government of Switzerland, where the officials were arrested, had been working together on the charges[8].

Swiss federal prosecutors said they had opened criminal proceedings in connection with the award of the 2018 World Cup to Russia and the 2022 tournament to Qatar[9].

The arrests on behalf of the US authorities form part of an international investigation into bribes worth $100m (£65m) spanning three decades[10].

«The indictment alleges corruption that is rampant, systemic, and deep-rooted both abroad and here in the United States,» U.S. Attorney General Loretta Lynch said in a release ahead of a news conference in New York[11].

Attorney General Lynch extended her grateful appreciation to the authorities of the government of Switzerland, as well as several other international partners, for their outstanding assistance in this investigation[12].

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[6]*Bump P*. How the U.S. can arrest FIFA officials in Switzerland, explained / The Washington Post // <https://www.washingtonpost.com/news/the-fix/wp/2015/05/27/how-the-us-can-arrest-fifa-officials-in-switzerland-explained/>.

[7]См., например: стр. 8 обвинительного заключения по делу «Соединенные Штаты против Чарльза Блейзера» (FIFAIndictments // <http://www.nytimes.com/interactive/2015/05/27/sports/soccer/document-fifa-indictments.html?_r=1>).

[8]*Bump P*. How the U.S. can arrest FIFA officials in Switzerland, explained / The Washington Post // <https://www.washingtonpost.com/news/the-fix/wp/2015/05/27/how-the-us-can-arrest-fifa-officials-in-switzerland-explained/>.

[9]Fifa officials arrested on corruption charges as World Cup inquiry launched / The Guardian // <http://www.theguardian.com/football/2015/may/27/several-top-fifa-officials-arrested>.

[10]Fifa officials arrested on corruption charges as World Cup inquiry launched / The Guardian // <http://www.theguardian.com/football/2015/may/27/several-top-fifa-officials-arrested>.

[11]*Rogers M., Hjelmgaard K.* FIFA officials arrested on corruption charges / USA TODAY Sports// <http://www.usatoday.com/story/sports/soccer/2015/05/27/fifa-officials-arrested-corruption-charges-extradition-united-states/27997783/>.

[12]Nine FIFA Officials and Five Corporate Executives Indicted for Racketeering Conspiracy and Corruption / USA Department of Justice // <http://www.justice.gov/opa/pr/nine-fifa-officials-and-five-corporate-executives-indicted-racketeering-conspiracy-and>.

The position of the international organizations on this issue are also of interest, on the situation itself and the possibility of public authorities' intervention in the affairs of international sports organizations.

Thus, for example, June 11, 2015 the European Parliament adopted a Resolution on recent revelations on high-level corruption cases in FIFA (2015/2730(RSP)), where stated above all:

– whereas 14 FIFA officials, including its Vice-President, were arrested on 27 May 2015 by Swiss authorities in Zurich; whereas the arrests were made at the request of the US Department of Justice on the basis of charges of money laundering, racketeering, fraud, and bribery in excess of USD 150 million;

– whereas FIFA has operated for many years as an unaccountable, opaque and notoriously corrupt organization; whereas the recent arrests confirm that the fraud and corruption in FIFA are systemic, widespread and persistent rather than involving isolated cases of misconduct, as claimed by former FIFA President Joseph Blatte,

The European Parliament:

– calls on sports organizations, the Member States and the EU to cooperate fully with all ongoing and future investigations into allegations of corrupt practices within FIFA;

–underlines the utmost importance of the investigation by the Swiss and US justice authorities into the decision by FIFA's Executive Committee to award the World Cup for 1998, 2010, 2018 and 2022;

– calls for the EU to monitor this process closely and to enable the necessary conditions for an unbiased external investigation[13].

The European Union also highlights that transparency, accountability and democracy are prerequisites of good governance in sports organizations for such a self-regulatory regime, and for the sports movement to prevent and fight fraud and corruption.

Also, in the Resolution «On the recent revelations of corruption cases in the FIFA high level» of 11 June 2015 № 2015/2730 (RSP), the European Parliament stresses that in view of the transnational nature of corruption in sport, efforts to fight it require more effective cooperation among all stakeholders, including public authorities and law enforcement agencies[14].

[13]Joint motion for a Resolution on recent revelations on high-level corruption cases in FIFA pursuant to Rule 123(4) of the Rules of Procedure of 09.06.2015 / European Parliament //<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+P8-RC-2015-0548+0+DOC+XML+V0//EN>.

[14]Joint motion for a Resolution on recent revelations on high-level corruption cases in FIFA pursuant to Rule 123(4) of the Rules of Procedure of 09.06.2015 / European Parliament //<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+P8-RC-2015-0548+0+DOC+XML+V0//EN>.

According to Article 19 of the Council of Europe Convention on the Manipulation of Sports Competitions of September 18, 2014[15]Each Party shall adopt such legislative or other measures as may be necessary to establish jurisdiction over the corruption where that offence is committed:

– in its territory;

– on board a ship flying its flag;

– on board an aircraft registered under its law;

– by one of its nationals or by a person habitually residing in its territory.

In accordance with Articles 22 and 23 of the Council of Europe Convention on the Manipulation of Sports Competitions of September, 18 2014, each Party shall take legislative and other measures to ensure that persons guilty of corruption offensesare punishable by effective sanctions, including deprivation of liberty that may give rise to extradition, as defined by domestic law[16].

Despite the fact that this Convention can not be applied to the United States it reflects the position of a major international intergovernmental organization on the subject.

The report *Why Sport in not Immune to Corruption* by the international non-governmental organization that monitors and publicizes corporate and political corruption Transparency International indicates that one of the alleged causes of corruption in sports are close (almost family) relations in most international sports federations. This can be considered in a positive way, create an effective framework for a possible exchange of shared values and experience, and with a negative connotation, since the word "family" in this context is related to mafia, according to the author of the report. Thus, there may be mutual responsibility between sports federations leading to the failure of the law[17].

If a certain body is inflicted by corruption, it is very difficult to reveal, analyze and describe it from outside[18].

However, according to the findings of this report, it does not mean that sport is basically affected by corruption. Sport is not a corrupted, but it can be a target for crime, it is vulnerable to corruption due to some of its essential features. In particular, these features are relevant in connection with quite large sums of money that pass through the international sports federations, as well as autonomy and self-management of such organizations. Corruption opportunities and

[15]Council of Europe Convention on the Manipulation of Sports Competitions of 18.IX.2014 // <http://www.coe.int/ru/web/conventions/full-list/-/conventions/rms/09000016801cdd7e>.

[16]Council of Europe Convention on the Manipulation of Sports Competitions of 18.IX.2014 // <http://www.coe.int/ru/web/conventions/full-list/-/conventions/rms/09000016801cdd7e>.

[17]*Bures R.* Why sport is not immune to corruption / Transparency International // <https://www.coe.int/t/dg4/epas/Source/Ressources/EPAS_INFO_Bures_en.pdf>. – 2008. – 27 p. – P. 18.

[18]*Bures R.* Why sport is not immune to corruption / Transparency International // <https://www.coe.int/t/dg4/epas/Source/Ressources/EPAS_INFO_Bures_en.pdf>. – 2008. – 27 p. – P. 18.

system weaknesses can be prevented. A precondition for effective prevention is acknowledgement of the problem, deep and systematic analysis and proposition of preventive measures[19].

The reports points out that transparency is one of the most powerful tools against corruption. Having in mind limited possibilities of governments to intervene to internal sport life also other measures should be explored[20].

The report also stresses that decision making in some sport branches may be rather close. As it may be quite difficult in many countries to intervene in internal sport governing and thus endanger sport autonomy some alternative measures can be found. Establishing independent ethical commissions or panel may provide an appropriate solution between strict autonomy of sport and strong governmental intervention[21].

It seems important to refer to the opinion of the US Supreme Court regarding the possibility of extending the application of US law against foreign citizens, why such an extension can be dangerous in certain situations in particular.

In case MORRISON et al. *v*. NATIONAL AUSTRALIA BANK LTD. et al. from June 24, 2010 № 08-1191 the US Supreme Court ruled (also recalling its earlier decision), that the long-standing principle of the legislation passed by the US Congress (if not displayed contrary in the intention of Congress) is its application only within the territorial jurisdiction of the United States. In addition, the US Supreme Court separately pointed out that if the legal act does not clearly indicate the appropriate extraterritoriality of its application, it does not apply outside the United States[22].

In case MORRISON et al. *v*. NATIONAL AUSTRALIA BANK LTD. et al. from June 24, 2010 № 08-1191 the US Supreme Court also stated that the judicial authority that had considered the case in the first instance, interpreted the absence of such an indication in the relevant regulatory legal act, as the possibility of extraterritorial application of its principle. Such disregard for the presumption against the application of the principle of extraterritoriality has occurred for decades in many courts of appeal and led to the fact that there are a number of criteria to "guess" the intention of the US Congress on this issue, which had in the adoption of appropriate laws, which are difficult to formulate and apply.

[19]*Bures R.* Why sport is not immune to corruption / Transparency International // <https://www.coe.int/t/dg4/epas/Source/Ressources/EPAS_INFO_Bures_en.pdf>. – 2008. – 27 p. – P. 19.

[20]*Bures R.* Why sport is not immune to corruption / Transparency International // <https://www.coe.int/t/dg4/epas/Source/Ressources/EPAS_INFO_Bures_en.pdf>. – 2008. – 27 p. – P. 20.

[21]*Bures R.* Why sport is not immune to corruption / Transparency International // <https://www.coe.int/t/dg4/epas/Source/Ressources/EPAS_INFO_Bures_en.pdf>. – 2008. – 27 p. – P. 21.

[22]Case «Morrison et al. v. National Australia Bank LTD. et al.» / Decision of the Supreme Court of the United States of June 24, 2010 № 08–1191 // <https://www.law.cornell.edu/supct/html/08-1191.ZS.html>; <http://www.supremecourt.gov/opinions/09pdf/08-1191.pdf>.

According to the US Supreme Court, the results of this kind demonstrate the wisdom of presumption against extraterritorial application of legislation. Thus, rather than determine the possibility to apply the principle of extraterritoriality separately, the US Supreme Court enforced the presumption to all cases in order to maintain a stable background for the United States Congress to exercise legislative activity with predictable consequences[23].

In caseEEOC v. Arabian American Oil Co отfrom March 26, 1991 № 499 U.S. 244 «» the Supreme Court of the United States pointed out that this principle serves as protection against unintentional clashes between US law and the laws of other nations, which could lead to ethnic hatred[24].

Moreover another vital issue is the ambiguity of expanse limits of the US legal and jurisdictional authorities or rather general lack of protection of international sports against politically motivated interference by the US authorities.

In recent yearsUS courts have become increasingly adjudicate, grossly violating the limits of its jurisdiction and affiliation. In fact, illegal kidnapping as means of extradition (citizens of Russia and other countries of the world) has come into practice with US courts and third countries authorities. The US courts' judgments relating to sovereign debt of Argentina and religious libraries in Russia are noteworthy, as well as a massive interference in the affairs of international sports organizations.

It is against this background that the United States actively protect themselves from the influence of foreign jurisdictions and infringe on internal affairs of foreign countries. Since 2010, a number of US states have adopted (in others have been initiated and are under consideration) laws to terminate any activity of foreign public policy and foreign laws on the territory of these states at a time. Among them are the following states: Louisiana, Arizona, Oklahoma, Tennessee, Florida, South Carolina and Utah.The analysis of these legislative initiatives in a number of states suggests that their aim is to curb the activities of any foreign law on the territory of the United States, any invasion of foreign public policy. Discussions and debates are held to consolidate these standards in federal legislation.

The Olympic Charter establishes the imperative of sports autonomy as an important fundamental basis of its organization and life management activities, activities of sports organizations.

According to Enrico Lubrano, «the autonomy of sport is in fact a barrier for the legal system to implement its legal norms and instruments in the area protected by regulations established by other normative order (using the concept of Inigo

[23]Case «Morrison et al. v. National Australia Bank LTD. et al.» / Decision of the Supreme Court of the United States of June 24, 2010 № 08–1191 // <https://www.law.cornell.edu/supct/html/08-1191.ZS.html>; <http://www.supremecourt.gov/opinions/09pdf/08-1191.pdf>.

[24]Case «EEOC v. Arabian American Oil Co from March 26, 1991 № 499 U.S. 244 // <https://supreme.justia.com/cases/federal/us/499/244/case.html>.

Marani Toro and Alberto Marani Thoreau[25] – *sports order* in its autonomous part), but under condition that the actions and decisions in this area have not exhausted their effectiveness"[26].

International sports organizations, the vast majority of which have their headquarters in the Swiss cantons and without interference on behalf of the USA are subject to the jurisdiction of Swiss authorities and under certain conditions are forced to comply with the Federal Code of Switzerland *On the international private law*[27] which, in general, ruins our beliefs in autonomy of sports.

The question is how many world countries can claim to interfere with the activities of international sports organizations? Especially in case with the United States there is no evidence that the rigid obstruction of FIFA leaders and attempts to influence the results of draw procedure in choosing the venue of World Cup 2018 are a mere coincidence (nature does not stand bright coincidence). US officials did not even try to conceal the fact that it was an attempt to deprive Russia of its right to host the championship as a punishment for dissent and opposition to the US destructive actions in the Ukraine.

We face a gross invasion of US foreign policy in the international sports and a clearly ideologically motivated interference in the affairs of the autonomous international sports order. We do hope it will be investigated whether certain FIFA functionaries did commit a crime.

A vital question on the future of FIFA (and international sports in general) is to be raised and measures to be taken in order to introduce new mechanisms of anti-corruption self-purification, as well as to protect itself from illegal interference of foreign jurisdictions with the internal affairs of international sports from now on.

The following issues are to be dealt with: what kind of enforced immunities for international sports officials should be introduced, the content of these immunities, who should enforce them, how to get the state to recognize and respect them. It is also relevant to balance the immunities with working anti-corruption mechanisms. Adequate measures will rule the future of international sports.

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[25]*Marani Toro I., Marani Toro A.* Gli Ordinamenti sportivi. – Milano: A. Giuffrè, 1977. – 480 p. – P. 14 идр.

[26]*Lubrano E.* Il Tribunale nazionale arbitrale per lo sport (TNAS): Analisi della giurisprudenza (anni 2009-2010) e della natura delle relative decisioni [Национальныйспортивныйарбитраж ныйтрибунал: Анализарбитражнойпрактики (2009–2010) ихарактерарешений] // Rivista di diritto ed economia dello sport. – 2010. – Vol. VI. – № 3.

[27]Loi fédérale du 18 décembre 1987 sur le droit international privé (Etat le 1er juillet 2014) // <https://www.admin.ch/opc/fr/classified-compilation/19870312/index.html>.

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THE EVOLUTION OF DOPING: FROM THE 1999 LAUSANNE DECLARATION TO THE 2015 NEW WORLD ANTI-DOPING CODE*

Elena Atienza-Macías
University of Deusto, Researcher at the Inter-University Chair in Law and the Human Genome,
University of Deusto and University of the Basque Country UPV/EHU, Bilbao, Spain

Francisco J. López-Frías
Researcher. University of Valencia,Valencia, Spain

José Luis Pérez-Triviño
Professor of Philosophy of Law, Pompeu Fabra University, Barcelona, Spain

Abstract: *In this article, we will pay special attention to illustrate which have been the different stages through which doping has gone, and we will do so by establishing the different periods, from their onset to the current times: a) Natural or non-chemical doping; b) Simple chemical doping or first generation doping; c) systematic chemical doping or second generation doping and d) biotechnological doping. In the second part of our text, we will focus our attention in analyzing what the responses of the different international sport institutions have been with regards to doping. In establishing the different stages in the war against doping we will highlight the significance of the established World Anti-Doping Agency, and in what has been the new World Anti-Doping Code which came into force in 2015.*

Keywords: *Doping, Antidoping rules, World Antidoping Agency, 2015 WADA Code, Biotechnological doping.*

1. Introduction

Any layman in sport matters who were to examine which have been the central issues that have arisen around sport, would conclude without a shadow of a doubt, that doping has become the central matter, and the one which has most jeopardized the ruling conception of what is considered to be the essence of sport itself. This perception has intensified, especially in the last decades. In response to that, the governing authorities in the world of sport have undertaken a full series of institutional, legal, medical and scientific measures and public awareness campaigns in order to eradicate doping.

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However, the use of substances in order to attain an artificial improvement of physical output, -causing as a result great harm on one's health-, has been around throughout the recorded history of sports[1]. But unlike in past times, it is characteristic of our present that doping is regarded as a matter of general interest because of its ethical[2], political or social impact, and especially for its repercussion on health matters[3]. The intense activity that has been displayed worldwide in order to try to set limits to this pressing problem, and the undeniable multidisciplinary interest that engenders, very much reflect a concern that is predicted to be increasing in the future.

In this article, we will pay special attention to illustrate which have been the different stages through which doping has gone, and we will do so by establishing the different periods, from their onset to the current times:

a) Natural or non-chemical doping;

b) Simple chemical doping or first generation doping;

c) Systematic chemical doping or second generation doping and d) biotechnological doping.

In the second part of our text, we will focus our attention in analyzing what the responses of the different international sport institutions have been with regards to doping. In establishing the different stages in the war against doping we will highlight the significance of the established World Anti-Doping Agency, and in what has been the new World Anti-Doping Code which came into force in 2015.

2. The Evolution of Doping

Until the appearing of the works of Davic C. Young[4], the classical historiography around sport mentions two golden ages in the history of sport: classical ancient Greece, and the England of the Victorian years. According to historians like E. Norman Gardiner or John Mahaffy[5], it was only the athletes of those times the ones who truly practiced sport without distorting or perverting its playful nature, since its practice was regarded as the objective itself, in the understanding that the sake of it lied in participating and enjoying by means of testing their own physical capabilities. The point was therefore not so much winning, but attaining the maximum level in the implementation of these physical abilities, that is,

[1]The history of doping in sports has been widely studied by Ramos Gordillo, "El uso de sustancias para la mejora del resultado: de la mitología al fármaco", 357.

[2]McNamee and Tarasti, "Juridical and ethical peculiarities in doping policy", 165-169.

[3]This subject was thoroughly dealt with by Neyro Bilbao, "Medicina deportiva" (technical perspective) and Malo De Molina, "Medicina deportiva" (juridical perspective), 1103-1110.

[4]Young, *The Olympic Myth of Greek Amateur Athletics*, 7-107.

[5]Mahaffy, *Social life in Greece: from Homer to Menander* & Gardiner, *Greek athletic sports and festivals*.

to achieve physical excellence; victory would only be the consequence of being excellent.

Sport, conceived in such a pure way sharply opposes to the highly professionalized fashion of our times, in which victory is paramount, not just because of the resulting financial profit, but because of a cultural question: it is about the praise of the winner and the oblivion of the loser. This disproportionate eagerness for victory that rules the world of sport today has led to its extreme rationalization. Athletes are subject to strict specific diets and perfectly controlled trainings, they take all kinds of vitamin supplements, they use specially designed sport equipment...all of that in the name of scraping that minimum competitive advantage that will place their performance above that of the rest. Being this so, our world of sport is today more than ever linked to the interests and elements that go well beyond the pure essence of sport practiced by the Greek athletes and the English amateurs.

For these reasons, anti-doping authorities have determined this network of typically modern –outer forces – economic, social and technological, to be at the origin of doping, proclaiming with it the need to return to the pure spirit of the golden ages of sport in which the athlete would enjoy by participating in an sport activity whose main goal was the search for physical excellence instead of trying to win no matter at what cost.

However, recent historiographical studies have demonstrated that such golden age actually never existed, and that, in fact, wherever sport has taken place, their actors have always tried to make use of whatever means available in order to scrap a competitive advantage against their opponents. The vision of a pure sport practiced by the sake of it as a means to attain physical excellence is nothing but fiction. Turning sport into a means to obtain something else has been and will always be a fundamental part of physical activity in such a way that the search for tools or elements to reach the goal beyond said physical activity is actually a constituent part of it[6]. Sport is basically strategy.

The use of substances leading to an improvement of physical output and performance is one of these strategic means that is part of its nature. This debunks the theory of those who, like the World Anti-Doping Agency (WADA) pretend to foster sport by appealing to a return to the mentality of those golden ages in which doping was inexistent because it was regarded as an aberration against the pure philosophy of sport. The level of sophistication and the nature of doping means have changed, and with it, their more or less harmful consequences. However doping has always existed in sport due to the eagerness from the side of athletes, of attaining competitive advantage or getting that -last second extra kick- , in order to accomplish their task of being physically more "excellent" than the rest. We can therefore distinguish the following four periods in the history of doping:

[6]Martinkova, *Intrumentality and Values in Sport,* pp. 25-63.

a) Natural non-chemical doping
b) Simple chemical or first generation doping
c) Systematic or second generation doping
d) Biotechnological doping

2.1. Natural, non-chemical doping

The fact of searching all possible means to increase the physical performance of athletes has been a constitutive element in sport events, and certainly, it was also so back in the ancient societies. This quest for the "competitive plus" was carried out mainly by training and diet but it was also based in the use of substances found in nature whose properties increased the physical output of athletes: certain vital organs, liquids, plants… Therefore, we will describe this type of doping as "natural".

Several cases of this type of doping can already be found in ancient Greece. Back in those times it was already empirically known the anabolic and androgenic properties of the testicles by studying the effects of castrating pets and farm animals[7]. By making use of these studies, certain practices of "organotherapy" were carried out in ancient Greece as well as in the Middle Ages. For example, the Greek athletes already suspected that something related to physical performance was linked to the testicles – an in a certain way, they were not that far from the truth, taking into account the role that testosterone plays in our organism. The intake of lamb or bull testicles became a common practice among them in order to attain that vital force that castrated animals seemed to be deprived of.

During this time, the athletes were aware that diet was key in their physical output, for which specific nutritional patterns were based on the intake of certain types of herbs, mushrooms, hallucinogenic plants, cheeses and products made of wheat flour and meat. Mushrooms and plants allowed to relieve pain and the physical symptoms arising from fatigue and overexertion and were used in order to keep up a high level of performance. Many of the uses of these substances are documented in the mythological texts of ancient civilizations, for example, the Greek rituals to god Dionysius.

2.2. Chemical doping or "first generation doping"

As civilizations and modern science evolved, particularly medicine, doping entered a stage that we have defined as "chemical doping". We will distinguish two generations within this stage: the first once is characterized by the simplicity of doping treatments, which were implemented by the use of chemical products such as cocaine, heroin, caffeine and alcohol. Given that these substances delivered immediately their effects on the output, they needed to be taken at key moments of the competition, such as for example, the end of a race.

[7]Yesalis and Bahrke, "History of Doping in Sport", 42-76.

As well as in the ancient Greece, it was the athletes who designed their own diets based on the advices of some medical experts. This first generation of chemical doping was practiced by athletes on an individual basis, but they were advised by experts or coaches having certain scientific knowledge. This way, although this doping was not scientifically controlled in their implementation, it was based on scientific knowledge. Therefore, it was not exclusively about introducing natural products, (that anyone could find), in the diet of athletes, but science was offering them pure chemical products whose effects on the organism were beneficial for physical output. Back in those times, it was common the use of coke leaves and other alkaloids whose main effect was to eliminate the feeling of fatigue and exhaustion.

As an example, cyclists of the XIX century would take in a chemical product called "speedball", which they mixed with heroin and cocaine whose effect was identical to that of the hallucinogenic products obtained by hand directly from nature by the Greeks. It was precisely during the XIX century, the times of amateurship, that the term "doping"[8] first came to light. This originates from a South African dialect: "kafir", in which "dop", an alcoholic beverage brewed from the skin of grapes, was used in religious rituals. This term was further extended and incorporated by the Dutch language, particularly in Amsterdam as "doop/doopen", where it was said that the swimmers who took part in the watercourse races were taking "doop". In 1889, the English dictionary included the terms "dope" and "doping" to refer to the mix of narcotics used to improve the performance of race horses. Taken from the contest of horse riding, the word ended up being used as it had been in Holland, that is, in any sport.

The first documented case of chemical doping in a big sport contest was that of Thomas Hicks during the Olympics in St.Louis, 1904. Winner of the marathon, he fainted right after crossing the end line, something that he was capable to do thanks to the doses of alcohol and strychnine administered to him by his team along the race[9]. We need to highlight the fact that the participants of these 1904 Olympics were amateurs- as professionals were barred from taking part in it– and they did not receive any kind of prize, payment or present for their victory, in such a way that natural doping as well as chemical doping were already present in those times that many have regarded as the golden ages of sport and to which certain anti-doping authorities are calling to establish as paradigm in their war against the "evil of doping".

[8]Pérez Triviño, Ética y deporte, 57-60.

[9]Pampel, *Drugs and Sports, 6.*

2.3. Chemical doping or second generation doping

With regards to the second stage of chemical doping, the products and the chemical processes possess a far more complex nature, their effects are long term and they are more dangerous. Therefore, they could not be employed and administered by the individual alone, but this is implemented by system, that is, designed and controlled by physicians and specialists. We are then entering the stage of the systematized chemical doping. Among the new products and treatments that give rise to this second stage we can mention amphetamines, anabolic substances, and blood doping all of which emerged out of the spiral of technological innovations unchained during the times that the historian Eric Hobsbawm described as "the era of catastrophes" between 1914 and 1945.

The massive use of and the experiments conducted with amphetamines and testosterone by the armed forces of both World Wars, particularly during the WW II[10] showed the athletes that these substances were much more effective than those used back in the nineteenth century. As a result, the calculated and systematized use of amphetamines and, mainly anabolic steroids became very common in the world of sport. The use and abuse of these substances cannot be understood without this context in history, and particularly without that which preceded: the Cold War.

Anabolic steroids were used, at least where sources are in a documented form, for the first time by Soviet weight lifters back in the 50s. The physician of the American athletic team, John Bosley Ziegler[11], used them with his team as he learned about their proven results, and it is said that he learned about it taking the Soviet delegates to a drunken state. Given the strong rivalry that arose between both sides in all cultural aspects, the respective national sport federations not only looked away from the use of drugs, but strongly fostered it, in what became known as "State dope", extreme cases of which took place in the former German Democratic Republic. But the truth is that the use of dope during this decade was not exclusive of the countries of Eastern Europe where the stated dope spread. Recently documents have been found that would prove that the football players

[10]During World War II amphetamines were used to keep soldiers alert and focused during long battles, while anabolic had a double function, first, increase muscle mass of the soldiers and on the other, increase their aggressiveness. Reinold & Hoberman, "The Myth of the Nazi Steroid", 871-883.

[11]This doctor is known as the father of steroids since he introduced an anabolic steroid known as Dianabol developed by Ciba Pharmaceuticals. As more and more athletes started using steroids without medical supervision, in ever-larger doses, Ziegler became concerned about the side effects and the harm they could cause to a person's health. By 1967, Ziegler had become convinced that steroids were not something athletes should use to gain an edge over their competitors. Woodland, Dope. The use of drugs in Sport*, 54.*

of the Federal Republic of Germany, who defeated the favorite Hungarians on the occasion of the World Cup back in 1954[12] took some kind of amphetamines.

Beginning the sixties and onwards the massive use of anabolic substances by athletes becomes known by the general public and particularly their fatal consequences for health when they were taken in large doses. This is so much so, that in 1960, during the Olympic Games of Rome the first victim of doping occurs: the Danish cyclist Knut Jensen dies as a consequence of the effects of Ronicol, an amphetamine. In 1967 the ghost of doping becomes worldwide felt when the British cyclist Tom Simpson, whom the BBC had named "sport celebrity of 1965" dies live on television during the race of the Tour France. The cause of death was the excessive intake of amphetamines and alcohol.

That same year, the International Olympic Committee establishes a Medical Commission to fight the practice of doping: the protection of the health of the athlete, the respect for medical and sport ethics, and a fair competition amongst the participants are their guiding lines[13]. As a result of that, in 1968 occurs the first "victim" of anti-doping testing during the Olympic Games in Mexico as analysis became mandatory. Out of the 667 controls carried out, only one tested positive: Hans-Gunnar Liljwewall, a member of the pentathlon team whom the bronze medal was withdrawn due to an excessive consumption of alcohol.

After the fall of the Wall, it was found out that in several Eastern Europe countries a systematic doping had been taking place, whose effects on health were devastating: suicides, sex change, injuries and illnesses[14], in order to show the world the superiority of the communist regime. However, this systematized and controlled doping did not disappear from a scientific point of view, instead it started to be conducted by wealthy associations or individuals who could afford to hire a medical-science team that would make sure that the use of doping was carried out in an effective and safe way. This is stage at which we find ourselves

[12]In fact, this unexpected victory was called "The Miracle of Bern". Delius, "The Sunday I became world champions" 2008.

[13]Significantly, anabolic steroids were not on the List of Prohibited Substances since the methods for testing them were not sufficiently developed. In this respect, the justification of anti-doping policy based on the following three premises is a conventional one: the athlete's health —as its backbone—, the equality of opportunity for competitors and the preservation of sport values. In line with everything above, Gamero Casado, "El dopaje en los ámbitos supranacionales: evolución histórica y situación actual", 30-33.

[14]As an example of this "State dope" may be noted the case of Heidi Krieger, an athlete who became to win one gold medal at the 1986 World Championship in Athletics, but as a result of anabolic substances Heidi underwent a sex change operation to become Andreas Krieger. See Pérez Triviño, Ética y deporte, 121 and Teetzel, "On Transgendered Athletes, Fairness and Doping: An International Challenge", 227-251.

today. Celebrities like Ben Johnson, Marion Jones[15], Lance Armstrong and their teams have staged the most infamous scandals of our times when resorting to labs who designed the systems and chemical substances more sophisticated of our times.

2.4. Biotechnological doping

Today, due to the advancements of science, we are again witnessing a new stage of doping: biotechnological doping. Mainly as a consequence of the results obtained from the Human Genome Project, whose goal was to determine the sequence of chemical base pairs, which make up DNA. Said project has been fostered by James D. Watson, co-discoverer together with Francis Crick of the structure of DNA back in the nineteen nineties. Out of this, the idea emerged that it was possible to improve our natural capabilities by means of a biotechnological intervention on it. Genetic science not only enables us to know the code in which human nature is written, but it also promises that we will be able to improve it and alter it at will.

However, the scientific and biotechnological advancements having an impact on sport are not limited to this, that is, to genetic engineering. Aside from "gene doping"[16], we can expect physiological improvements by using body implants or prostheses leading to what could be called "cyborg-athletes"[17], as well as the creation of hybrids and chimeras[18]. Finally, adding to it, there will be improvements in other aspects of sport performance such as the cognitive and emotional side of the individual, areas in which neuroscience and pharmacology are showing considerable advancements.

[15]The case of Marion Jones is a part of the known as "Balco Case" (2003). A research in these laboratorios led to the discovery of the use of THG as well as data related to the atlete´s timetable of intakes, including Marion Jones, Barri Bonds, a famous baseball player who in 2007 achieved the record for home runs (756). Finally Marion Jones admitted taking steroids (THG) during the Olympic Games in 2000. In addition to her medals withdrawal she was sentenced to six months in prison for lying to the court. The discovery of THG was not due to an improvement in doping controls, but due to a declaration by an employee of BALCO. Fainaru-Wada & Williams, *Game of shadows: Barry Bonds, BALCO, and the steroids scandal that rocked professional sports,* part 1.

[16]Of paramount importance: Miah, *Genetically modified athletes: biomedical ethics, gene doping and sport,* 41—63. And World Anti-Doping Agency (WADA), "Gene doping", Available at: https://wada-main-prod.s3.amazonaws.com/resources/files/PlayTrue_2005_1_Gene_Doping_EN.pdf, accessed November 2014.

[17]Pérez Triviño, "Cyborgsportpersons: Between Disability and Enhancement", 12-21.

[18]Pérez Triviño, *The Challenges of Modern Sport to Ethics. From Doping to Cyborgs*, 107-121. De Miguel Beriain, "Quimeras e híbridos: ¿Problema ético o problema para la ética?", 101-122.

3. Stages in the war against doping

It seems that both during the "natural doping" and "first generation chemical doping" stages there was not a public awareness regarding the fact of artificially altering the physical performance of athletes. Some of the chronicles about the victory of Hicks[19] in 1904 remarked the efforts made by this runner when it came to overcome obstacles and finally come up as a winner, even if that required the use of certain substances such as alcohol. However, the first debates about the permissibility of such substances started already around 1890. For example, in one article in the medical section of The New York Times in 1895 it could be read:

"There are no drugs which will help one to win a game that could not be won without them, and the general effect of drug taking, and specially the use of drugs belonging to the caffeine and cocaine class, is distinctly bad. We believe that the medical profession ought seriously to warn those with whom they come in contact professionally against the use of such things[20]".

Even though in 1928 the International Association of Athletic Federations forbids doping for the first time, it was only during the second stage of chemical doping when this anti-doping awareness finally sank in amongst sport institutions. Especially due to the severe side-effects linked to the use of amphetamines and steroids. For example, it was the abuse of amphetamines that lead the International Olympic Committee to create the Medical Commission against Doping, particularly after the deaths of Knut E.Jensen during the 1960 Olympic Games in Rome and that of Tommy Simpson during the Tour de France in 1967, reportedly having occurred due to the intake of such substances. That commission made the first attempt to define the term doping, and it read:

"the administration to or use by a healthy individual of any agent or substance nor normally present in the body and/or of any physiological agent or substance when introduced in abnormal additional quantities and/or by an abnormal route and/or in an abnormal manner, with the purpose and effect of increasing artificially and in an unfair manner the performance of that individual during the period of competition[21]".

Taking this definition as a starting point, in 1968 the IOC commenced to conduct the first urine tests in order to detect doping substances during the Olympic Games in Mexico. However, technical and political reasons lead to the failure of this first stage of the campaign against doping.

As for the technical ones, IOC scientists were able to detect certain substances in urine (blood extractions were not permitted as they were considered too

[19]Møller, *The Ethics of doping and anti-doping, 35.*

[20]Quoted in Dimeo, *A History of Drug Use in Sport 1876-1976,* 23.

[21]*Council of Europe Committee for Out-of-School Education, 1963.*

invasive for the integrity of the athlete), but only a very limited number of them. Besides, as said tests where only carried out during official competitions, they were only useful to detect those drugs what would have an immediate effect. Those drugs taken out of the competition during the training, such as steroids (having long term effects), would remain undetected, since the athletes could calculate when they had to stop the intake in order to avoid detection during testing. Therefore this was definitively a very ineffective anti-doping policy from the technical point of view. Aside from that, with regards to political difficulties, anti-doping campaigns emerged during the "Cold War". It is well known that both blocs, particularly the Soviet bloc, conceived sport as a means to beat the rival by pacific means and show the superiority of their own System[22]. This situation did not promote[23], rather prevented, the development of an effective anti-doping campaign.

An institution such the IOC, so much lacking in technical resources, did not have the necessary power to strengthen anti-doping normative and could only resort to the good will and cooperation of those involved, something that did not exist during the Cold War[24]. This way, doping became rather the rule than the exception during those years[25]. Therefore, many started to accept it as something intrinsically part of sport itself, and the institutions in charge of sports considered it as a minor problem.

All of this changed after several scandals related to doping that occurred during the 1988-1998 decade: first, Ben Johnson tested positive for anabolic steroids in 1988 Seul Olympic Games[26], second, after the fall of the Wall the systematic doping in place in the former Soviet Union became known, and finally, the case

[22]Beamish, *Fastest, highest, strongest: a critique of high-performance sport,* 105-136; Hoberman, *Sport and political ideology,* ch. 1.

[23]Hunt, *Drug Games: The International Olympic Committee and the Politics of Doping, 1960-2008:* 71-87.

[24]In fact, the 1980 Olympic Games were called "the chemical games." However, not a single case resulted positive for doping. The situation began to change from the 1983 Pan American Games where more effective doping controls were applied to develop a new method to check ahead steroid intake. This caused that many athletes were detected by surprise. Other athletes decided to leave the competition without explanation. Nineteen athletes tested positive. Glenn Zorpette, The Chemical Games, *Scientific American*, Fall 2000.

[25]Two-thirds of the urine samples which were collected in the 1980 Olympic Games contained high levels of testosterone. Houlihan, *Dying to Win: Doping in Sport and the Development of an Anti-Doping Policy,* 70.

[26]Canadian sprinter was stripped of his gold medal that he won at the Olympic Games at Seoul, based on evidence he had taken stanozolol, an anabolic steroid. He was punished for two years. From there, several countries banned the sale of anabolic steroids for non-therapeutic uses. Møller, *The Ethics of doping and anti-doping, 71.*

of systematic doping of the Festina team during the Tour de France in 1998[27].

Those events rang the bell inside sport institutions worldwide as it became clear that a considerable amount of athletes had accomplished their deeds by means of using forbidden substances or techniques. For example, the Festina team back in 1998 was one of the leading cyclist teams in the world, it had in their ranks cyclists such as Virenque and Alex Zülle. Soviet athletes won 58% of all the medals in the Olympic Games in 1976. Ben Johnson won not just the gold medal in the 100 meters run in the Olympic Games of Seul, one of the queen races, but set a new world record: 9,79 seconds.

In all of these cases, the enemy to beat as far as the sport authorities were concerned was the use of steroids, which was particularly difficult since they were not used during competition but well before that, in such a way that the anti-doping tests carried out by the IOC during the Olympic Games were useless.

Therefore, anti-doping policy needed to take a further step ahead to "catch the cheaters": conduct anti-doping testing by surprise, frequently along the training season; this would prevent athletes from calculating the time needed to bypass detection not allowing their organisms to eliminate evidences of using illegal substances.

Such an anti-doping network needed great international coordination, since it was not just about controlling all of the athletes at a time when they were all gathered in the same place for competition, but when they were scattered around the world, following their separate training plans. The coordination between the different States, national federations, professional leagues, and of course, the IOC, would be the cornerstone of this ambitious project, all of which lead to the founding of the World Anti-Doping Agency (WADA) in 1999.

3.1. The Birth of WADA

From an international perspective and with regards to the historical conjuncture around the World Anti-Doping Code, there is a key date as a starting point in the campaign against doping: February 1999, when the first World Conference on Sport Doping took place, held in the Swiss city of Lausanne, under the auspices of IOC, chaired by the Spaniard Juan Antonio Samaranch who, later on would become the president of this institution. As a result of the works carried out during the conference, the Laussane Declaration on doping in sport was adopted, and it would become in turn the founding stone of what would later be the WADA. WADA was born on the tenth of November 1999, in Laussane having as mission to promote and coordinate the fight against doping in sport at an

[27]The Festina case involved a large network of international doping in cycling led by the director, doctor and masseur of Festina team: Bruno Roussel, Eric Rijkaert and Willy Voet, respectively. The products found were EPO (at this time undetectable), growth hormone and testosterone. Vest Christiansen, "The Legacy of Festina: Patterns of Drug Use in European Cycling Since 1998", 497-514.

international level and it was comprised in equal numbers by representatives of sport organizations, governmental and intergovernmental agencies. It is particularly remarkable that WADA was created as a foundation subject to Swiss law.

A further milestone took place in 2003, when WADA developed the World Anti-Doping Code which meant a progressive appearing of more homogenous national rules and certainly, it was a step forward towards harmonization of an international regulation on the subject. Later on, in November 2007, and on the occasion of the Third World Conference on Doping in Sport held in Madrid, the Code was reviewed, and the amendments to the original version were approved by the WADA Council on November the 17th, 2007, coming into force on the first of January 2009.

Following the founding of WADA and the Code that came into force, the anti-doping hunt took the form of a police and thieves high tech race where the ruling policy was zero tolerance towards cheaters, who should be found and banned from sport. All federations, Nation Estates, and professional leagues wanting to have their athletes be part of the international Olympic family should be subject to the authority of the Code as well as that of the WADA, -which gave rise to a series of diplomatic conflicts between this organization and institutions like the National Basketball Association (NBA) or the Fédération Internationale de Football Association (FIFA).

In order to develop this list, the WADA defined doping as "the occurrence of one or more of the anti-doping rule violations laid down in Article 2.1 through article 2.8 of the World Anti-Doping Code[28]"[29]. However this definition has been criticized for being far from being clear, and what is worse, from being useful. Prove of that is that the list keeps growing and it is being amended constantly without justification and consensus, since, either some substances formerly considered as doping, such as caffeine, have stopped being so, or as it is common the case, medical teams and scientists that are on the side of athletes are introducing substances and techniques that are undetectable for anti-doping authorities.

[28]World Anti-doping Agency (WADA), *World Anti-Doping Code. Available at: https://wada-main-prod.s3.amazonaws.com/resources/files/wada_anti-doping_code_2009_en_0.pdf, accessed November 2014.*

[29]"2.1 Presence of a prohibited substance or its metabolites or markers in an athlete's sample.
2.2 Use or attempted use by an athlete of a prohibited substance or a prohibited method.
2.3 Refusing or failing without compelling justification to submit to Sample collection after notification as authorized in applicable anti-doping rules, or otherwise evading Sample collection.
2.4 Violation of applicable requirements regarding athlete availability for out-of-competition testing.
2.5 Tampering or attempted tampering with any part of doping control.
2.6 Possession of prohibited substances and prohibited methods.
2.7 Trafficking or Attempted Trafficking in any Prohibited Substance or Prohibited Method.
2.8 Administration or Attempted administration to any Athlete In-Competition of any Prohibited Method or Prohibited Substance".

To address these technological advancements used by "cheaters" as the WADA defined them, it has resorted to the strategy of trying to go a step ahead of them. For that, it has put in place two types of measures: a) criminal investigations involving even law enforcement agencies of nation states and b) finance scientific research that, either finds out ways to bypass detection before "cheaters" do, or they find ways to detect them during testing. This is the new context in which the war against biotechnological doping is currently developing its activities. As a matter of fact, after the interdisciplinary workshop (Banbury Workshop on Genetic Enhancement of Athletic Performance-Banbury Center), held in New York, 2002, the WADA hurried to add this to the list of forbidden substances and techniques created in 2003, the so called "gene doping" without having at the time sufficient data or reliable studies about their possible implications on sport[30].

Having reached this point, we cannot avoid mentioning some of the technical and juridical problems that arose out of the complexity and singularity of the international doping system and that were being created as a result of WADA actions and its Code. In the first place, it is necessary to point out that the WADA is born as a private foundation subject to Swiss law, and its only coercive element is provided in article 4.1 of its Statutes relating to a necessary moral and political commitment of the participating countries when following their recommendations. Being this so, merely appealing to a political commitment could not be considered enough, particularly because some of the obligations that the WADA was trying to enforce clashed with the constitutional precepts of come countries, which considered that the WADA did not represent a sufficient justification to amend their Constitutions. Therefore it became readily visible that trying to address these problems from within a private institution was inefficient and since the WADA did not change its legal personality the difficulties encountered to obtain the cooperation of Nation States by means of an instrument of Private Law such as the World Anti-Doping Code, led to the search of an instrument subject to International Public Law, that would enable and enforce a political commitment from the side of the different governments.

3.2. International Convention against Doping in sport (2005)

In order to overcome the problem mentioned in the last paragraph, the 33rd General Conference of the UNESCO held in Paris in 2005, took a great step forward: the creation of the International Convention against Doping in sport on the nineteenth of October 2005, which was endorsed by the signing States

[30]2013 was a particularly relevant year for the detailed study of the legal implications that doping implies, especially because of the Fourth World Anti-Doping Agency (WADA) Symposium on —the emerging issue— of gene and cell doping. See World Anti-Doping Agency (2013), "WADA Symposium on Gene and Cell Doping", in: Play True, Vol. 1..

finally making possible the harmonization of the international normative and the effective enforcement of the World Code against doping (but not in its entirety as we shall see) on the territory of the signing countries. This Convention sought to incorporate, - therefore within the limits set by its own normative -the Code in the International Public Law, imposing on the States the obligation to adapt their legislation to the principles of the Code. Indeed, and it is appropriate to point out here that such obligation, pursuant to the provisions of article 4 of the Convention, is enforceable only in what respects to the principles of the Code. In such a way that the countries, including Spain[31] which endorsed the Convention on the 25th of October 2006 have committed themselves to uphold the principles of the World Code against Doping, but the specific content of the text itself, is not enforceable. In other words, upholding the Code, save the principles, does not become an international commitment.

However, this statement demands plenty of nuances because some stakeholders point to the existence of an obvious dissociation between the juridical enforcement and the real one. Some would argue that the Convention had turned merely into an instrument for dealing out, sport events, for example, the Olympic Games- only to those countries who had endorsed its principles, or simply the confirmation of the idea, within the social debate, that not endorsing and not upholding its principles would be equivalent to an attitude of negligence or substandard accomplishment of the obligations from side of the country in question regarding doping.

We can therefore deduce that the main problem regarding the World Code against Doping lies on its ability to enforce its normative on the basis of the legal instrument that has been granted to the WADA to this end. Added to it is the fact that the Code relies on Anglo-Saxon common law something that is alien to other juridical traditions such as is the case of Spain based on Roman law, and also the fact that it imposes, within the framework of private relations -*ius commune*-, a series of obligations that nation States cannot incorporate not even in the Public Law domain -*ius publicum*- . We are specifically referring to the fact, claimed by some scholars, that the Code conveys violations of basic national and international legal frame, a clear example of which would be the breach of the right to privacy.

[31]See Atienza Macías, "Doping and health protection: a review of the current situation in the Spanish legislation" 138—142 and as far as the famous Operation Puerto doping case is concerned: Atienza Macías, "The Fight against Doping: Controversies over 'Operation Puerto' and Recent Spanish Legislation", 8-13.

3.3. Fourth World Conference on Doping in Sports and the 2015 World Anti-Doping Code

During 2013, the city of Johannesburg hosted, from the 12th to the 15th of November, the Fourth World Conference on Doping in Sport, an event that became a milestone in the way this problematic had been handled. On this occasion, using a recently revised version of the Code, the main purpose was the approval and endorsing of a new draft of the Code for the Founding Council of the WADA.

In this sense, in order to continue improving the programs against doping all around the world, the WADA started in 2011 a process of consultations[32] around the Code already in force, and said process concluded with the presentation and ulterior approval of the proposed revisions during the Conference in Johannesburg. It is important to remark that the Code is currently applying a set of five international criteria with the purpose of harmonizing the technical areas of the anti-doping normative.

The works of the Conference focused on the process of revision of the World Code on Anti-Doping which started at the end of 2011, and which took the form of a draft that became the Code in last 2015. While the Code was being revised, fourth of the five international criteria associated with the WADA were also subject to a process of consultation (International Standards for Laboratories, International Standard on the Protection of Privacy and Personal Data, International Standard for Testing, International Standard for Therapeutic Use Exemptions), the fifth of these Standards, that is, the Prohibited Substances and Methods List**,** was not revised in the same way that the Code and the other four international standards since the WADA conducts an annual consultation of this normative and therefore, it is revised and republished each year.

After the implementation by the signatories in 2014, the revised Code[33] and the International Standards came into force on January the first, 2015[34]. The numerous amendments included in this last version of the Code (4.0) can be grouped within the following seven key points:

1) Sanctions

The stakeholders, in particular, the athletes, have shown their support to an increase on the length of the ban for those who are considered "international

[32]See World Antidoping Agency (2014), "The code in review. Moving ahead through stakeholder consultation and the code review process". Available at: https://www.wada-ama.org/en/resources/play-true/play-true-magazine-the-code-in-review accessed November 2014.

[33]Dvorak, Budgett, Saugy *et ál.* "Drawing the map to implement the 2015 World Anti-Doping Code, 800.

[34]The Code can be consulted at: https://wada-main-prod.s3.amazonaws.com/resources/files/wada-2015-world-anti-doping-code.pdf, accessed November 2014.

cheaters". That is, when someone is aware that his/her actions constitute a breach of anti-doping regulations, or when one is aware that a specific behavior can imply the breach of said regulations and still decides to carry on. On the other side, more leniency has been shown regarding those "unwittingly cheaters".

For the presence in blood, or for the use or possession of a forbidden substance, the banning extends to four years, unless the athlete can prove that the breach occurred unintentionally.

Prompt admission, that is, when the athlete admits he has breached the doping rules, does not guarantee anymore an automatic reduction of the banning period from four to two years. Conspiring will represent a breach under abetting charges, while the definition of manipulation has been extended to include the fact of intentionally interfering or trying to interfere in the work of an officer or agent in charge of conducting anti-doping testing, providing false or fraudulent information to an Anti-Doping Organization, or intimidating or trying to intimidate a potential witness.

The banning period for an athlete thought not to be significantly responsible for an adverse analytical result which involves a "specific substance" or a contaminated product can range from a word of warning to a banning of two years.

2) Human rights

The parties involved requested consideration regarding the principles of proportionality and human rights expressly provided for in the Code, together with the amendments introduced in respect to the mandatory public disclosure and its procedures.

Among other new amendments, public disclosure will not be mandatory until the process of appeal concludes and will not be applied in the case of underage. In this regard, minors do not need to explain how a forbidden substance entered their bodies to demonstrate the lack of intentionality.

3) Investigation

There was a general consensus among the involved parties in that the role the investigations were playing in their fight against doping should be enhanced and strengthened in the new Code, as well as the cooperation among the governments and between all stakeholders in matters regarding the breach of anti-doping regulations.

In this sense, each of the responsibilities of the investigation and collection of information assigned to the Anti-Doping Organizations was described in the 2015 Code. It was expected that the governments passed legislations including laws, rules, policies and administrative procedures to promote cooperation in the exchange of information with Anti-Doping Organizations, while the tasks and responsibilities of the International Federations, the National Olympic Com-

mittees, of athletes and their support staff were substantially extended in order to require cooperation with Anti-Doping organizations to ultimately investigate breaches to anti-doping regulations.

Taking account of the events of doping having occurred recently, the limitation period deadline has been extended from eight to ten years, as it has been shown that tracking and solving sophisticated doping plans can take a considerable period of time.

4) Support staff of the athlete

The stakeholders have expressed in both occasions the need to address the problem of the support staff with regards to doping. The last revised version of the World Code on Anti-Doping for 2015 linked the responsibility to this support staff through specific functions and endowed the anti-doping authorities with new rules to this respect.

International Federations and (Ifs) and the Anti-Doing Organizations (ADOs) are from now on, compelled to investigate automatically any staff involved in supporting an athlete who is: a) involved in any breach of anti-doping regulations by a minor or b) provides support to more than one athlete who has committed a breach of said anti-doping regulations.

Under the motto "prohibited association" a new article has been added to the amendments to the 2015 Code, regarding the breach of anti-doping regulations. So, it is considered a breach of anti-doping regulations for athletes and other persons the fact of establishing an association on a professional basis or related to sport with any support staff who is: a) currently banned b) has been convicted on charges that could constitute doping in a penal, disciplinary or professional procedure for a period of six years or for the period for which the sentence has been imposed c) act as a screen for a person described in sections a) and b).

Before it is considered that an athlete has breached this article, said athlete must have been informed by his support staff of having been disqualified and he must likewise be informed of the consequences of continuing the association. The support staff also has the opportunity to explain that the condition of disqualified is not applied to him. And lastly, this precept is not applied in the cases where the association is inevitable, that is, relations father/son, wife or husband.

Aside from this, a new article has been added to the functions and responsibilities of the support staff, which prohibits the use or possession of any prohibited substance or of any method without a valid justification. Even though it is not considered a breach of anti-doping regulations, a disciplinary action will be imposed.

5) Testing and samples analysis

The amendments to the 2015 Code address the need for effective and precise tests and sample analysis in all anti-doping Organizations.

After consultation with the International Federations and other Anti-Doping Organizations, the WADA will adopt a technical document that will identify a list of prohibited substances and methods that must be analyzed in specific sports and sport disciplines. Anti-Doping organizations must use this risk evaluation at the time of designing their plans for the distribution of tests and further on, put into practice a program of testing in accordance with these risks.

6) Balanced interests between the International Federations and the National Anti-Doping Agencies (NADOs)

The changes proposed in the Code recognize the critical role of the International Federations and the National Anti-Doping Agencies in their fight against doping and the need to clarify and better determine their responsibilities.

While International Federations still continue to control the exceptions related to the therapeutic use (Therapeutic Use Exemptions or TUEs) for those athletes on top of the lists of world rankings and National Anti-Doping Agencies control those exceptions in relation with national athletes, both are going to accept any therapeutic use exception accepted by the rest. However, any of these two organizations may challenge an exception that does not abide by the applicable international standard. The organizations of big events still preserve their authority to accept and grant therapeutic use exceptions for their events, but refusing an exception does not have any effect on the exceptions granted before said event.

7) A shorter and clearer Code

The stakeholders requested that the Code be clear and straightforward, capable of tackling with and addressing the different situations that could emerge, therefore this Code has no loopholes and it is guaranteed a harmonious use of it. They also demanded that the Code be shorter and less technical. The challenge has been in how to balance these two requirements. This way, all sections relating to the reductions of sanctions have been revised and simplified. A brief formula to calculate the banning period for multiple breaches replaces a long chapter and a long explanation. Furthermore, the WADA will publish a simplified version for athletes[35] in relation to the 2015 Code, highlighting the areas that are considered to be more important for them.

[35]2015 Code Implementation for Athletes, available at: https://www.wada-ama.org/en/resources/search?f[0]=field_resource_collections%3A188, accessed November 2014.

4. A contemporary critique of the current anti-doping fight policy and the 2015 WADA Code

The issue of doping in sport is not a new one —having it been present throughout the history—, nowadays it shows its own particular features, and these make it different from the past: the different perception that society has expressed about doping, and this is a consequence of a different vision of sport. Thus, from the point of view of sport as a recreational activity, predominantly being an end in itself (as it was at the times of Classical Greece), we have now reached the point of considering sport as a highly professionalized activity where the pressure for victory is exacerbated, and whose primary purposes are both large financial profits and the social exaltation of the winner (this is the nowadays` perception); likewise the need of an interdisciplinary approach (including social, ethical, political, economic, health-related and legal dimensions); and, finally, in contrast to previous eras, the recourse to the Law by public authorities in order to define rules and limits for such an increasing and complex matter of doping.

In recent years, the issues related to doping in sport have attracted a significant (and controversial) attention due to the confluence and interaction of a series of factors, such as: the exponential growth in the number of sports athletes, suspected or proved, without any doubt, to have *used performance enhancing drugs or methods in order to gain an advantage over their competition* (this notions is labeled as "general doping"); as well as the spread of doping in any sport activity—even in sports adapted for the disabled people and in sporting events that involve animals—. Likewise the progressive advances in the field of biomedical sciences and biotechnology that have led to the development of new techniques or methods of doping, increasingly sophisticated and being more difficult to be detected (*e.g.* gene doping). This situation has called upon the intervention of the law, to the extent that the legislative system has been forced to evolve, in order to adapt and to respond to new legal situations previously unknown.

From our point of view, the most meaningful problems arising in the context of the legal regime about doping are the following ones: **a)** on the one hand, **the hybrid and heterogeneous organizational framework** (consisting of sporting and non-sporting entities with juridical private nature, and of governments from different countries). This has been the result of the existence of various anti-doping regulations and the subsequent lack of harmonization between them (dispersion); and, **b)** on the other hand, **the lack of legally binding force for the World Anti-Doping Code** in the framework of Public International Law, since this Code is a regulatory instrument governing private foundations (i.e. The World Anti-Doping Agency). The qualitative leap occurred thanks to the UNESCO International Convention against Doping in Sport (in force since February 1, 2007), which constituted a milestone for both the mandatory effectiveness of the World Anti-

Doping Code upon the Signatory Parties —it became a legally binding instrument in the context of Public Law— and for the normative harmonization. However, the following objections can be highlightened: **1)** the legally binding force can be recognized only for the principles of the Code (as they have been included in the aforementioned UNESCO Convention). Accordingly, the provisions of the Code — except in the case of principles— do not form part of the international obligations, and **2)** concerning the debate on the extension of the legal force upon all the provisions of the Code, it appears that, **in practice, there is a significant dissociation between legally binding force and pragmatic binding force of the Code's rules.** The latter would mean that the signature of the Convention is simply done for ensuring the country's participation in the award of international sporting events (i.e. Olympic Games), or it would be a way for removing, within the social debate, the idea that the lack of ratification and enforcement of the Convention mean that there is a lack of care and interest in the compliance of anti-doping obligations by the Signatories Parties.

Furthermore, we would like to highlight that the classical view of doping has been to consider it as a "problem", a "threat", a "scourge" —and a long etcetera of pejorative terms— that have compromised the sport in this new century. This kind of doping has been historically condemned by athletes, sports officials, government and society. Alongside such classical trend, we have observed and analyzed that in the past decade other approaches have been built: they are questioning the traditional idea of doping and therefore the anti-doping policy adopted by national and international organizations. Hence, concerning the justification of intervention of the Law in this area, we have noticed that from the point of view of fundamental values (from a legal and ethical perspective) the reasons that stigmatize doping need to be carefully reviewed. On this basis, we conclude that there are no compelling reasons to condemn the possibility that, under certain conditions, athletes can use certain mechanisms in order to increase their performance (enhancement treatments). We have critically analyzed the three central pillars on which any antidoping policy is based, namely: 1) ensuring equal opportunities for competitors; 2) preserving sport values (i.e. *fair play*); and 3) protecting the athlete´s health. Subsequently it seems clear the justification for the prohibition of doping in order to ensure equal opportunities for competitors and *fair play*, as long as it occurs a deception in the counterparty when substances or methods that are not permitted according to the current game rules are assumed. However, the approach would be different in a scenario in which other kind of sport could be conceived (such as "sports-entertainment") and some forms of doping were permitted, so we could not justify the prohibition based on a deception in the counterparty; and, on the other hand, the argument of health protection as a basis for antidoping regime can be contested because of the weakness of its justification in two ways: firstly it means adopting a paternalistic

attitude and ignoring the principle of athlete's autonomy and secondly) it may turn out to be inconsistent since there are certain sports which are also harmful practices but they are admitted and perfectly regulated.

5. Concluding remarks and further research

Despite the fact that there exists currently an institutionalized conception about doping as a practice that jeopardizes the continued existence of sport as is, we have tried in this paper to offer a historical vision that would remind that the improvement of sport by means of natural or chemical substances not always has been regarded in a negative way. In this historical approach we have highlighted four central stages describing how doping has evolved (natural doping, chemical simple, systematic and biotechnological doping). Only in the last stages have the international authorities undertaken a manhunt against doping, sometimes jeopardizing the human rights of the athletes. This has been a matter of discussion in the second part of the paper: a historical vision in the fight against doping. After having examined how this fight has evolved and how the main authorities and regulatory bodies (WADA) have been established, our goal has been to provide a scheme of the main new amendments introduced in the final revised version of the World Code Against-Doping adopted in Johannesburg in 2013 and which came into force in 2015; and from our point of view, the new version of the WADA Code (in force since 1 January, 2015) has introduced substantial regulatory changes in comparison with the previous two versions (from 2003 and 2009). These changes show *a progressive trend towards toughening standards of control and repression* of doping laws. This is evident from measures like: **1) the intensification of doping controls** and the introduction of **new methods of indirect detection** such as the "Biological Passport", in addition to the traditional methods; **2) the introduction of two new doping offences:** the *complicity* and the *prohibited association* (they consist in preventing the athlete from working with an helping person such as a coach, a doctor or a physiotherapist, if these have been sanctioned, or condemned by the Commission for a conduct linked to doping); **3) the extension of the statute barred for penalties** (from eight-year to ten years), since it has been demonstrated that it can take a long time before sophisticated doping schemes are discovered; and **4) the implementation of a mechanism of automatic disqualification of the athlete's results, if he is found to have used doping**. It entails that, if an athlete commits a doping offence, all its competition results obtained after the discovery of its infraction shall be invalidated. This measure presents **obvious deterrent effects**. All in all, although the aforementioned normative changes related to the 2015 World Anti-Doping Code confirm a harsher set of rules, they seem to be more effective for the purpose that they aim to achieve, and thus they are proportional. This allows us to support the reasonableness of such new measures.

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CIVIL LIABILITY OF ATHLETES AS A RESULT OF VIOLATION OF NORMS IN SPORTS LAW

Mahsa Mokarrami
M.A student of private law, Electronic Branch, Islamic Azad University, Tehran, Iran

Mehdi Yousefi Sadeghloo*
Assistant professor of Payamnoor University of Karaj, Alborz, Iran

Ali Zare
Department of Private law and political sciences, science and research branch, Islamic Azad University, Tehran, Iran

Abstract: *What in this study, entitled as civil liability of athletes as a result of violation of norms in sports law has been studied; different aspects of this type of responsibility to compensate for losses resulting from damage to persons, different aspects of this type of responsibility to compensate for losses resulting from damage to persons including players, spectators, those involved in the sport as well as citizens as people who are athletes, especially athletes as their model in the community. Athlete, in this study, in terms of whether it is used and includes all the elements and sports persons, in addition to logging losses by damaging action, so what to do outside of the norm of conduct and rules of the sport, also committed a fault and should pay compensation under civil liability law. Sometimes this is the fault of the athlete, the criminal aspects and associated criminal responsibility and sometimes this type of civil liability and responsibility becomes confused with the problem more difficult, however, what ultimately we will be ahead in the article, the necessity of developing civil liability law athletes.*

Keywords: *civil liability, athletes, norm, law, violation, fault, error.*

Introduction

Demands of social life, human, civil and social interaction and relationships is vast and complex laws and regulations governing the communities they are regulating. Contracts that the parties are concluded, the parties were bound by the law and the principle of party autonomy and a violation of the obligations and refusing to perform the duties, responsibilities give rise to civil and sometimes criminal is arrogant, in addition, parties are required norms of society as well as public order and social life must be respected, not to commit fault. Ignoring the dominant norm or customs of the business community, in addition to ignoring the rules and regulations, so what led to damage to another, the cause is civil liability. Natural and legal persons which are typical for professional sports and tenure communicate, in addition to adhering to the commitments and obligations arising from contracts required to comply with the requirements of governing itself are out of contract. Obligations or customs of society in general or specifically due to

the special status of sport or the sport originated. Athletes, is a group of citizens who are professionally involved with the sport on the one hand by natural or legal persons such as federations, clubs and the clubs have signed a cooperation agreement and the other against athletes who are in training and education, for out of the contract, the commitment to be a certain person. In addition to the general rules governing the civil liability of specific standards on some sports and some sports-related parties ruling and this interference causes the right and duty while the athletes are also required to comply with the requirements of the norm. The importance of physical education and sport that requires health and wellbeing in today's society is not no secret so that even linked with national pride, but it must be recognized that sport is not separate from hazards and may be one of the athletes on the commit an error or a violation of the norms of sport rules, the legislation also violates the normative and the risks and damage from sight unknowingly and it has underwritten. The most obvious example of this is in accordance with paragraph (e) of Article 158 of the Civil Code Act 2013, if the movements of the exercise was conducted in accordance with those provisions are not contrary to the Sharia, not criminal liability, but civil liability continues is established. Although assaults unforgivable crime, but in sport by athletes accepted the risks of competition, but if the damage is unusual will be subject to civil liability so distinct fault tolerance in sport is swimming on rigor nor should a balance between social utility and social interest, as well as losses from its exercise is established. The article tries to find a way to deliver community sports law to establish this balance. It is hoped that this study is an important step in achieving a balance between sport and the risks it permissible principle and rule is compensation.

1. Civil liability

Definition of civil liability seems a bit difficult because the definition is necessary in the sense of responsibility is also noted that the exchange of ideas and according to some lawyers[1], if the civil rights issues deserve to be addressed directly to the subject matter of civic responsibility will be to define the debate. Responsibility in the word means being obliged to do something. (Moein, 2008: 432). Responsible is a personal who else is liable to pay it if she refuses to be held accountable. So the responsibility is always with commitment. Whenever a person with his behavior has caused prejudice to the legal rights of other persons called to say that legal responsibility. Sometimes the offender's behavior is against the law, as has the crime in which case the type of criminal responsibility and «other compensation is in any case a person had to say against him is civil liability.» (Katouzian, 2006: 46) Civil liability is primarily due to

[1]Dr. Amir Nasser Katouzian

the detrimental practice of realized losses caused by the negligence of others, whether intentionally or not, but sometimes in order to compensate for the other losses caused by illegitimate or risk is also there. Civil liability resulting from sports activities as well as general civil liability, has three pillars:[2]

A) The existence of losses;

B) Commit a harmful act;

C) The causal relationship between the act and the harm that has been entered.

«The purpose of the rules of civil liability is to compensate for losses, in other words, it must be time to compensate for the loss of the religious responsibility, and to be responsible. Responsibility should be action by profit. So there should count the loss of the main pillars of civil liability and this rating is the legal entity of moral responsibility. Civil law rule on any legal matter not expressly stated reason for this silence is considered to be evidence. Because it does not find that the loss is not right on both sides. «(Katouzian, ibid: 242)

Loss in term of law include:

1. Injury to yourself and others whether young or maim for murder, for example, athletes injured in sport as a result of an error by the opponent or fall in child athletes from horizontal movement as a result of carelessness coach and his death is a loss to the creation of civil liability. (Jafari Langroodi, 1999: 415)

2. Violation of the dignity of others and hurting the dignity of the person, such as the creation of homosexuality rumors about a supervisor or manager or the like.

3. Remonstrate to honor of others.

4. Waste and maim their property and the property of others and raping non: Such as breaking glass gyms in other words, wherever there is a defect in the property or lost profits Muslim or harm to the health and dignity of the person's feelings and say it is a loss incurred (Aghaei Nia, 2007, 99)

In this case, the following points are significant:

1. The loss of one's own actions on their rise to civil liability, but the loss should not be entered.

2. Loss should be clearly and precisely, so the probability of loss will cause civil liability. To perform an action that causes losses, it is not enough to hold factor, but it should be illegal or illegitimate and so refused the operation that caused the harm.

So all the exercise that is against regulations, causing losses would not be compensation. Coaches, teachers, administrators and sports are obliged to take care of the athletes. They refused duties if the incident would cause their response. Two teenagers wrestling coach who oversees the ship if the announcement of technical errors, one of which is performed against each other to avoid and

[2]Although there are differences in the content of each element with a general discussion of civil liability.

prevent the guarantor is not executed. Or judgment that the views of non-standard or embedded boxing gloves refuses to be held accountable or arbitration gymnastics competition before the start of defective toys refrain accurate hits and athletes due to the defect, the injured are in charge. (Hosseinnejad, ibid: 35)

In other words we can say that civil liability is subject to the following conditions: 1. Act 2. Realize the harmful effect 3. Illegitimate act 4. The causal relationship.

2. Exercise and Sport error

«Sport is the movement of regular physical ability and skill in order to achieve various goals - the best of them, vitality and well-being of the body - done. So irregular and ill-considered actions, are not like some games and recreational sports.»(Hashemi Noor Bakhsh, 1999, p. 17) In Islam, the principle permissible in the current exercise. As dignity requires respect for the principle of reason and reason do not exercise but sports are inherently and by itself is prohibited, and include:

1. Exercise gambling machines and tools (both winning and losing bets and without it), such as exercise setter, billiards (according to a great number of scholars), backgammon and ...
2. Play to win or lose the bet. (As for gambling and betting either with or without it)
3. And play any kind of sport that encourage, promote, facilitate, bowed out to be unlawful.

In addition to sports illegitimate in Islam are considered dangerous sports:

Turning to sports that trading the foot beat, wound and fracture and sometimes killed, absurd, unreasonable and unacceptable from the perspective of Islam. To the extent that Imam Ali (as) in Nahj al-Balagha, he wrote: «Stay away from extremes because each and every extreme negligence to destroy him back his losses. Extremes that can be multiplied to themselves or others is prohibited. The Prophet (pbuh) said: losses to yourself and others is prohibited. «(Beheshti, ibid: 85) Stated in Article 2 of the Civil Code, «any behavior that causes harm to another, whether the act or omission for which the penalty is specified in the law is a crime» after exercise is therefore dangerous sport rules and norms Sport accepted and unusual damage to others. Each exercise is essentially a set of codified as laws or regulations or delegations are prepared and presented to the Federation. If the athlete can violate the rules during the game and other players on the accident would be wrong. In other words, the dangerous sports, sports or immoral aspects of sport was also averse is an error. So we can say that the purpose of sporting events all crimes and offenses sub-athletes, teachers, coaches, administrators, fans equipment makers and the like directly or indirectly related to the exercise is performed. These events may be subject to health, life,

property, honor, dignity and other legal rights of persons who are present within the sport in some way.» (Aghaei Nia, ibid: 31)

3. Law and norms Sports

Sports law sets the rules that govern all of sports including athletes, technical managers, spectators, staff sports management, sports medicine, sports goods manufacturers and retailers of sports and the sports staff. A set of rules and regulations governing the sport. In general, in all countries, public support for certain sports, such as exercise goals in a generation, courageous, strong, happy, and healthy, and finally the preparation of the most important pillars of human development and political and economic and social aspects should be simply ignored and why to support these activities and the institutions, laws and privileges may be considered very special. However, the granting of these concessions is different, sometimes explicit and sometimes implicit rules and sometimes in the form of judicial practice is the exercise of the privilege. But because the purpose of this discussion is sports in general all over the world, governments pay the cost of it and from sporting events, including events that occur on the street are completely separate, although the result be the same. (Aghaei Nia, ibid: 4) (Shokri, 2012: 15) In general norm of general behavior or method is called. Anyone who does not follow from that kind of punishment or be punished by the group. In the form of legal norms, social, cultural, moral exist. There is less consensus about the moral norm. However, some unwritten ethical norms accepted by the general public and specific area. Some popular all the world's people. «Sport is sport rules represent the norm, sport separates the external environment. The rules are divided into two categories: 1) Basic rules: such as banning the referee or warm up at the beginning of the race. 2) Secondary legislation which normative ethics and moral norms are controlled and protection of basic laws. (Like a referee / damage is bad, it is good to follow the law, offenders will be fined by both the referee and the spectators - the norm or the norm), the action by law to exercise discipline, but ensures justice, friendship ... is not. "(Chalabi; ibid: 42) numerous verses and hadiths that in Islam it represents a clear vision about the sport and the necessity of the law in this case. In parallel with these resources, legal responsibilities concerning the rights of sports events have raised strong comment and content; for example, if your minor child's personal swimming teacher (swimmer) submission to teach him to swim, so the child drowned liability rests with the reasoning of the teacher swimming because However, the child handed to him to maintain child care, so if you sink the sinking of wrongdoing teacher swim in the maintenance of the child, but the judge allowed the this is an appropriate analogy in religion, this is a swimming teacher sponsor of breath blood money not because it is a habit and custom of the current flowing to the best interests of the child so if the guarantor

is not to be wasted through swimming as usual if the child's teacher would then sponsor a child through the multiplication not be wasted. But for adults, if the teacher drowned when swimming is not what it is not wastage because that adult authority in his own hands and wastage in adult perish not rule than the exception.

4. Sports events and responsibilities of athletes in front of it

Laws and regulations related to sports and sporting events if it is accurate and transparent for society be explained athlete avoids the violation of the norms and rules of the sport, which in turn caused the event is for athletes, events resulting from the physical and psychological integrity of sport sometimes people who starts the assault and the destruction, maiming, mutilation, and murder continue dementia and sometimes done on the property, thereby causing harm to others. Here should be noted propose that the reason was an accident and sports injuries. The first relates to events that athletes than athletes will face and verify the rules and regulations governing the use of sport is motor behavior or technical or otherwise. The second form is that the incident is the result of athletes than non-athletes. If as a result of recklessness and disregard for safety issues, such as the athletes who play football the ball hits the streets to passers-by and caused him to fall and cause injury or jogger responsibility to be nasty, but if the damage to third parties due to negligence on the part of players or inattention to safety issues or violation of the rules of the game, It comes from the fact that according to Article 259 and 367 of diya; any damage or injury that hurt the human being person is entitled to receive compensation payments, thus committing a punishable act as the injured referee hit the ball over his head. (Salimi, 2005: 53) In conjunction with other forms of matter can be said about the events near and far that sport operations caused by the incident seems that all parts of this clause but if sports events, other events cause appears to be the inclusion of paragraph (e) of article 158 of the Civil Code is excluded. Because it is not reasonably expect, for example, if someone is injured and he cannot exercise proper monitoring of movements later maintain your balance and thus it breaks his arm and other injuries are also outside the scope of this paragraph. The term encompasses events in this article titles that firstly, transition offense and is punishable by law. Secondly, as a result of sports operations there. Of the view that the events should be offended by the legislator should be noted that in the case of injuries sustained during a sporting competition by an athlete over another athlete, offenses that can be considered, in the usual sense of criminal law are those that involve the improper and unauthorized violence to property or bodily or physical health are lifelong interest and identity but in this connection, the accidents have resulted from sporting events should be noted that these events do not necessarily have to be done by the athletes during the operation and performance of sports. For the crime of ignorance and lack of criminal responsibility of athletes and sports

events, many people believe that crime is not currently documented sports events to let the law. Participating in sports competition situation, such as being someone who is in an emergency must quickly decide and defend itself; then we should see whether the decision conditions in which he is competing with conventional decision taken in the exercise of its proportional or disagree with it? Civil liability, especially the one that is harmful is the opposite criteria to be considered as a violation of the rules of the game and misuse of healthy competition. The argument is that because it is in an emergency and where to obtain a fast decision in that case is necessary, many slip makes it permissible negligible and reduce the spread of sports transgressions. Exercise should be documented on the legitimacy of the accidents caused by operation of law in which the events and actions that are really in compliance with the provisions of that exercise, accordingly cannot be regarded as a crime and can be prosecuted and punished. For example, according to the judgments of 1998.09.22 number 1678 of Tehran Public Court Branch 1102:

«... It is certain that inflict blows in different martial arts, is a member of its principles and the court to clarify whether bumps and regulatory frameworks taekwondo entered correctly or not?

Attempt to appeal to experts Taekwondo Federation to issue a detailed report ... Performance Coach, Mr. ... to conventional and in accordance with the provisions of taekwondo stated ... so far, a large number of statements made by the plaintiff, Mrs. ... late mother ... and the men responsible Time Sports Complex ... and Mr. ... taekwondo and statements of a number of art school, exercise trainer who was supervising the scene as well as theory and forensic experts Taekwondo Federation, the court, in the event of unusual regulatory frameworks understood and practiced taekwondo and according to the principle of presumption of innocence is not assumed by virtue of article 37 of the constitution of the Islamic Republic of Iran, ruled to acquit Mr. Mr. director-time coach and gym ... issued and announce. «(Ahssani Forouz, 2012: 50) Thus, according to ratings above, if the rate of criminal responsibility in accordance with the law of that sport will not be noticed him.

In theory, number 4413.7 - 1988.6.30 reads:

Bone fracture in match Diego vessels and detect intentional or inadvertent damage to the investigating authority is being delivered. The question that comes to mind here is that if the sporting regulations are obeyed why should someone pay? Is the lack of criminal responsibility in this case, does not contradict?

In answer to this question should be said, mixing and unity of civil and criminal liability in terms of debt will result in the offender from criminal responsibility, not responsibility, but in terms of civil liability, the responsibility is his atonement in other words, the dual nature of the debt and the trespassing debts must be paid.

5. Norms of Sports

This section tries to explain the concept of sports norms.

1. Is it professional conventions and sports federations error with the decision, the court and the liability is innocent?

2. Would you say the rules a player who has committed no fault and does not assume liability?

In the first question, the general response is that infringe the rules of the game and not respecting the legally required precautions innocent, because the athlete reasonable, no such behavior is why it is said that sporting fault in the eyes of first have to exceed the particular rules of the game of interpretations. Contrary to Section C, article 158 of the penal code suggests that the fault is a violation of the rules and norms of the sport. This paragraph is not included among the acts that mass read: «Events of sports operations, provided that it does not sport events in violation of relevant regulations and such regulations do not disagree with Islamic rules». Uttered this sentence, the credibility of the sports regulations in accordance with the general rules of criminal acts is confirmed and sports and compliance with the presumption of innocence, but he did the opposite sense it used to be that violations are subject to the general rules. So, it should be said that a handful of errors in the sport of boxing is to be assault and battery and negligence. This provision relates to criminal matters, not civil liability but also can be used to measure the financial liability and mixing civil and criminal liability in the law, take advantage of the proposed confirms, however, as has been said many of the common errors are negligible and only the deliberate and heavy transgressions liability can see you. But in response to the second question is more uncertainty and many authors have confirmed that the court is not bound to the rules of the game: In other words, although the rules of sport is always used as a guide, but the court is not required to practice the game is legitimate and what is not permissible rights and the court can always see, based on social and moral purpose motor sports and the guarantee error counts. Especially in cases where the result of the severe harmful act such as blindness and death and permanent paralysis, courts are normally hard and flexible criteria (ie, reasonable athlete behavior) use to achieve justice. (Katouzian, ibid: 410)

6. Unforeseen errors in terms of sports

Although efforts have been made that all the relevant provisions of the misconceptions athletes and judges are required to have their opinion, but many gestures which seem indispensable for the exercise counts may be due to the accident. In other words, lack of foresight some misconceptions exercise in virtual means of doing it are not absolute because only the cover athletes have allowed the sports movement seems to touch every effort to achieve criminal goals for example, if throwing the ball by hand can be played in basketball requires it

allowed the player hit the ball hard into the opponent's face, enhancing throw a spear or can be allowed with the permission of the referee is not allowed to throw even if the person or persons regardless of traffic in the area is to be launched? Undoubtedly, the answer is no. Sport is a tool for health, strength and vitality and ultimately a generation in Iran and never be used as a means to satisfy the anti-human. In this regard, the regulations of each sport after the counting of errors mention a matter, any misuse of the sport have been banned. Among these cases is Article 8 of the 22 international regulations Water Polo: committed abuses, including the use of such language is insisting on unfair play. Insist on unfair play consists in the application that is incompatible with the spirit of the rules. Like throwing the ball to the opponent's face or in Article 63 of Regulation ship Technical any stretch leading to the central spine or under the law of football twelfth errors and inappropriate behavior, playing in a way that is dangerous to the opinion of the referee's error is detected such that the ball is in the hands of the goalkeeper and the player with his foot. The above examples show that sport errors is not limited to special cases set forth in the bylaws but every sport is dangerous, immoral or contrary to sporting aspects of sport is also considered an error, it is responsible and committed against accidents and vice versa within the prescribed exercise and the athlete will not be responsive in the face of negative consequences. The most obvious examples of rules, regulations governing the operation errors caused by exercise any sport is essentially a set of codified as laws or regulations or staff is prepared and presented to the federations. In this set, usually Cottages of regulations related to land, players, referees, violations and crimes, etc. are carefully listed. (Yousefi Sadeghloo, Mokarrami: 2014: 78) Therefore, if the above-mentioned sports, regulations and norms related to compliance and the regulations not contrary to Sharia and an error occur on other athletes, however civil liability criminal liability will not be in any way will not disappear and will be persistent and the civil liability in addition to the general rules of play where the regulations associated with the sport, including any dangerous sport movement, opposes unethical aspects of sports or sports.

7. Responsibility and blame coaches

The responsibility of the coaches to the athletes to be said that:

Coach responsibility for physical injury to the athlete root of the contract and it should be the basis of «Perjury» count. Because of a contract with an athlete or coach, but he is obliged to protect. Therefore, Saheb Javaher stated that, if the treaty coach disclaims responsibility for, the certificate of innocence or the like, similar to what has been said about the doctors do, it eliminates liability. (Shojapourian, 1994: 93). The treaty commitment to protect the players, in the case of children, such as commitments to the result. So if a child drowns, the breach also involved but, in the case of growth, commitment to the provision of

safety and care instructions and giving instruction to his apprentice. As a result, if an accident occurs, if liability is based on wastage him. In civic responsibility and clean in the loss, determination and capacity to help the injured party does not share a real sense of common intention in the contract doctrine does not. What is important is the involvement of each of the two factors in the accident. As a result, it must be admitted, in any case where the injured party is the role of passive obedience, as coach employer is responsible for the damage incurred, or is detrimental to the athlete or for a third party to be created as a result of his action: In this case, the commitment concerning safety and injured thus considered to be exempt from proving fault: for example, novice to learn driving contract with the institution closes, working as passive in the face of his coach and it is possible, though brave and wise as well. So, coach or institution should be considered responsible for damage caused by driving him and this situation will continue until the other players in chief and only an observer and is not driving. (Beheshti, 2006: 138) Some French jurists «fault» and, divided into three categories: heavy - light - very light. They believe that the failure of this category of the «coaches» When his fault liability is usually not tolerated. While the errors are not negligible responsibility for them (coaches). Although athletic trainers in the event of fault, and in this regard should be held responsible for damages incurred by these individuals but requires conditions that are as follows:

1. Coach instructor in the care and protection is significantly failure. That is his fault usually well-tolerated and not tolerated.

2. Accidents resulting from sports activities, in sports that take place according to defined rules and regulations. Operation of sports-related injuries that occurred in non-sport facilities cannot be attributed to athletic trainers and blamed them in this respect.

3. Athletic trainers, has enough experience and education in the field and the origins of coaching cards are competent.

4. Whether it is the fault of the coaches of the verb such as insisting on the presence of injured athletes who still have regained their health and force them to do sports activities; and omissions, such as lack of interest or lack of proper training and exercise adequate physical preparation of athletes trained ... after the event for athletes coaches first task of helping the athlete is injured.

8. No violation of norms and regulations for sport

Sports activities should be within the framework of common law and regulations governing the field of sport has been committed to action in causing damage to another during the race and sports operations and the lack of criminal responsibility is not considered a fault committed be recognized. So play soccer or volleyball in general and unsupervised approach and non-use of virtual sports coach and the person does not go from liability. Of course, compliance with any

exercise is not only the responsibility of the athlete, but may implement some of the provisions such as safety rules, such as those tasks are the organizers and the authorities. So if sports-related injuries due to operations managers and other officials in violation of the rules of sport is the athlete's guilt is not proven and will be found responsible manager or the wrongdoer (Ardebili, ibid, 197)

From a legal perspective, sport rules can be divided into two main groups:

1. A group of rules that surround the main building and runs a sports game and the game laws and implementation is just a branch of physical activity: such as at a football game against the eleven players from each team are lined up, one of whom is the goalkeeper, players, except the goalkeeper, the ball is not allowed to drive the game should be in the range of certain sports ground flow, the goalkeeper is not allowed to attack ... and so on. Violation of these rules, «Athletic error» and comes with a special sanction as punishment for the rapist.

2. The other group rules, some special care and caution imposed on players and aim to ensure the safety of players during the match and avoid violence and revenge and healthy sports environment. (Aghaei Nia, ibid: 23)

The two groups are linked together, with the total issue of «Sports Rights» is placed, but the current law and, in particular civil liability, the second group is interested in the study and classification and valuation sees their legal beneficiaries. The first group to investigate the violation of their useful only in terms of legal effects and, as long as it has not been raised unusual loss of rights issues «civic duty» are not. In fact, sports fault, for damage to the load it puts the responsibility on the shoulders of the perpetrator, the rights will be raised. The relationship between athletes and sports liability for losses which may arise during the fight and the match is not limited. The other major part due to the relationship between players and coaches, sport organizations and the explicit and implicit contracts are closed linked in this field. In other words, in this section is the responsibility of the contractor and, like many unfaithful liability in laws and public assignments against each other on the ground for the possibility for the responsibility of the contractor and forcible possession of the aggrieved in the case creates damage. (Salimi, ibid: 82) Another face any responsibility in the relationship between athletes and race organizers on the one hand and spectators and third parties on the other hand, sometimes with social and economic issues, including liability insurance and its crucial role in the regulation of these relations is fair, to be mixed.

9. The need for specific legislation in the field of sport

Whenever a person with his behavior has caused prejudice to the rights of other persons called to say that legal responsibility. Sometimes illegal behavior of the offender's crime, in which case the type of criminal responsibility. In each case, the person had to say to him other compensation responsibilities. It is the

responsibility entailed by the disposal. Free man and wise aware of the outcome of their work and government officials. Based on this responsibility, especially religious relationship between the injured parties and is responsible to occur: The aggrieved creditor and the debtor responsible for the damages issue of debt is normally done with the money. (Katouzian, 2009: 48) Civil liability or under contract or tort. The contractual liability due to lack of commitment and lack of fulfillment of the covenant, which is caused by a contract between the people who does not fulfill its obligations, in this way, the loss is not responsible for the damage shall have been obtained in this way is raised, the sponsor (liability arising from the contract) for example: a wrestling coach who is committed to training techniques to teenagers ships and as a result of lack of proper training, carelessness is injured teen to teen and parent coach is responsible and obligated to compensate the damages. In the case of non-contractual liability of the contract between the parties does not exist and one of the parties does harm intentionally or by error to another according to the dictates of the law and sports should be implemented in compliance with its own rules and regulations, resulting in violation of the provisions of an athlete violated the rule of law offenders to liability for damages from injury to athletes or others. (Chalabi, 2008: 42)

According to Article 1 of the Law of Civil Liability Act 1960:

«Anyone who deliberately or as a result of carelessness without a license or the life or health or property or freedom or dignity or reputation of the trade or to any other rights established by law for the harm that causes moral or material harm others is liable to compensate the damages caused by their actions.»

The realization of civil liability athletes are subject to the following conditions:

1. The act: Prejudice to the rights of others could be in the form of action and omission, the act of doing something visible and tangible manifestation of its external simplicity is like a tackle from behind for intentional athletic field for football and pushing the water in the swimmer's beginner sport is swimming. But the fact that refraining omission when the work is obliged to do by law or contract such as gymnastics which match referee before the match is not exact, the defective toys and athletic or be injured by a defect in the swimming lifeguards of rescue swimmer who was drowning himself that in this case, is responsible for the accident.

2. The existence of loss: Loss can be caused by damage to the different forms of life such as beating, mutilation, rape and hurting the dignity of the person and can debauchery like the rumors about sport and the athletes and coaches, supervisor or manager workers from and can be wasted and mutilation of the stadium property, such as damage to the ship and tatami mattress and the means to bodybuilders.

3. Contrary to the law: Must be said that the only work that leads to the detriment of other sins must rise to civil liability, but is against the law and without a license. It is not opposed to the notion that the losses resulting from

Law Enforcement rise to civil liability for example, if an athlete in compliance with all regulations in the field of sport would be injured opponent because his action is in accordance with the law and is legally not responsibility.

4. Causality relationship: Must exist between the two operating losses and harmful act is causality means that due to the loss of the verb, for example, Judo Players foot fracture is caused by errors by the opponent responsible for knowing him. So we can say four conditions must be met above can be said to be responsible for the lack of responsibility of the person committed one of the above conditions be abolished. (Aghaei Nia, ibid: 45)

10. Conclusion and Recommendations

In today's world, sports, educational and moral one effective way, especially for young people, means that every day more scientific figures. Politically, victory in the sports field is a useful tool to promote and establish a national credit and so many huge budgets and human resources for progress and success in the field of sports to be spent. This has caused increasing importance of legal scholars tend to establish a specific sequence called «sports rights» that such trade or agriculture labor rights or social aspects of this relationship. The scientific interest has led many books and articles written on the subject and judicial procedures special attention to sporting events and risks associated with it and the importance of sports in applying the rules of civil liability to consider. To fulfill this order, the «sports law» as well as a special field of law be established, we have a long way to go: Our legal literature in this field is still new and legal procedure, as it should, to the phenomenon of socially useful and combat sports risk is not addressed. The community is still in our country, sports is not career and clubs and sports associations not to have the authority and integrity of the creator of a new order in sport. Still our people look to sports as a kind of moral virtue and it is useful to know fun and the benefits it is expected that as a means of education and health of the human body and soul. This moral attitude, style and little incentive for handling massive effort in compiling and Evolution «sports rights», but it should be borne in mind the fact that professional rights and to provide job requires the introduction Comes and sports institutions for economic and professional institutions of social life appear on the scene. Of course, with a growing desire in young people to learn various sports disciplines to be seen and have achieved promising success in the field of international and global, sport progress beyond the demand for social and national demands accordingly and yet create a «sports law» as an independent discipline with all the moral and educational and economic characteristics and it is within our reach, and I hope that the formation of customary international conferences, the first stone of this building is high.

In this study, we were able to answer these questions:

1. Is violation of the norms and regulations of the sport athlete in action with civil and criminal liability? In accordance with paragraph (e) of article 158 of

the Civil Code provides: «The following acts shall not be considered a crime and is for athletes with civil liability: «Operation of sports-related injuries due to accidents, provided that such regulations do not violate the regulations of the sport does not disagree with Islamic rules.» «Operation of sports-related injuries due to accidents, provided that such regulations do not violate the regulations of the sport does not disagree with Islamic rules.» In sports operations, criminal responsibility in accordance with the conditions set forth in this paragraph there, but there is no reason to assume civil liability of such a person outside but also elements of civil liability if he is present in accordance with the provisions of the law of civil liability, he/she will be responsible.

2. Meanwhile, in answer to the question of whether civil and criminal liability in mixing sport and the unity of error does not? It can be said: If the athlete to beat error and be forced to pay blood money assailant, civil and criminal liability mixing and unity are found. And the payment of blood money as compensation under civil liability.

3. If an athlete is injured, while the Sports unnoticed because the sport is his job to be excluded from income if the offending athlete must compensate this loss? In this regard would be treated according to the law of civil liability and compensation for moral damages unfortunately, in our legislation under discussion is not anticipated but in fairness it is better to compensate for this type of damage is predicted.

4. If the costs exceed the amount of the liabilities of hospitals and medicines. Is the amount of debt over the responsibility of the athlete is guilty?

Answer: What contemporary scholars says the author was informed verbally of their offices is nothing more than blood money. But the law of civil liability in Article 6 it confirms that in addition to the liabilities of other costs Even the cost of storing, treating and losses resulting from the expropriation of work is also part of the losses and injuries can require it as well.

11. Suggestions

Often exercise unaware of the legal implications of offenses and crimes committed in the sports environment due to lack of education as well as the absence of codified crimes involving sport and penalties is there, always on quantitative and qualitative expansion crime has increased. Athletes generally believe the actions against women in sports activities and lack of awareness of their civic responsibilities towards eventually will lead to disciplinary punishment and judicial decision making body of the Commission delegations, the Federation or managers know and expansion of the knowledge of coaches, referees, administrators, athletic director also, what about its responsibilities, and what about athletes, as usual this is not over. Study of Sports Law, teaches the community how to participate in sports activities to its accidents, legal responsibilities to the

ultimate punishment, deprivation of civil rights and compensation for losses leads, and does not notice them. All of this indicates negligence in separate respective designated responsibilities that need to reconsider the laws and consequently demand strict enforcement of the law. Otherwise, lack of awareness of their responsibilities by all those who are associated in some way with the sport, not only did not help to solve the problems in sports but also in violation of the law raise any violations of Statistics nothing to help the sport progress. Since the knowledge of most of the players, coaches and referees are very small compared to their civic responsibilities. We must promote continuing education and scientific promotion of civic responsibility and action training certificates to be granted. Remove athletes who are turning to the responsibilities assigned, and encourage athletes to fulfill their responsibilities to serve well. Due players, coaches and referees, the goal rather than the means. Context of the implementation of fair competition through training before the game. Can be effective steps towards this promotion it is suggested: Sports errors in the content developed jurisprudence on civil liability law accomplished professional athletes be developed as civil liability law and one of the necessities of our sporting society that is despite appeals and dispute settlement sports, «The Court of Arbitration for Sport Iran» as soon as possible on the agenda of the assembly have been respected and dedicated judges and branch dedicated to attracting done in this way, which is a step in the escalation of justice in society Sport of Iran. Hoping that day.

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THE WELFARE STATE AND SPORT

Evgenii V. Aristov
PhD of Law, Perm State University[*]*, Russia*

Abstract: *This article is devoted to the correlation between imperatives that result from the constitutional-legal principle of welfaring of the state and sport. The sport segments, aspects and displays covered by the welfare state are considered.*

Keywords: *sport, welfare state, welfaring of the state, Constitutional Law, Sport Law, public benefits, solidarity.*

The specifics of sport were given in an enormous amount of scientific publications that examined the most diverse characteristics of the sphere in question, but the correlation between sport and social state (the term we use as a synonym for "welfare state") is still the least investigated theme. Even though the theme of state and sport, reasons for and limits on government in the sport sphere has been studied rather thoroughly[1].

Meanwhile, this issue is of great importance. The issue of the correlation between welfaring of the state and the government policy on sport causes, as Klaus Heinemann indicates, the following complex questions: what essential actual basis and ideological motivation justify the government policy on sport within welfaring of the state? What cultural values, historical contexts, and political forms are obvious in concrete agreements of a given concrete welfare state and its state infrastructure within the welfare policy?[2] We must add that the answer to the question, which is highly actual today and which has become a topic of numerous heated discussions, about legal opportunities and limits to the state budget financial support of sport, including financing of professional sport, depends on understanding the correlation between welfaring of the state and the government policy on sport. This is one of the most crucial questions in a practical sense, too.

[*]The author is a Senior Lecturer, Department of Business Law, Civil and Arbitration Process Perm State University. E-mail: welfarestate1@gmail.com, Contact: 227 mailbox, 614007 Perm, RUSSIA

[1]See. *Ponkina A. I.* Government and autonomous institutionalization in sport / Commission on sport law within Association of Lawyers of Russia; National Union of Sport Lawyers of the RF. – M., 2013. – 143 p.

[2]*Heinemann K.* Sport and the welfare state in Europe // European Journal of Sport Science. – 2005, December. – Vol. 5. – Issue 4. – P. 181–188. – P. 181.

However, according to Klaus Heinemann, «interconnections between sport and the welfare state are by no means obvious»[3]. According to Nils Asle Bergsgard, Barrie Houlihan, Per Mangset, Svein Ingve Nødland and Hilmar Rommetvedt, «it is not obvious that the welfare policy should include sport. Sport can hardly be said to belong to the core concerns of the welfare state and consequently, we might expect the state to play a relatively passive role with regard to sport. However, especially since the Second World War the welfare state has expanded in most western countries, extending the scope of its interests and including sport. The development of modern welfare states is characterised by a stepwise expansion of government responsibilities»[4].

We should agree with the thesis that if sport, due to its identification and exhibition (of its characteristics), is considered as sport industry (the business and economy sphere), then it is obvious that this characteristic of sport doesn't relate it to welfaring of the state.

But if sport is considered as means of the public health improvement, then there are necessary and sufficient foundations to include sport in the sphere of public interests resulting from the imperative of welfaring of the state (if welfaring of the state is certainly not understood in a narrow sense, in its limited meaning).

Sport is so varied that it is not a problem, though. One need only make a "coordinate" connection to some sport aspects that refer precisely to welfaring of the state, but we do not think that it is possible to consider welfaring of the state especially in its limited meaning and context.

According to Klaus Heinemann, «people participate in sport for a number of reasons and in response to numerous interests. Several extant empirical studies mention health, fitness, relaxation, body consciousness, fun, play, happiness, sociability, relationships, communication, a feeling for nature, acknowledgement of one's abilities, prestige, adventure, risk and testing one's limits among these reasons. Of these, however, only health is clearly connected to the agenda of goals and tasks of the state welfare policy»[5]. It is hardly likely to agree with so narrow approach of the author mentioned above, though.

Thus, sport is, among other things, a unique environment for equality principle that is one of the most important principles of the welfare state.

As Bjarne Ibsen indicates, the conception of the welfare state includes the citizens' rights and opportunities and a possibility of their integration into

[3]*Heinemann K.* Sport and the welfare state in Europe // European Journal of Sport Science. – 2005, December. – Vol. 5. – Issue 4. – P. 181–188. – P. 181.

[4]*Bergsgard N.A., Houlihan B., Mangset P., Nødland S.I., Rommetvedt H.* Sport Policy: A comparative analysis of stability and change. – Oxford: Elsevier, 2007. – xiii; 285 p. – P. 8.

[5]*Heinemann K.* Sport and the welfare state in Europe // European Journal of Sport Science. – 2005, December. – Vol. 5. – Issue 4. – P. 181–188. – P. 182.

society[6]. According to the author, «welfare state as we know it today took shape after the Second World War, and was characterised by a rapid growth in the public sector and the dissemination of the universalist principle – that all citizens are entitled to the same services irrespective of income, social background, etc»[7].

Steven Vos, Pamela Wicker, Christoph Breuer and Jeroen Scheerder confirm this thesis about the welfare state that keeps expanding gradually (its subject-object area of «care») and including new spheres, the sphere of sport among them[8].

«Sport for all» is not only a program goal of organised sport, but it is also an essential principle of (welfare) government support of sport», points out Klaus Heinemann[9].

Moreover, sport is, according to Matthew Nicholson and Russell Hoye, «an institution capable of creating substantial social capital»[10]. And this is a crucial issue for our theme.

In the document of the II Magglingen International Conference on Sport and Development (Switzerland), the necessity «to make sport, in a broad sense of this word, one of the most important components of international efforts at achievement of development goals agreed on an international scale including Development Goals in Millennium Declaration» was highlighted. The document recommended that governments take the following actions: «promote the ideal of "sport for all"; develop inclusive and coherent sports policies; involve all stakeholders in their coordination and implementation; strengthen and invest in sport and physical education in schools and educational systems; and integrate sport, physical activity and play in public health and other relevant policies»[11].

[6]*Ibsen B.* Sport and Welfare Policy in Denmark // <http://ecpr.eu/Filestore/PaperProposal/f435c7c6-2e99-4f0d-bc54-9428cf73cf5d.pdf>. – 18 p. – P. 2.

[7]*Ibsen B.* Sport and Welfare Policy in Denmark // <http://ecpr.eu/Filestore/PaperProposal/f435c7c6-2e99-4f0d-bc54-9428cf73cf5d.pdf>. – 18 p. – P. 3.

[8]*Vos S., Wicker P., Breuer C., Scheerder J.* Sports policy systems in regulated Rhineland welfare states: similarities and differences in financial structures of sports clubs // International Journal of Sport Policy and Politics. – 2013. – Vol. 5. – № 1. – P. 55–71. – P. 55–56.

[9]*Heinemann K.* Sport and the welfare state in Europe // European Journal of Sport Science. – 2005, December. – Vol. 5. – Issue 4. – P. 181–188. – P. 182.

[10]*Nicholson M., Hoye R.* Sport and Social Capital. – Oxford: Elsevier, 2008. – xix; 263 p. – P. 2.

[11]The Magglingen Call to Action 2005: Magglingen, Switzerland, 06.12.2005 // <http://www.un.org/sport2005/newsroom/magglingen_call_to_action.pdf>. – P. 14–15.

David Ekholm[12], Johan Hvenmark[13] and Göran Patriksson[14] seriously considered that, in modern history, sport had been consistently linked to the notion that it could contribute to positive social and societal development.

According to Robert Putnam, «to build bridging social capital requires that we transcend our social and political and professional identities to connect with people unlike ourselves. This is why team sports provide good venues for social capital creation»[15].

And certain integration-geneity and integration capacity of sport (i.e. potential for integration of people and communities, for development of social solidarity) are crucial here.

Thus, sport exhibits numerous aspects, characteristics and displays that are also particularly significant for the sport sphere identification (in these aspects and displays, these segments of the sport sphere):

1) sport is not only of direct importance to societal health, but it is also a great resource for the increase in societal health;

2) sport as a form and means of the mass cultural leisure activities, sport tourism; sport is a great recreation and leisure resource, and the sport and health activities play an important part in the everyday lives of many people; opportunities for people's rest of their choice (not worse than they can afford) after work are an essential element in the matrix of welfare and prosperity (quality of life that is minimally necessary and guaranteed by state (subject to guarantee)) that is formed and provided by the welfare state;

3) the cultural role of sport; the role of sport can be understood, if we address its deep cultural origin, its place and role in modern culture; in this sense, sport is a means of self-actualisation as well as a means of people's inculturation (the cultural integration development of people);

4) sport for all (mass sport) and mass physical training as a segment of the public benefits field;

5) sport for disabled people; sport as a means of the reintegration of handicapped people into society;

6) sport as a means of the re-socialization of the certain categories of people (first of all, delinquent children and teenagers), as a means of solving the problem of child neglect, homelessness and social orphanage;

[12]*Ekholm D.* Research on Sport as a Means of Crime Prevention in a Swedish Welfare Context: A Literature Review // Scandinavian Sport Studies Forum. – 2013. – № 4. – P. 91–120. – P. 92.

[13]*Hvenmark J.* Om nytta i allmänhet och om idrottens eventuella nytta i synnerhet // Är idrott nyttigt. En antologi om idrott och samhällsnytta / J. Hvenmark (Ed.). – Stockholm: SISU Idrottsböcker, 2012. – S. 8–29.

[14]*Patriksson G.* Idrottens historia i sociologisk belysning. – Stockholm: Utbildningsförlaget, 1973.

[15] *Putnam R.* Bowling Alone: The Collapse and Revival of American Community. – New York: Simon and Schuster, 2000. – P. 411.

7) sport (ethnic types) as an element of people's culture, its identity and its historical and cultural inheritance;

8) sport as a producer of human capital[16]; sport for children and teenagers and sport at school and university; sport as a means of the physical and moral education of the under-age persons;

9) sport as a unique environment for the equality principle that is one of the most important principles of the welfare state;

10) social and labour rights of sportsmen in professional sport.

All of these, undoubtedly, relate to the subject-object area of the welfare state influence, are a beneficiary and object of the attention and care of the modern welfare state.

According to O. A. Shevchenko, constitutional-legal imperative of welfaring of the state stipulates the mechanism of the sport support and sport development stimulation[17].

As B. M. Antonov writes, «the term "welfare state" highlights in particular that state is appealed for the policy that provides the certain level of welfare of its citizens, supports unprotected groups of people and maintains social equity in the society… The idea of "welfare state" in the Constitution of the Russian Federation is just stated. It is expected to take a lot of measures to implement this idea in a practical way. Among other measures, it is necessary to create an effective system for creating healthy lifestyle, based on the increase of the role of physical training and sport, in the society»[18].

The modern debates about the importance and role of welfaring of the state, the formulation of a new model of the welfare state definitely will affect sport. And under the conditions of the world financial crisis the state budget expenses spent for sport definitely will decrease. It is crucially important to elaborate standards of the minimum level, which is not lowered, of the state support of sport, preserving autonomy of the latter.

[16]*Nicholson M., Hoye R.* Sport and Social Capital. – Oxford: Elsevier, 2008. – xix; 263 p.

[17]*Shevchenko O. A.* Peculiarities of the regulation of labour in the sphere of professional sport / International Association of Sport Law (IASL). – M., 2014. – 184 p. – P. 141.

[18]*Antonov B. M.* Social direction of the development of physical training and sport in modern Russia: Cand. sociol. sci. diss. (22.00.08). – M., 2008.

SOME ARGUMENTS REGARDING THE NECESSITY OF CHANGING THE PARADIGM OF OLYMPIC EDUCATION IN AGREEMENT WITH AN ADEQUATE JURIDICAL PEDAGOGY

Alexandru Virgil VOICU
Associate teacher at "Babeș-Bolyai" Unversity and "Sapientia" University in Cluj-Napoca, Romania[*]

Abstract: *Knowledge regarding the sports phenomenon – already considered a notable social phenomenon – could be coagulated in a sports science and a sub-branch of law science only being reunited in a coagulated theory first.*[1]

The aim of this paper is to offer information to those interested in the competence of future experts/professionals (as seen by European Civil Codes)[2] *in the dynamic of normative order. This information may be helpful in getting a specialized opinion regarding the role and functions of sports in our society today. It has become more obvious that becoming acquainted with the set of rights and liberties, obligations offered/ imposed to sports activity participants and the related ones is a first step towards normality in social life. In this context, normality can be achieved, mainly by initiating a process of juridicization of the field. Because "nobody is above the law", isn't it? [text introduced in the Constitution of Romania. Art 2, para. (2) by the Constituent Assembly in order to strengthen the principle of equal rights in agreement with the provisions of*

[*]Professor Alexandru-Virgil VOICU Ph.D. is an associate teacher at "Babeș-Bolyai" Unversity and "Sapientia" University in Cluj-Napoca, Romania. He is Licentiate in Law and Licentiate in Physical Education and Sports. Emeritus Coach in Weightlifting. President of the Judicial Commission of the Romanian Olympic and Sports Committee. Honorary Vice-President of the International Association of Sports Law (IASL). E-mail: alexvirgilweisz@gmail.com

[1]Epuran Mihai, *Paradigmele contemporane ale științei sportsului*, work-shop organized by Facultatea de Educație Fizică și Sports, Universitatea Babeș-Bolyai Cluj-Napoca, 14-15 Nov. 2008, România – also see: la T.S. Kuhn, „Structura revoluțiile științifice", 1962.

[2]In the New Romanian Civil Code **professionals** are considered to be all those who exploit an enterprise; this means the systematic performance of one or more than one person of an organized activity consisting in: *making, administration or alienation of goods* or in **provision of services** no matter if the enterprise is profit making [art. 3, para. (3) Civ. C.]. Thus, according to the previous ideas a **professional may be any kind of physical or juridical person who exploits an enterprise.** Under Art. 8 para (1) Law regarding the enforcement of NCC stipulates that „ a professional as stipulated in Art.3 Civil Code includes: traders, entrepreneurs, economic operators, as well as any person authorized to develop an economic or professional activity as stipulated by law at the moment when the Civil Code entried into force." In the context of Romanian legislation – we approach the matter of sports activities as object of activity within sports structures.

Charter of Paris (1990) regarding the rule of law state] – neither a physical person nor a juridical one, the field of activity...including sports.

Thus, we may offer arguments in favour of including in the curriculum institutions meant to offer competence to specialists in physical education and sports in a didactic discipline entitled "Juridical Pedagogy of Olympism".

Key-Words: *Activities of physical education and sports, olympism, ethics, law, sports law, legal liability, social responsibility, juridical pedagogy of sports.*

Blurring the "Spiral of Silence" Regarding Sports Values

Thus, we let you know (understanding by it "all processes by means of which one human mind may influence another one")[3] at least from the stringent perspective of contributing to the formation of a juridical culture with special tendency towards sport activities. It is necessary that the phenomenon called „spiral of silence" deliberately nested in mass culture should be blurred. The step of deliberate, legitimate absorbing within a social system of some behavioral norms, social usages, viewpoints, opinions etc. concerning sports role and value in society today should be wittingly valued. It is already known that the projection of viewpoints, ideologies etc.in order to legitimize them often depends on the **confrontation between public opinion (vs.) the spiral of silence.**

To explain in order to *understand* – must be an attribute of all those who communicate being concerned with activities in physical education and sports – including the means of mass media which are often concerned with the function of social control, as source of social pressure upon the individual.[4] Communication should be a responsible and constant professional activity of trainers – of those who are meant to form competence for future professionals – including sports and legal ones.

On a Normative and Behavioral Order and Sports Desacralization

The very core of a society is the ***normative and behavioral order by means of which the life of people is collectively organized. The values and norms of such an order must be valued as being significant and ligitimate. But all this depends on the value of the viewpoints of those who evaluate – and what we need here are cultural references which should not be ralated only to mass culture.***

Culture is influenced by morals. Morals in its turn can be revigorated through new cultural references. Morals reunites in its parts reason, will and individual's

[3]Prutianu, Șt., "Tratat de comunicare și negociere în afaceri", Ed. Polirom, Iași, 2008, p. 339.

[4]Elisabeth Noelle-Neumann, "Spirala Tăcerii. Opinia publică – invelișul nostru social", Ed. Comunicare.ro., Bucuresti, 2004.

affectivity, which he exteriorizes in moral facts; the moral individual obliges himself to respect his beliefs, principles, values, norms and moral ideals; guarantor in fulfiling morals through actions is the obligation of the individual's subjectivity towards values, principles and norms he assumes. Moral subject, each man performs moral or imoral actions in variable ways, degrees or modalities depending on his loiality towards moral values and norms, on what level is the consciousness of assumed obligation situated. Most of human behaviours have double significance – moral and juridical.[5]

For a series of authors (Marc Auge, A. Erhenberg[6], Jean- Philippe Turpin[7], R. Garassino[8], Michel Maffesoli[9] etc.), sports would be "the religion of modernity." Or, this makes it possess all the attributes of religion in society. Thus, one may also explain the somehow special statute of sports as far as the management of some illicit actions are concerned. "Religion" of sports, like all religious systems, has developed its own autonomous laws, norms, and constraint systems. From this viewpoint, the perverse effect regarding the possession and control of illicit acts performed in sport activities (and related actions) initially designed as lay forms of spending one's spare time, are separated from the other social systems and institutions, making themselves autonomous as religious systems do.

As a creation of the modern world, desacralized, sports begins to develop its own forms of profane religiosity. But, the social control of these activities has already been subject of some analyses during a long historical process. "Gymnastics during the period of flourishing in Greece was a liberal art, a device of embellishment and strengthening both of body and spirit. It was not a profession...".[10]

Nowadays, sports has more than one function (by means of function understanding an action, behaviour, significant for a certain system, namely yhe fulfilment of its functional requirements) among which:[11] the *competitive function* (the function of satisfying and urging of the competitive desire); *maximizing of performance function* (development of performance capacity on

[5]Mihai, Gh. C., "Teoria dreptului", Ediția 3, Editura C. H. Beck., București, 2008, p. 47 și urm.

[6]Marc Auge, A. Erhenberg, *Le culte de la performance,* Hachette Litteratures, Paris, 1991.

[7]Jean-Philippe Turpin, "Le Sports: une religion decadente...", *Corps et culture*, http://corpsetculture. revues. org/document637. html.

[8]R. Garassino, "Les demi-dieux du stade", în C. Genzling (dir.), *Autrement, le corps surnature,* 1992, pp. 63-75.

[9]Michel Maffesoli, *La transfiguration du politique,* Grasset, Paris, 1992.

[10]Bezdechi Ștefan, "Sportul la eleni", Editura "Cartea Românească Cluj" – Biblioteca Subsecției de Educație Fizică a "Astrei".

[11]Dragnea, C. A., Mate-Teodorescu Silvia, "Teoria Sportului", Editura FEST, Bucureşti, 2002, p. 30-34.

the bio-psycho-social level); the *conative function* (the function of fulfiling the desire to move, act); the *socializing function* (integration, social affirmation, communication, emulation) that, in its turn, includes the representation of the country function; the *cultural function* ad the *economic function.* In this context, a brief diagnosis of illicit behaviours during sport activities and related actions invokes as removing legal liability clauses the very necessity that the functions of sports be operationalized (and without limits). On the other hand, counting on the ancestral necessity of a part of society to be satisfied, in case it is hasn't accomplished its material and spiritual needs, the circus performance, the game where the ego and the spirit of justice without foundations of social normativity are manifested – has become a fundamental principle of a current or future government „ *panem et circenses*" (bread and circus/game) – an expression that is considered as belonging to Decimus Juvenalis, who complained to a friend of his about the decay of the Roman people. It is also necessary to know other opinions concerning the values of current sports, different from those invoked by those who invoke them without believing in them. It may be the only possibility to come to understand the necessity of bringing again sports to the values that initially consacrated it. Both customers and participants should be lead by the *fair play* spirit, generated by a moral society and transfered on the sports field and its neighbourhood. Thus, with a pessimistic tone, but well argumented, in the relativ new social context of secularization, it is stated that: „Professionalization of sports makes that it no longer emits spontaneity and nonchalance. In the modern society, sports is progressively detached from the pure ludic sphere and becomes a *sui generis* element: it no longer means playing, but still isn't seriozity. In nowadays society, sports occupies a p[lace detached from the process of culture as such, that goes on outside it. In archaic civilizations, competitions were part of sacred celebrations and were indispensible, as holly and redemptive actions – in modern sports, the relationship with the cult has been lost completely. Sports has become absolutely secular and no longer has any organic or another kind of relationship with the structure of society, even if its use is imposed by authorities. Today, sports is more an autonomous manifestation of some agonistic instincts (of race), than a factor of a fertile community feeling. Perfection brought about by modern sociqal technique regarding the outer aspect of sports parades and competitions cannot raise sports to the level of style and culture creative activity. However important it may be both for spectators and participants, sports remains a fruitless function, in which the old ludic factor has faded away – this conception categorically contradicts current public opinion, according to which sports is considered to be the ludic element in our culture. In reality, sports has lost its ludic content almost entirely, namely all what was the best in it. The game has become serious; the ludic mood has disappeared, more or less... Authentic civilization always requires and from all viewpoints *fair play*, and *fair play* is

but the equivalent, expressed in ludic terms, of good faith. He who spoil the game, spoils culture itself. In order that this ludic content of civilization be both creator and promoter of culture, it should be pure. It shouldn' t be the deviation or desertion from the norms prescribed by reason and humanity. It shouldn't be a delusive appearance behind which the intention is disguised to achieve certain aims through ludic forms especially cultivated. Genuine play excludes any propaganda. Its target is within itself.[12]

Juridic and Moral Character of "Game Rules"

As with legal norms, *game rules* as well (taken as norms which regulate the deployment of sports activities including all organizing forms), should satisfy the requirement of defending the participants' subjective rights and, last but not least, to offer the guarantee that these activities won't disturb the order and rules of social life. The rush for outcome, record or other satisfactions which may be offered by sports, even excluding the performance sports, may cause illicit behaviours with a higher or lower degree of social danger.

Game rules are formed, as mentioned above, as a rule, independant of the state will. They appear „ not as effect of a unilateral decision belonging to the members of a community, but as an expression of their consent"[13] – *they are legitimate*.

Thus, the game rule represents the official declaration of this consent. The game rules, gotten this way, are at the same time the declaration made by the authority of a sport community regarding what its members consented upon and may ensure the certainty (legal certainty)[14] to the subjective rights belonging to the participants of the sport activity. It is known that *game rules*, besides their legal certainty, should also ensure equity and make the game interesting.

The third function, that of *making the play/game interesting,* offers dinamicity and spectacularity to sport activity. Changing the rules, no matter what the reason may be, cannot and is not allowed to exclude or limit the content of other functions. In fact, the provisions of a certain sport order cannot be modified unilaterally by a team, club or sport federation. The sport federation will be able to modify such provisions only is the coordinated sport discipline has a local character.

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[12]Johan Huizinga, "Homo ludens – încercare de determinare a elementului ludic al culturii", Ed. Humanitas, București, 2003, p. 289-311.

[13]Shinji Morino (Facultatea de Educaţie Fizică, Universitatea Chukyo, Toyota, Japonia), "Sports... mileniul trei", op. cit., în cap. "În căutarea excelenţei: revoluţie, probleme şi valori", *Analiza funcţiilor şi structurilor regulilor jocului,* p. 621-628, cu trimitere la Vinogradoff, P., *Common sense in law* (Bunul simţ în drept), Oxford University Press, London, 1959.

[14]Shinji Morino, *op. cit.*

In all the other instances, changes in *game rules* lie in the competence of International Federations, Union of International Federations, and as far as disciplines or games belonging to the big family of olympic sports, of the International Olympic Committee (IOC). This assures protection against the interference of other interests (of a patrimonial nature, of some politics etc.), of sport fanaticism and chauvinism etc., which may alter the ethic values of sports.

Taken as such, the *game rules* may contribute to the achievement of civic education, basis of a real democracy. The game rules have both a legal and moral character. These norms, with a mixed character, which are functioning within the sport zone with maximum density should be obeyed by all participants to these activities. Any deviation from them is compulsory penalizedby coaches and ruling forums of these activities. Thus, on the sports field, we'll have both *responsibility*, but also *liability.*

The legal system also includes the institution of effective legal relationships on the sports field. On *the sports field* legally act the *state legality* and *legality* of sports structures. Sports law embodies special social relationships, regulated by legal norms belonging to various law branches, but also norms belonging to some non-governmental sports organizations, which have received the investiture of legitimacy and legality.

To the support of this statement, we take over the modern law theory that says that the validity of forms, their specific way of existance is not determined only by the formal criterion of expressing them in a fprm accepted as law source, but results from the jointing of three elements: *the formal, effective and lawful ones.*[15]

The formal validity of these game rules gives birth to a presumption of legitimacy and assumption of efficiency, being a decisive element for causing the effcets meant by that rule. The legal liability can also belong, under certain circumstances, to those who, by their conduct, *refrain* from penalizing deviations from sports orders. Even more – "Sport activity is likely to undergo a series of risks which are previously known by participants and which are supposed to have been accepted by victims – co-participants – „the player's consent for sport risks is manifested by his very presence on the sports field."[16]

In this case, the author of an illicit and guilty action, that might cause injury, won't succeed in invoking, in his defence the victim's consent, being here a non-liability clause, only when, during sports activities, all compulsory norms have been obeyed and all participants, sportsmen, trainers,[17] coaches, spectators,

[15]Boar, Ana, "Elemente de teoria dreptului", Editura Servo-Sat, Arad, 1996, p. 119-123.

[16]Gaşpar, C., "Răspunderea civilă și asigurarea în accidentele sportive", Revista "Legalitatea populară", nr. 6/1957, p. 658.

[17]Ripert, G, Boulanger, J., *Traite de droit civil,* tome II, Paris, 1957, p. 370: "Sports trainers are resposible for accidents which take oplace under their guidance".

organizers are held." [18]

On Moral, Ethical and Deontology Concepts[19]

As already mentioned, in society there is a variety of norms by means of which human behaviour is influenced within these relationships and where possible, and they would be promoted in a synergy that might ensure a behavioral, normative order. We won't proceed examining the features and qualitative determinants specific to all categories of norms. We are going to emphasize only the correlation of some social norms with legal norms. Accent will fall on the analysis of the relationship between law and morals, an aspect that has been researched by law theory for a long time now. The system of social norms includes the following: ethical norms, custom norms, technique norms, political norms, religious norms and legal norms. Casting a glance upon the historical process regarding the appearance of law, we conclude that it has been progreswsively detached from moral norms and customs. In this respect, morals preceed law. „Morals – Guy Durand writes – have always served as a social proto-legislation."[20]

In history, law has developed closely related to morals. In research, the relationship between law and morals, the link between law and justice, of the basis and moral lawfulness of positive juridical regulations have been the main aspects of the theory and phylosophy of law – a kind of „Horn Cape" of the phylosophy of law (R. von Jhering) or „centre of storms" (A. Rava).[21] In general, all kinds of human activities are submitted, in a way or another, to norm, that means that they cannot develop unorganized, without being subordinated to some aims or criteria, prefigured in a system of principles and norms. Therefore, we may say that any process of evolution, adaptation or integration in society will take place within an organized, normalized, regulated frame. The system of norms pre-exists the individual's decision and effective behaviour. In the independent explanation of law, in its existence separate from morals, among law's precepts one comes across both moral principles - *honeste vivere, neminem*

[18]Voicu, A. V., "Răspunderea civilă delictuală cu privire specială la activitatea sportivă", Editura Lumina Lex, București, 1999, p. 158.

[19]Voicu, A. V., Roman, Gh., "The deontology of the profession of sports between coercion and freedom", la al 8-lea Congres al Colegiilor de Ştiinţa Sportsului – 8th Annual Congress European College of Sports Science, Institute of Sports Science, University of Salzburg, 9-12 iulie 2003 –publicat în CD - ul congresului şi în ECSS Salzburb 2003, 8th Annual Congress European College of Sports Science, July 9-12, 2003; Abstract Book, p. 284, ISBN 3-901709-11-8 – Institute of Sports Science University of Salzburg Austria.

[20]Popa, N., "Teoria generală a dreptului", Ediția a III-a, Editura C.H. Beck, op. cit., 2008, p. 111, cu trimitere la G. Durand, "Du rapport entre le droit et l'étique", Themis, vol. 20, m. 2, 1986, p. 285

[21]*Ibidem*, p. 111.

laedere, - and the proper principle according to which each ought to be given what belongs to him - *suum cuique tribuere*, a principle that depends on the functioning of law (of distributive justice).[22] "The French jurist Georges Ripert considers that there is no difference of field, nature and aim between morals and legal rule. The moral rule easily pervades law by means of the lawmaker's or judge's ethic conceptions or, in the best case, wanders along law borders to pervade when the moment comes (when legal laws are incomplete or contrary to moral laws). Morals also appear as a criterium to check up the correspondence between positive law and justice, positive law being achieved according to some moral aims. The legal norms which contradict moral principles are unjust (*lex injusta non est lex*). Whenever rights neglect humanitary aspects (*summum jus, summa injuria*) the moral principle of equity intervenes. "Laws – Durand writes in the above-mentioned study – influence mentalities and, little by little, each individual's morals." When we refer to **the practical ethics of deontology** of a sport profession we cannot avoid also refering to aspects related to their **moral profile**. In some circumstances, when the professional consciousness of a professional, as found in the New Romanian Civil Code, does not agree with the requirements of professional responsibility – part of social responsibility, a conflict may be reached between the professional performance and the normativity of juridical consciousness. Sport "professionals" – should serve the interests of their country – should be good citizens. We believe that the acceptance of the phrase „good citizen" includes the quality of a valid interlocutor in the material, spiritual and legal life of society – of global society, culturally coabitated. Deontologic norms establish a "minimum of morals specific when exercising a profession."[23] The three ways of establishing a relationship between a person and morals are: a**. morality,** when the person knows the moral requirements and respects them; b. **imorality**, when the person knows the moral requirements but does not respect them; c.**amorality**, when the person does not know the moral requirements and consequently does not respect them. The deontology of professions should be based on a system of norms, rules, requirements, moral professional obligations, as well as on legal, administrative and technical-professional regulations which lead their activity towards correctness and efficiency. In the *present acceptance,* **deontology** includes, besides moral, professional obligations and some technical norms, elementary professional requirements, juridical norms which, within each profession, will determine **the professional deontologic behaviour** (or the professional deontologic action) – defined as being "an ensemble of attitudes,

[22]*Ibidem*, p. 112, cu trimitere la V. Hanga, Morala şi dreptul în concepţia filosofilor greci, în Studia Napocensia, Drept, Ed. Academiei, Bucureşti, 1974, p. 7-25; Genoveva Vrabie, "Politica, Morala şi Dreptul. Forme de reglementare a conduitei umane", Bucureşti, 1978.

[23]Craiovan, I., "Tratat de Teoria generală a dreptului", Ediţia a II-a . revăzută şi adăugită, Ed. S.C. Universul Juridic S.R.L., Bucureşti, 2009. p. 189.

and actions required by professional and technico-professional norms, without which the exercise of the profession is not possible according to the exigencies of society."[24]

Components of Deontologic Steps – whenever deontology is mentioned, terms belonging to morals and ethics[25] are used – in relationship with law: **1. Morals** are, on the one hand, a form of social consciousness; on the other hand, it includes all the norms, rules, requirements, precepts, obligations, ideas etc. which regulate relationships among people – morals regulate people's behaviour in all social fields – such strong relationships are to be found especially in the zone of professional activities, in the process of work. ***Work Morale*** regulates human behaviour while working as well as the behaviour of each person in relation with his own professional activity. ***Professional Morale*** is concerned with the relationships among pofessionals and also between them and the object of their profession. **Ethics** is the science about morals; it has been developed within phylosophy and later on it became independent. **Metaethics** is already accepted as a science about the science of morals. ***Work Ethics*** deals with work morale and ***profession ethics*** deals with professional morale. **Professional Ethics** deals with moral relationships implied in exercising a profession; by it, **the deontology of profession** also places other kinds of imperative social norms: **legal, administrative, technico-professional norms** (creations of people who regulate some relationships between man and his nature, especially the surviving instinct of his own values, within the complex process of getting professional competences) specific to that profession and whose observance, together with the norms belonging to the morals of the trainer profession, are absolutely necessary to achieve the aims of that profession.

In sports, the ethics sports norm[26] is mentioned, the concept of fair play and olympism. But these would be re-considered from the viewpoint of the practical ethics of sports – the new institutional structure in sports recently mentioned in the documents of the European Union, with a certain globalization tendency. Olympic education is an important task of national olympic Academies.

[24]Lăscuş, V., "Deontologia pedagogului social", Ed. Gewalt, Cluj-Napoca, 2002, p. cu trimitere la Duţescu, B., "Etica profesiunii medicale", Ed. Didactică şi Pedagogică, Bucureşti, 1980.

[25]*Ibidem*, p. 6-8.

[26]Voicu, A.V., "The Legal Dimension of Ethics in Sports", The International Sports Law Journal, 2005, P.38-42; Voicu, A. V., "Code of Ethics in Romania" publicat în The International Sports Law Journal, Volume 3-4, 2005 (ISSN 1567-7559), pp. 59-61 – The Official Journal of The ASSER International Sports Law Centre, The Hague, The Netherlands – www.sportsslaw.nl – indexata in Baza de date Internationala – Institute;

The relationship ethic-juridical in sports should be included in the contents of a didactic discipline named "Juridical Pedagogy of Olympism"

As far as the relationship legal-ethic in sports is concerned, it shouldn't be considered as being totally contradictory: it is seen either as a tautology, or as an impossible relationship as the terms cannot be associated at all. It functions tautologically as the two terms seem to be identical: either the legal exercise is seen as the very practice of ethics, or ethics is considered to be moulded by the legal normativity – both of state order and of the "sports field" – expressed by means of game rules. Sports ethics, still tributary to the belonging of the so called "religion of modernity" seems impossible to be associated with the legal, because everything legally normed would not belong to ethics or because what can be legally normed is not part of the essence of ethics. On the contrary, the current tendency of modernizing sports and the necessity of getting competence as a task of future experts in sports imposes the awareness, both for active and passive participants in sports, the necessity of including this phenomenon harmoniously in the context and rigors of a civilized behaviour, of the highest morality, but also lawful and responsible.

As far as this last matter is concerned, besides the radical change of paradigm of the pedagogy of olympism, the pragmatic approach of a legal pedagogy of it is also necessary. We might conclude that "ethics and the juridical/legal are in a relationship of interdependence that does not allow any of them to function independently and proves that the sphere of the two terms cannot be the same."[27] Only so we will be able to dissociate the olympic phenomenon, although marked by exessive commercialization, from the unlawful interference of some groups of interests.

[27]Danileț, C., "Etica juridică", curs U.S.A.R.B. https://dreptmd.wordpress.com/cursuri-universitare/etica-si-deontologia-juridica/etici-ale-drepturilor/

THE RELATIONSHIP BETWEEN SPORT AND UNIVERSITY IN ITALIANSYSTEM

Maria Francesca Serra
Lawyer, Italy

The subject I will present you today is the relation between sport and university in the italian educational system. We can generally think that this is a simple and elementary matter. But when we talk about sport in the italian system we deal with a *sui generis* situation.

We have to consider that Italian legislatorshas never connected practice of sport -as a profession - with our educational system, and has reserved to sport organizations- which mean Federations - the regulation of professional and nonprofessional sport.

Nevertheless,Italian educational system has always considered sports an important subject. Italian Universities have always had a University Sports Centre since early 1900, with sport venues for students and staff of the University. Universities partecipate to „Universiadi"which have an international relevance.

Except this activity, we have to analyze this matter under two different points of view - teaching and practice of sports- and defeat a regular occurence: sport and culture in Italy.

From a cultural point of view, sport has never been considered important as a profession.In fact, in the italian educational system, sport is born as a hobby, a way to enjoy ourselves or to take care of our health. Sport has been used as a weapon as well, with strong military implications.

It used to be a pleasantamusement or a hobby, when suddenly sport has turned into a whole business and a real job with all the issues related to professional sport;the phenomenon has forced italian legislators to introduce special laws. Nevertheless, if we consider the great importance that sport has gained in economic and social system, sport does not receive in Italy theright cultural attention.

We can analyze the problem in two different ways: paying attention toteaching and practicing sport as a profession and paying attention to the relationship between sportsand University in other systems.

Underthe first point of view, we notice that at University level teaching of sport law and sport economic organization has been taken into consideration in the last twenty years. Almost all universities have a degree course or an advanced degree programme of new professional profiles in the area of sport management or physical education in all its aspects. Some University Faculties (Law, Political Science and Economics) have included sport organizationin

their curricula.There has been an increasing interest of Universities for sport law and organization and, in addition to curricula of faculties, there are also masters and doctorates (phds). However, we note that degree courses, advanced degree courses,and masters generallyconcern management and marketing (Roma Sapienza, Milano Bicocca,LUISS, Roma Tor Vergata and others), Psychology (Padova) phisyotherapy applied to sport, and so on, but they have no connection with practice of sport, which remains separated from the educational system. Also phds involve law, economics and sport organization but not practice of sport.

Furthermorein Italy there is ISEF since 1952 (Istituto superiore di educazione fisica), today IUSM(Istituto universitario scienze motorie Foro italico), which is a degree course on sport aiming to train teachers, sport managers, trainers, personal trainers, arbitrators and so on. Curricula include learning in physical education and educational psychology, law and economics, but not practice of sport.

Also phd of IUSM in Scienze dello sport e dell'esercizio fisico e dell'ergonomia aims to promote research and development in three directions: 1.research in the field of human performance,methodology of training and spread of competition; 2.Physical exercise related to neuromuscular system 3. Research on man-machine interaction in the field of physical exercise, sport and work.

As we can see, there is an increasing interestin sport from a legal, economic and physical point of view and this shows the importance that sport has reached in society. But incidentallyI would like to add that,at first,this increasing interesthas been developed out of educational system, except for the legal community, where lawyers started writing on sport law and economists started writing on management and economics involving sport. Nevertheless today this interest has reached universities.

The shift from *ludus* to businessemphasizes sport complexity and specificity and the peculiar characteristics of sport system in Italy, where legislator has made laws with an emergency character, aiming to ensure the regulation of important aspects of sport system, forgetting others. He adopted a law, the L.81/91 creating the role of professional in sport system, but leaving Federations free to decide which sport is professional and which not. Practice of sport is left to sport organizations and it remains separated from our educational system.

In this framework it is evident that there is no conscience that the practice of sport may be a real profession and at a University level cannot be an interest in practice of sport as a real profession since Universities cannot contribute to professional training.

Howhever something is changing andrecentlya particular kind of secundary school has been introduced, the so-called "liceo sportivo", or, as an alternative, a school section specialising in sports instead of linguistic or economic sections.

It is a secondary school in which we can find sport teaching under a theoric point of view and also under the practice one. It is an innovation still in a start-

up phase, but it may be considered such as a first step approaching to practice of sport in a new direction in educational system.

It's a new way to intend sports. First of all, in these schools, we can find more hours dedicated to sport practice. But, above all, we have sport specialization. According to resources and locations, the intent is to show to younger generations different kinds of sports, taught by qualified istructors with professionalism and competences.

Scholastic championships are in place for these schools, even at a regional level, acknowledged by the Federations.

We can also find sport elements in law and economic subjects: there are sport law basis and the analysis of sportive associations or societies' budgets.

In other words, sport acquires a different theoretical importance that shows its growth in all directions.

Even if the intents are worthy – because the university learning is more oriented on including sport into scolastic subjects -, statistic data are quite daunting.

The ones who approach these kind of studies suffer the same cultural limit we said before: students cannot see the opportunity of studying sport in a different and more complete way and they seem to think that this special school is more easy than others. So they don't study enough and often their marks dont't allow them to next year.

Sport is already "free time", or, once at university, it's a subject to be choosen without any possibility of a future employment.

Somebody decide to add sport in his curriculum but this choice is made because of the certainty of an easy and quick subject, just to pass the exam.

And then here we are. We love studying sport with all its implications. We are not many, but we grow day by day.

Even if the purpose of this kind of secundary school could be reached, we will find ourselves in front of a new obstacle at university level.

Universities as well begin to consider sport in a new way. For instance, University of Trento, acceding to the european network EAS - The Dual Career Network, provides a support and mentoring service and some flexibility for atletheswho desire to combine ***studies*** with sport.

Unfortunately, even if these are aids for athletes, the problem remains because these solutions don't involve any influence on the professional sport training.

Despite the importance that Universities are giving to sport, there is no link between professional practice of sport oreducational system and people who want to play sport at a professional level. Universities, as we said, approach to sport in its legal, economic, communicational and physical aspects, that are completely not related to practice of sport as a job.

Sportspeople must refer to Federations; they must become members of a federation if they want to participate to sporting competitions.

Anyway, nobody knows the difference between professional and non professional athletes and nobody knows that just a few Federations have a professional section. So we go on thinking that professionism is a category question and not a federal question. I mean: Federations decide to be professional or not and decide also which categories are professional and wich are not. It's not a problem of series or leagues.

Let me go back to the second approach

Looking at other countries we notice that,in the educational system,sport is much more important than it is in Italy.

The Practice of sport in these countrieshas a very important curricular prestige. In Italian schools, in fact, we have just a couple of hours dedicated to sports without any specialization, without any attention to personal capacities or inclinations. In Italy we used to call this as "educazione fisica", physical education, that begins at primary school and goes on in the same ways till the end.

So, this is the situation of young people who want to learn something about sport and sport system:

- Liceo sportivo, with teaching of sport law basis and sport economical system basis, and, in addiction, more qualified practice
- Universitary studies about sport law, business economics, sport moral and sport law system
- The ones who want to learn more can take up a sport Master (I or II level) or a phd to acquire more specialization.
- There is a good opportuniy for lawyers, managers, trainers and technicians but not for professional athletes

Excelling in sport get people away from universities and heads them to Federations. We must remind that in Italy there is a difference between professional and non professional sport not linked to the specific class or to a form of job but to a Federation choice. For instance, the volleyball player, like the ***Women' s Basketball*** players and many other athletes, are not considered professional also if they work full time in the same way as those belonging to professional Federations. They cannot have an***employment contract and haven't theguarantees accorded to professional athletes.***

As we can see, there is a great difference between italian educational system and anglosaxon ones where excelling in sport allows the athletes to be accepted at colleges. The practice of sportapproached in a professionalmanner promotes ***sport as*** an educational tool in society and as a job. In this way,there is a double benefit: facilities in educational field and inputin professional sport system.

So, from college ***to the world of*** real ***work***, where young people enter with a cultural background and a training in their sport that will be appreciated by clubs. As we can see, it is an important opportunity sponsored by this educational system.

There is a great difference between thesetwo systems because the concept of professional is different. It has to dependon abilities and not on the will of Federations.

The lack of link between the italian educational system and the practice of sport depends on how we look at professional sport, more complex because of the intervention of a legislator who has never considered everypractice of sport as a professional kind of employment(job). And so ithas created forms of discrimination between professional and non professional sport.It is a difference that cannot depend on the will of a Federation but on the characteristics of performance. There is a question of respect for sport to be considered as a job anda cultural change would be necessary. The key could be the growing awareness that sport can be also a job and that, in particular, as a job it requires a regulation ***complying with*** principles of equality and non-discrimination.

However if a reform should be possible, along the lines of the anglosaxon one, it would be greeted with italian sport law and with power agreed to National Federations, claiming their autonomy.

A reform like this would be an authentic cultural revolution requiring a change not only of the educational system but also of sport law and of the mindset of *sportsmen and sportswomen themselves. Referring to sport, educational italian system and sport law are not appropriated to the current reality.*

A revision of sport law on professionism would be desirable, and hence a revision of the educational system aiming to link practice and theory because these two areas are strictly linked and,*having regard to their connection, they cannot remain on parallel roads, never crossing each other.*

There is a need to come up with professional career mechanism outlining the future of new professional fieldsgenerally accepted for their connection with institutions and not depending on private associations will.

It should be necessary to understand that sport is a complex cultural phenomenon: *ludus*, business,economy, ethics, force for peace, tool for socialization, physical fitness and so on.But it can be performed also as a job. We must hope for a cultural change in the direction of the awareness that sport, in all its aspects, even in the practice, is a real job an it must be recognized as well.

PENAL AND DISCIPLINARY LIABILITY ENTAILED IN DOPING IN SPORT ACTIVITIES

Aikaterine Gkonta
Lawyer, Greece

Abstract: *The present article examines the legal framework that provisions sanctions aiming at deterring doping in sport. The fundamental constitutional provisions and international conventions that govern the relevant sanction authority of the State as well as the general principles that are thus provisioned by those documents are presented at the outset. The more specific stipulations of the Greek Law, constituting an expression of the above general principles and rules, which provision penal and disciplinary sanctions for those engaged in such doping cases, are subsequently outlined. Lastly, the innovations introduced by the recent draft legislation for the harmonization of the Greek legislation with the International Anti-Doping Code shall be addressed.*

Keywords: *Anti-Doping, Greek Law, legislation, general principles.*

1. Introduction

The use of substances and preparations (prohibited or not) in view of performance enhancement, namely doping, constitutes a commonly observed phenomenon which casts its shadow over modern sport and especially all major national and international sport events. Doping directly violates the fundamental values of sport as explicitly stated in the preamble of the International Anti-Doping Code of 2003; primarily the principles of fair play, equality of athletes as well as the protection of their health[1]. In addition, it poses fundamental ethical questions as for the essence, mission and social function of sport in general and major international sport events in specific as athletes, under the pressure of

[1]See the fundamental rationale of the World Anti-Doping Code:
"The spirit of sport is the celebration of the human spirit, body and mind and is reflected in values we find in and through sport, including:
Ethics, fair play and honesty
• *Health*
• *Excellence in performance*
• *Character and education*
• *Fun and joy*
• *Teamwork*
• *Dedication and commitment*
• *Respect for rules and laws*
• *Respect for self and other Participants*
• *Courage*
• *Community and solidarity*
Doping is fundamentally contrary to the spirit of sport."

public opinion expecting superhuman records and the lure of high gains, only compete for victory by using any lawful or unlawful means[2]. For those reasons, a strict control system has been established at a national and international level so as to prevent and deter doping occurrences, also accompanied by a penalty mechanism intended for all parties engaged in the violation of the relevant rules (athletes, trainers, associations, etc.).

We shall thereby portray in brief the legal framework that governs doping rule violations in accordance with the International and Greek legislation as well as the penalties thus provisioned. The rules of overriding legislative supremacy, on which the imposition of such penalties is based, as well as the general principles that govern this penalty process shall be presented in the first part whereas the legislative provisions that the Greek law draws upon in order to specify and implement those rules will be subsequently cited.

2. Overriding legislative supremacy

At a first level, anti-doping rules are governed by a legal basis as outlined by the Greek Constitution. In specific, article 16, par.9 S that provisions that sport is subject to the protection and high supervision of the State is applicable. Not only doesn't the provision under consideration lack a regulatory framework but it also allows for and justifies the state's intervention and limitation of other fundamental rights in order for this state obligation to be exercised[3]. Therefore, by virtue of this provision in conjunction with the provisions of articles 5 par.2 S and 21 par 3 S which govern the fundamental obligations of the State for the protection of citizens life and health, it becomes evident that the State can and shall intervene in both a preventive and repressive manner so as to ensure compliance with those fundamental sport values and principles while also protecting the health and life of athletes. The establishment of anti-doping regulations and the provision of penalties for violators thus constitute the fulfillment of the above constitutional requirements.[4]

[2]D. Koutsouki (2006), "Doping: Deterring – Preventing – Trafficking", in: Sports Law [Lex Sportiva] in the World (D. Panagiotopoulos Ed.), Greek Legal Publishing, Athens, p.160.

[3]K. Chrysogonos (2002), Individual and Social Rights, Ant.N.Sakkoulas, p. 333

[4]See the ad hoc decision of the Council of State 264/2011, LxSp 2014, p. 71-75 (72): «*Furthermore, in view of the State's great interest in the development of equal competition terms in the fields of recreational and professional sports, the preservation of fair play, safeguarding the validity of results in both recreational and professional games as well as the protection of the life and health of athletes, the aforementioned state consideration and supervision are expressed, among others, by virtue of the stipulations of articles 7, 8 and 9 of Law 1646/1986 (Greek Government Gazette I138/18.9.1986), by way of which the definition of doping is presented, the drugs which are related to the athletes performance enhancement are listed, the penalties that shall be imposed are provisioned for those cases when the use or administration of such substances has been tested positive after an ex-officio prosecution, the disciplinary penalties and the competent administra-*

The above stated constitutional requirement, though, is further specified by International Law which enjoys high order of precedence in accordance with article 28 par. 1 S. Those rules outline a specific control and penalty framework so as to deter doping in an effective and uniform manner. At the same time, those rules constitute an expression of the general principles of the World Sports Law ("Lex Sportiva"), which prevails over the relevant national law while guiding its interpretation and enforcement.[5]

The proliferation of those unsporting practices in all major events and especially in the Olympic Games has called for initiatives to help deter the occurrence of doping in sport[6]. As a result, the World Anti-Doping Association (WADA) was established and the World Anti-Doping Code (hereinafter the "Code") was adopted, as approved in 2003 at the World Summit in Copenhagen[7]. The Code, as currently in force, does not provide a general definition of doping but its first article defines doping as the "occurence of one or more anti-doping rule violations, as provisioned under Articles 2.1 to 2.10 of the Code". Article 2 provisions the specific conducts prohibited, that is the presence of a prohibited

tive authorities that shall impose them, as well as the procedures of laboratory doping testing in the recreational and professional football and sport games are stipulated until the establishment of the Control Centre. It is thereby concluded that the legislator has recognized doping occurrences to be of utmost importance, hence has specifically stipulated the disciplinary penalties that shall be imposed by competent authorities upon the occurrence of relevant violations by athletes. Consequently, the relevant detection and disciplinary procedure that is provisioned by a lex specialis, manifests the constitutional consideration of the State in doping activities and has been established so as to serve the obligation of a public service".

[5]For the definition of the meaning of Lex Sportiva and the nature of its regulations, see Dimitrios P. Panagiotopoulos (2012), "Lex Sportiva: International or sui Generis – 'Unethnic' Law?", in: "SPORTS LAW: PROSPECTS OF DEVELOPMENT", sixth International scientific practical conference, Moscow State Law Academy et all, Russia. 30 May 2012 MoskBa, pp. 25-31., Dimitrios Panagiotopoulos (2013), "Aspects of Sports Law & Lex Sportiva", in: Revista de Derecho del Deporte, 25-4-2013, Cita: IJ-LXVII- 965 http://www.ijeditores.com.ar/articulos.php?idarticulo=64965&print=2 (in Russian) Also: Panagiotopoulos Dimitrios P. (2014), "General Principles of Law in International Sports Activities And Lex Sportiva", in: International Sports Law Review Pandektis, Vol. 10:3-4, pp.332-350, in: Lex Sportiva ,Issue.10:2014 (in Greek), Issue. 10:2014, pp. 2-11, Sports Science Research (in Chinese) No 1, pp. 74-81. Also see ibid: Panagiotopoulos Dimitrios P. (2014) In Sports Activities when there is Ludica, Lex is Not, but when Lex is, then only Lex Sportiva is !!! As a Category of Sports Law, in: e-Lex Sportiva Journal, Vol. I:2, pp.7-18. Also see. D. Panagiotopoulos, "General Principles of Law in International Sports Activities and Lex Sportiva", LxSp 2014, pp.2-11, of the same, Sports Legal Order in national and international Sporting Life, ISLR/Pandektis, 2002, pp.. 227-242.

[6]For a brief historical background of those innovations, see I. Papadogiannakis (2006), "The World Anti-Doping Code and the Greek Law", in : Sporting Rules, LxSp [Dimitrios P. Panagiotopoulos ed], Athens, p.220 and 150, Greek Legal Publishing

[7]The Code was amended in 2013 with effect on 1 January 2015. For International Anti-Doping rules, see D.Panagiotopoulos (2005), Sport Law, Greek Legal Publishing, Athens, p. 484-494. For the new provisions of Greek Law in harmonization with the amended Code, see below.

substance or its metabolites or markers in an athlete's sample, the use or attempt to use a prohibited substance or a prohibited method by the athlete, evading, refusing or failing to submit to sample collection, lack of tracking information, tampering or attempt of tampering with any part of the doping control process, possession and trafficking or attempted trafficking of any prohibited substance or prohibited method, administration or attempted administration of a prohibited substance to an athlete in-competition or out-of-competition and finally aiding and being directly engaged in the above violations. The absence of a general doping definition as well as the restrictive definition of a doping violation as the usage of specifically listed prohibited substances and methods, consequently prevent the application of the Code in doping cases where new methods or substances have not yet been listed[8]. Subsequently, articles 9, 10, 11 and 12 provision the sanctions for the violators and more specifically the automatic disqualification of results in cases of individual sport, the temporary ineligibility of the athlete, the disqualification of the results or the annulment of a game in case of team sports, when more than two team members have committed an anti-doping rule violation, while the contracting States are offered the liberty to impose additional sanctions on sport organizations in accordance with their national law. Finally, article 8 establishes the procedural guarantees, such as the right to a fair hearing and provisional hearing principle that shall be abided by during the procedure of detecting violations and imposing the aforementioned sanctions.

The anti-doping control system is complemented with the Unesco Convention against Doping in Sport as adopted on 19 October 2005 (hereinafter the "Convention") which was ratified in Greece by Law 3516/2006. The Convention explicitly stipulates the applicable basic principles of the Code[9] and provisions the measures that contracting States shall take in order to prevent and deter doping, while it also establishes a cooperation mechanism among the competent anti-doping authorities of the contracting States. A basic reason for the adoption of the Convention was the acknowledgment of the fact that both the Code, being an international law, and the powers of WADA were insufficient to deter doping so additional measures should be taken at a national level[10]. Making provision

[8]I. Papadogiannakis (2006), "The World Anti-Doping Code and the Greek Law", (Op.cit), 153.

[9]A. 4 par. 1 of the Convention: "In order for the harmonization of anti-doping implementation in sports, at a national and international level, the Member States are bound by the Code's principles as a basis for the measures provisioned in article 5 of this Convention. The content of this Convention does in no way deter Member States from adopting additional measures, supplementary to the Code".

[10]Papadogiannakis, The World Anti-Doping Code and the Greek Law, (Op.cit), p. 152.

for the establishment of sanctions and penalties is explicitly included in the measures adopted by the contracting States.[11]

As a basic principle of the World Sports Law with regard to anti-doping, Lex Sportiva establishes the objective liability of the athlete[12]. According to this principle, which is also adopted in the decisions of the Court of Arbitration for Sport (CAS), there is a legal presumption for the athlete's liability when a prohibited substance is present in his or her body. In this case, the interest of their fellow athletes for equal and fair conduct at the sport competition shall outweigh the individual rights and the presumption of innocence of the athlete who is subjected to doping control[13]. Rebuttal is however permitted. Also, some protective principles of broader implementation (which are not only related to sport law) are enshrined as an integral part of Lex Sportiva, such as the principle of fair hearing and the level playing field between the parties as well as the proportional principle that should govern sanctioning and penalties.[14]

3. The pertinent provisions of the Greek Law

The Greek State addressed the problem of doping early enough. The first related legislation was Law 75/1975 while Law 1646/1986 provisioned criminal sanctions for the presence of prohibited substances. The nature of the relevant violations constitutes the application of disciplinary actions, like long-term disqualification from sport events[15], the most effective method in tackling this problem when considering that the sole motive of anti-doping rule violators is the achievement of victories and distinctions in sport events, accompanied of course by the corresponding financial and social benefits[16]. However, since the fundamental principles of life and health of the athletes are put at risk, as abovementioned, the utilization of the "criminal arsenal" against doping occurrences in sport is justified.

[11]See for example article 9 of the Convention as related to the athlete support personnel: "The Member States shall take measures themselves or shall encourage sport organizations and anti-doping organizations to adopt measures, including sanctions or penalties, aiming at the athlete support personnel who commit anti-doping violations or other offences related to doping in sport".

[12]This principle is explicitly enshrined in article 2.1.1. of the Code: "It is each athlete's personal duty to ensure that no prohibited substance enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, fault, negligence or knowing use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation under Article 2.1"

[13]D. Panagiotopoulos (2014), General Principles of Law in International Sports Activities And Lex Sportiva, (9) ,p. 2-11.

[14]Ibid, p.5., with further references to CAS decisions.

[15]Dimitros Panagiotopoulos (2016), "Doping and Nutritional Supplements – Parallel Lives", ISLR/Pandektis Vol 6:3-4, pp.221-233 (223).

[16]D. Panagiotopoulos (2000), "Doping, Law and Money", published in Newspaper "To Vima", 17 September 2000, available at: http://www.tovima.gr/opinions/article/?aid=126055

In our days, doping is governed by article 128A-ID of Law 2725/1999 as supplemented by Law 3057/2002, along the lines of the (at that time) draft Code. This legislative framework is considered one of the most comprehensive and severe at an international level[17]. The fundamental values challenged by the use of pharmaceutical substances and other preparations are listed in article 128A[18]. Subsequently, article 128B provides the definition of doping[19]. By virtue of article 128C par.2 the Ministry of Health, Welfare and Culture are empowered to issue, at least once annually, a joint decision listing the prohibited substances and methods in line with article 128B of the same law. This decision shall be harmonized with the international lists of the International Olympic Committee and WADA. The individual disciplinary violations are provisioned by article 128G[20] while the corresponding disciplinary sanctions are provisioned by article 128H. Those sanctions fall under the category of those imposed on athletes and those imposed on persons engaged. According to article 128B par. F, the persons engaged are defined as any "fellow athlete, coach, trainer, sports director, doctor or physician who collaborates, works with athletes, trains or treats athletes". The above disciplinary action shall be imposed by the pertinent disciplinary authorities of the sport federations while their decisions shall be susceptible to review at a second degree by lodging an appeal with the Sport Dispute Council or the Appeal Committee of the Hellenic Football Federation. Due to the public scope of the relevant legislation, the actions of the above disciplinary authorities are considered enforceable administrative acts against which an appeal for annulment may be submitted to the Council of State.[21] At the same time, an appeal can also be submitted to CAS, in accordance with World Sports Law.[22]

[17]D. Koutsouki, "Doping: Deterring – Preventing – Trafficking", in: Sports Law [Lex Sportiva] in the World (D. Panagiotopoulos Ed.), Greek Legal Publishing, Athens, p.161.

[18]Article 128A, Law 2725/1999, "Doping tampers with the results authenticity and the athletes efforts, puts the health of athletes and in particular minors at risk, is contrary to the principal values of the Olympic spirit, fair play and medical ethics and shall be prohibited".

[19]Article 128B, point a, Law 2725/1999: "Doping is the administration or use of a prohibited substance by an athlete, as well as the presence or evidence of use of such substance .in his or her body".

[20]Article 128G, par 1, Law 2725/1999: "The disciplinary doping violation is defined as: a) the administration or use of a prohibited substance by an athlete during or in view of participation in a sport event, b) instigating, proposing, promoting, approving or not imposing a penalty for the use, facilitation or administration of a prohibited substance, c) the conduct of a prohibited action, especially within sport premises, gyms and training facilities, private gyms and private schools under article 32 of the current law".

[21]City of State 264/2011, LxSp 2014, (Vol.10), pp.71-75, point (72).

[22]Dimitrios P. Panagiotopoulos (2013), "Sporting Jurisdictional Order and Arbitration", in US-China Law Review, Vol. 10:2, pp.130-140.

The criminal provisions are included in Article 128I. In particular, the administration of a prohibited substance or material to athletes aiming at the enhancement of their predisposition, ability and performance during sports events or in view of their participation in such (subjective liability) is penalized with imprisonment of at least 3 years and a fine of five to fifty thousand euros or imprisonment of ten years if the offender commits the above actions by profession or aims at obtaining a pecuniary advantage. The use of prohibited substances of methods by an athlete for the aforementioned purposes is punished by imprisonment of at least two years while the possession of such substances, if not legally registered in their Health Card, shall be punished with a fine of at least five thousand euro. Finally, provision has been made for penalties related to the production, trafficking and storage of prohibited substances and anti-doping control hampering. At the same time, as the use of prohibited substances may pose health risks or might even put at risk the life of athletes, the offenders trafficking such substances in case an athlete's health is harmed shall be punished for simple or great bodily harm where appropriate (article 308 and 310 Penal Code). [23] Those provisions are fully in line with the above penal provisions of Law 2725/1999 owing to the diversity of the legal rights violated.

The relevant Greek Law provisions are applicable in view of the above general international principles. Therefore, the objective liability of athletes for the above disciplinary violations is established aiming at the more effective deterrence of doping.[24] Athletes are liable for any substances used and it is their duty to protect themselves against any presence of prohibited substances.[25] However, as the competent authorities carry the weight of detecting and proving that any such violation[26] has occurred, any formal violation in the detection procedure shall lead to the annulment of the sanction imposed.[27] The establishment of a strict and formal control procedure shall counterbalance the establishment of objective liability and shall protect the athlete from excessive extend of liability. Even in the field of penal sanctions, in accordance with the stipulations of article 128I Law 2725/1999, the athlete shall be liable to be punished even in the case of

[23]Supreme Court of Greece 384/2009, LxSp2008, pp.193-202, with notes by M.Papalouka.

[24]Decision 196/2009 by the Primary Disciplinary Commission of Super League, Lex Sportiva, p.81: "Doping is contrary to sports ethics. The main repercussion of doping at a practical level is the distortion of the results of the game as a result of the inequality between the competing athletes in spite of the existence of an opposing prohibition rule. The athlete's fault or negligence is only taken into consideration with regard to the disciplinary penalty (Note: as regards the determination of its amount) that shall be imposed on the athlete".

[25]City of State 264/2011, LxSp2014, pp.71-75, point (74).

[26]See also Article 3.1 of the Code.

[27]Decision 4/14-01-2014, Supreme Council of Arbitration for Sport, LxSp 2014, pp.77-81, with Notes by V. Papapostolou.

inadvertent negligence.[28]

Recently, Law 4373/2016 was adopted in order for the Greek Legislation to be harmonized with the amended (since 2015) Code. This Law stipulates anti-doping objectives in accordance with the Code[29] as well as the competent anti-doping control authorities in Greece, which is the National Anti-Doping Control Organization and the National Council to Combat Doping (NCCD). The most important legal innovation therein is that the disciplinary actions shall be exercised at first instance by the NCCD, an independent Disciplinary Committee, without the involvement of sport federations, while the Supreme Council of Arbitration for Sport[30] shall act at second instance. Additionally, the provisioned disciplinary sanctions have become more severe[31]and can be now also imposed on sport federations for the first time in the Greek legislative system[32]. Furthermore, certain fundamental principles included in the Code are explicitly provisioned, such as the standard of proof carried by the National Anti-Doping Control Council for anti-doping violations. In particular, in order for a violation to be established, the standard of proof in all cases shall be greater than a mere balance of probability but less than proof beyond a reasonable doubt[33]. The principle of a fair hearing is also therein established.[34]

Conclusion

Unfortunately, the phenomenon of doping is predominant in modern sports, especially in major sport events. It is the responsibility of all authorities, at national and international levels alike, to make every possible effort in order to deter and regulate such unsporting practices. What is more, the stance of international organizations, such as that of the International Olympic Committee in particular, is not the most appropriate as its practice in view of the participation of athletes tested positive in the Olympic Games manifests its lack of interest in really deterring the phenomenon but instead limits itself to ensuring a pretence of lawfulness in the eyes of the public. On the other hand, in view of

[28]M. Papalouka, Notes in Supreme Court of Greece Law 384/2009, LxSp 2008, p.201.

[29]See the Explanatory Report of Law 4337/2016 as well as footnote 4.

[30]See Article 9, Law 4337/2016

[31]See Articles 10-12, Law 4337/2016

[32]See Article 13, Law 4337/2016.

[33]See Article 4, par.1, Law 4337/2016: "The National Anti-Doping Control Council shall have the burden of establishing serious indications that an anti-doping rule violation has occurred, in accordance with the unbiased judgment of the Council, which shall be then submitted to the Disciplinary Committee, bearing in mind the seriousness of the allegation which is made. The standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt".

[34]See Article 9 Law 4336/2016.

the extravagant profits made by the television broadcasting of the Games, the Committee welcomes the participation of athletes who set high records, even by non-transparent means.[35] In this respect, the diffusion of practices aimed at deterring doping violations and the delegation of relevant responsibilities to independent national authorities is a positive element, as doping occurrences are thus preventable at a national level by administrative authorities that are not influenced by the commercialization of sports.

However, sanctioning is not enough in its own right. The State shall be required to get to the root of the evil. This can only be achieved if students are taught about the sports culture and the principles of fair play from an early age while athletes who "run a good race" even without achieving records should be presented as role models in the public sphere. Only if the entire society manifests their aversion to such unfavorable doping occurrences that harm the essence of sports will the rapid growth of doping be brought to an end.

[35]See relevant facts in view of the Olympic Games of 2000 at: D. Panagiotopoulos (2000), "Doping, Law and Money», published in Newspaper "To Vima", 17 September 2000, available at: http://www.tovima.gr/opinions/article/?aid=126055.

PUBLIC FINANCIAL SUPPORT OF PROFESSIONAL SPORT

Igor V. Ponkin
Professor, Kutafin Moscow State Law University[*]*, Moscow, Russia*

Alena I. Ponkina
Lecturer, Kutafin Moscow State Law University[**]*, Moscow, Russia*

Abstract: *The article investigates legal possibilities, conditions and limits of public financial support of professional sport. This article describes the arguments against public financial support of professional sport and the arguments for public financial support of professional sport.*

Keywords: *administrative law, public administration, professional sport, sport, public administration in sports sphere, sports law, regulation of sport, public financial support of professional sport, autonomy of sport.*

Introduction. Problem Statement

For the last 20 – 25 years, a lot of infrastructure objects have been developed and modernized in the USA, Canada, the Republic of South Africa, Germany, China, and some other countries of the world. The priority is put on the stadiums used for professional sports, including those used for organizing major international sporting events at the national level[1]. However, today, there is a downward trend regarding the state financial support of professional sports. It is explained by substantial deficit of public finance, and also by a number of other reasons.

Respectively, the issue of legal framework and conditions, measures of obligation, and state financing limits applied to professional sports system becomes more and more actual and significant in the development and implementation of public administration and state policy in the field of sports. There are a number of pragmatically relevant and reasonable arguments for the state financial support of professional sports. Nevertheless, there are also pragmatically relevant arguments against the state support of professional sports. This article gives a brief summary of these controversial opinions.

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[*]The author is a Doctor of science (Law, Doctor of science (Law), Professor of sports law of the Kutafin Moscow State Law University, State Professor, E-mail: i@lenta.ru

[**]The author is Lawyer, PhD (Law), expert of Consortium of Sports Law Specialists, lecturer of sports law of the Kutafin Moscow State Law University, E-mail: juriste.ap@gmail.com

[1]*Baade R.A., Matheson V.A.* Financing Professional Sports Facilities / North American Association of Sports Economists // <http://college.holycross.edu/RePEc/spe/MathesonBaade_FinancingSports.pdf>. – 2011. – 33 p. – P. 3–4.

Arguments against the State Financial Support of Professional Sports

There are following reasons for unacceptability or, at least, uselessness of the state financial support of professional sports:

1. Lack of grounds for professional sports priority regarding its funding by the public authorities – in comparison with education, health care, social protection, culture, etc.

Speaking about expediency of the state financing of professional sports, according to Baade R.A. and Matheson V.A., attention should be paid to the economic aspect of such measures. Typically, the construction of sports stadiums and the creation of professional sports franchises have served as a reflection of economic development rather than a means to it [2], that is, such measures can be generally taken by the state if the other expenditures are provided.

According to Wilhelm S., we include the decrease of public funds investment into the development of the other fields, in which the state is also interested, in the negative economic consequences of the state financing of sports infrastructure. So, within the framework of an effective state policy, funds must be allocated for financing those fields which will bring the most benefit estimated by both: direct economic benefit and quality of life of people[3].

Murray D. believes that there are other social benefits (education, safety, health care), financing of which is much more reasonable[4].

2. Professional sports are show business industry in the first place, that is the field of mainly private interests, where public interests are of minor importance.

The nature of professional sports is mainly aimed at earnings of professional sports actors and often takes advantage of the entertaining aspect of sports, placing marginal importance on social interests[5].

The professional sports field is much more show business industry than sports in pure form; so, it is connected with private business interests.

In this regard, this business segment cannot be a priority for the state in comparison with any other segments and directions of legal business.

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[2]*Baade R.A., Matheson V.A.* Financing Professional Sports Facilities / North American Association of Sports Economists // <http://college.holycross.edu/RePEc/spe/MathesonBaade_FinancingSports.pdf>. – 2011. – 33 p. – P. 4.

[3]*Wilhelm S.* Public Funding of Sports Stadiums / Center for Public Policy & Administration // <http://cppa.utah.edu/_documents/publications/finance-tax/sports-stadiums.pdf>. – 11 p. – P. 6.

[4]*Murray D.* Reflections on Public Funding for Professional Sports Facilities // Journal of the Philosophy of Sport. – 2009. – № 36. – P. 22–39. – P. 25–26. <http://www.humankinetics.com/acucustom/sitename/Documents/DocumentItem/16999.pdf>.

[5]*Murray D.* Reflections on Public Funding for Professional Sports Facilities // Journal of the Philosophy of Sport. – 2009. – № 36. – P. 22–39. – P. 28. <http://www.humankinetics.com/acucustom/sitename/Documents/DocumentItem/16999.pdf>.

Murray D. notes, that the state should not finance professional sports, or should do it to an extremely limited extent, which follows from an imperative that any large direction of the public funds investment cannot defy a principle of the state neutrality. This conception of neutrality would be violated if the state acted in some way, in particular using its powers of coercion as to make one way of life easier to access at the expense of another sort of life[6].

According to Rochebloine F., there is a need for strict application of the ban on State aid for professional sports companies – which are, by definition, engaged in economic activities and are therefore covered by the term «undertaking» for the purposes of European Community law. Moreover, greater financial transparency should be required at national level in all transactions involving the use of public funds for the benefit of professional sport. This is in order to avoid taxpayers having to pay for the survival of companies incapable of introducing sound financial management. Finally, States could support the efforts of the national and European federations through greater harmonisation of accounting rules for sports clubs, with the specific goal of increasing financial transparency[7].

3. Unconfirmability (or – weak confirmability) of an argument regarding the connection of the professional sports state support and the economic development of the area (region, settlement).

According to a number of sports economists, using sports constructions financed by the state hardly ever leads to the declared economic growth and benefits, often resulting into material debts in budgets[8].

The corresponding experience of the USA shows that public authorities, investing into sports infrastructure projects, as a rule, gain very small income from such investments[9].

Moreover, investments into the professional sports development by local public authorities in certain cases can lead to negative effects.

So, for example, a study of 37 major metropolitan areas with major league baseball, football, basketball and hockey franchises, showed that not in one instance did these sporting activities translate into a boost in the local economy. Moreover, the net economic impact of professional sports in Washington, D.C.

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[6]*Murray D.* Reflections on Public Funding for Professional Sports Facilities // Journal of the Philosophy of Sport. – 2009. – № 36. – P. 22–39. – P. 25–26. <http://www.humankinetics.com/acucustom/sitename/Documents/DocumentItem/16999.pdf>.

[7]*Rochebloine F.* Good governance and ethics in sport (Report № 12889) / PACE Committee on Culture, Science, Education and Media // <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=18099&lang=en>. – 05.04.2012. – 22 p. – P. 11.

[8]*Garofalo P., Waldron T.* If You Build It, They Might Not Come: The Risky Economics of Sports Stadiums // <http://www.theatlantic.com/business/archive/2012/09/if-you-build-it-they-might-not-come-the-risky-economics-of-sports-stadiums/260900/>.

[9]*Zaretsky A.M.* Should Cities Pay for Sports Facilities? // <https://www.stlouisfed.org/publications/regional-economist/april-2001/should-cities-pay-for-sports-facilities>.

and the 36 other cities that hosted professional sports teams for over nearly 30 years, was a reduction in real per capita income over the entire metropolitan area[10].

4. Limitation or prohibition of the state financial support of professional sports is a consequence of autonomy of sports[11]. This is a «reverse side» of this fundamental principle of sports.

5. Risk of financial abusive practices by professional sports clubs and professional sports federations.

Rochebloine F. reasonably states, that the autonomy of the sports movement cannot extend to serious infringements of sports ethics, or to inaction where management systems are no longer able to cope with legitimate concerns about transparency and good governance. Autonomy is there to protect the interests of sport, not those of unscrupulous individuals[12].

Arguments for the State Financial Support of Professional Sports

It is obvious that theoretically activities of professional sports teams, maintenance and functioning of sports facilities of the professional sports system must be fully financed by private sources. However, the state financial support is often a necessity.

In research literature the need for such financing is quite often derived from rather abstract concepts and mainly justifies interests of professional teams and professional sports. It is clear that such reasons cannot be recognized as sufficient and relevant.

It should be noted that the state financing of professional sports can be acceptable and rational within reasonable limits if public authorities use really correct efforts for this purpose, in particular – invest in cooperation with private investors[13], realizing, for instance, public-private partnerships.

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[10]*Murray D.* Reflections on Public Funding for Professional Sports Facilities // Journal of the Philosophy of Sport. – 2009. – № 36. – P. 22–39. – P. 29. <http://www.humankinetics.com/acucustom/sitename/Documents/DocumentItem/16999.pdf>.

[11]See: *Ponkina A. I.* Autonomy of sport: Theoretical and legal research / Commission on Sports Law, Russia Bar Association, National Russian Association of Sports Lawyers. – Moscow, 2013. – 102 p.; *Ponkina A.I.* Public Administration and Autonomous Institutionalization in Sports / Commission on Sports Law, Russia Bar Association, National Russian Association of Sports Lawyers. – Moscow, 2013. – 143 p.

[12]*Rochebloine F.* Good governance and ethics in sport (Report № 12889) / PACE Committee on Culture, Science, Education and Media // <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=18099&lang=en>. – 05.04.2012. – 22 p. – P. 20.

[13]A Solution to Finance Professional Sports Facilities in Alberta: Public-Private Partnership Model //<http://www.conferenceboard.ca/press/newsrelease/14-07-09/a_solution_to_finance_professional_sports_facilities_in_alberta_public-private_partnership_model.aspx>.

There are certain pragmatically relevant arguments for legal and actual possibility and justification of certain direct state financial support of professional sports. The state financing of professional sports infrastructure can also have certain positive results.

The state financing of private projects in any form is generally based on the principles of objectivity and efficiency. It is more reasonable to consider the rationality of professional sports financing by the state with regard to the benefits gained, including not only countable, but many other benefits.

Wilhelm S. highlights the following benefits of sports infrastructure financing by the state connected with the influence of such financing on the quality of life of people:

– consumer benefit from attending sporting events within the understanding of this benefit as the difference between the sum which fans are ready to pay for attending a sporting event and the sum they have to pay indeed;

– advantage for local fans who can attend competitions;

– solidarity and national pride as the result of success achieved by local teams[14].

In our opinion, it is reasonable to identify the following groups of reasons for obligation or, at least, acceptability of certain state financial support of professional sports:

1. The state financial support of professional sports indirectly positively influences the maintenance and development of the human capital of the country.

Professional sports cannot be separated from mass sports. Both are integrally aimed at the development of human potential.

It is no coincidence that article II of the Resolution of the Committee of ministers of the Council of Europe No. (76) 41 "On the principles for a policy of sport for all"[15] states that sport shall be encouraged as an important factor in human development and appropriate support shall be made available out of public funds.

2. Focus of professional sports upon effective creation of an attractive image of sports in general; its positive agitational influence on attraction of children and youth to mass sports.

3. Imperatives of creating conditions for the economic development of the state in general, its regions, or areas.

During the process of its development the field of sports becomes more and more integrated with business, and sports industry has already become a

[14]*Wilhelm S.* Public Funding of Sports Stadiums / Center for Public Policy & Administration // <http://cppa.utah.edu/_documents/publications/finance-tax/sports-stadiums.pdf>. – 11 p. – P. 5.

[15]Resolution of the Committee of ministers of the Council of Europe № (76) 41 «On the principles for a policy of sport for all» / Adopted by the Committee of Ministers on 24 September 1976 at the 260th meeting of the Ministers' Deputies // <http://www.coe.int/t/dg4/epas/resources/texts/Res(76)41_en.pdf>.

significant segment of national economies. Professional sports are viewed as a strategic center of sports industry, and its state financing has positive effects upon the economic development of the area (city), region, or country in general.

The state financing of professional sports infrastructure construction indirectly contributes to the economic growth of the area (city), region, or country in general, as it promotes development of the related retail companies (sports accessories, sportswear and footwear, sports souvenirs, and brand mark goods), promotes creation (maintenance) of a number of workplaces, provides additional inflow of taxes to budgets of all levels.

The USA experience shows that even if the economic benefit from financing professional sports constructions by public authorities from government, regional, or local budgets is extremely low for the cities in which such construction is performed, these constructions can have a strong positive effect on economies of neighboring cities and areas[16].

Building and exploitation of sports facilities for professional teams can provide new workplaces. However, the offered work demands attraction of unskilled workers; it is temporary and seasonal, and also low-paid in contrast to a much broader spectrum of workplaces offered by private enterprises[17]. Nevertheless, the specified surplus of workplaces (though temporary) should be positively evaluated. Especially as such evaluation is reasonable by narrow consideration of the issue.

Workplaces are created not only in the course of construction and exploitation of new sports infrastructure and enterprises around it, but also at local hotels and catering establishments where the number of customers increases is the result of carrying out sports competitions[18].

Sometimes allocation of the state budgetary funds for development of professional sport is justified by allocation of funds for development of private entrepreneurship, claiming that from this point of view the specified fields of activity are similar. However, there are major differences between them, and the expenditure of public funds for supporting of one industry cannot be justified by provision of such means for the development of the other one. So, for example, supporting private enterprises, the state can receive considerable economic benefits from their activities in the future.

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[16]Public financing of professional baseball stadiums // <http://www.ibo.nyc.ny.us/iboreports/stadtest.html>.

[17]*Jensen S.A.* Financing Professional Sports Facilities with Federal Tax Subsidies: Is it Sound Tax Policy? // Marquette Sports Law Review. – Spring 2000. – Vol. 10. – Issue 2. – P. 425–460. – P. 439. <http://scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=1477&context=sportslaw>.

[18]*Wilhelm S.* Public Funding of Sports Stadiums / Center for Public Policy & Administration // <http://cppa.utah.edu/_documents/publications/finance-tax/sports-stadiums.pdf>. – 11 p. – P. 5.

Besides, unlike professional sport franchises, private companies like the type listed above do not divert money from the existing economy in the same geographical area, rather, private companies tend to stimulate economic growth by bringing money into the economy[19]. Nevertheless, in general, the influence of the actions of the state on the economy should be positively evaluated.

4. The state financial support can be justified by the fact that the financed professional sports venues serve a wide range of public interests, provide service to a much wider audience than only professional athletes, professional teams, and professional sports clubs.

Responsibility for dealing with problems relating to sports policy primarily lies with the sporting community, together with its self-regulation. Self-regulation is of paramount importance, but if problems persist then governments should step in. The autonomy of the sports movement requires States to refrain from undue interference in the organisation and functioning of sports authorities. It cannot, however, come to be used as an excuse for inaction. Sport is an area in which the public interest applies, and States have an important role to play in preserving the common interest. This role implies the creation of an appropriate legal framework, the penalising of abuses that are against the law and effective co-operation with governing bodies of the sports movement to combat any abuses contrary to the ethics of sport and to the fundamental values of which sport should be a vehicle[20].

5. Image benefits and benefits connected with the influence of such financing on the quality of life of people.

Today, as Lin C.-Y., Lee P.-C. and Nai H.-F. say, the state intervention into the sports is often realized for the purpose of demonstration of social, political, or economic levels of life of the country[21].

Wilhelm S. states that the benefits of this category have an intangible benefits for the society, which influence its well-being and interaction of its members[22].

The intangible benefits from the state financial contribution into construction of new stadiums for professional soccer teams is expressed in the increase of civil

[19]*Jensen S.A.* Financing Professional Sports Facilities with Federal Tax Subsidies: Is it Sound Tax Policy? // Marquette Sports Law Review. – Spring 2000. – Vol. 10. – Issue 2. – P. 425–460. – P. 438–439. <http://scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=1477&context=sportslaw>.

[20]*Rochebloine F.* Good governance and ethics in sport (Report № 12889) / PACE Committee on Culture, Science, Education and Media // <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=18099&lang=en>. – 05.04.2012. – 22 p. – P. 20.

[21]*Lin C.-Y., Lee P.-C., Nai H.-F.* Theorizing the Role of Sport in State-Politics // International Journal of Sport and Exercise Science. – 2009. – Vol. 1. – № 1. – P. 23–32. – P. 23. <http://web.nchu.edu.tw/~biosimulation/journal/pdf/vol-1-no01/vol-1-no-1b-0004.pdf>.

[22]*Wilhelm S.* Public Funding of Sports Stadiums / Center for Public Policy & Administration // <http://cppa.utah.edu/_documents/publications/finance-tax/sports-stadiums.pdf>. – 11 p. – P. 5.

pride, emotional involvement, and also increase of collective self-awareness, self-feeling, and self-esteem, and in providing individuals with bigger feeling of national identity[23].

Groothuis P.A., Johnson B.K. and Whitehead J.C. state that governments usually justify stadium subsidies with efficiency claims that sports generate large positive externalities for their communities. Subsidies internalize the externalities and can attract or keep a team that would otherwise not stay in a city[24].

6. Demonstration of a substitution effect, which means that those who attend sporting events can cease to spend money on other types of rest and entertainment, including socially unacceptable or dangerous, because of limitation and inflexibility of family budgets of a considerable part of the population.

7. Image value of professional sports for the public sector.

The level of professional sports development obviously has a very high value for the international image of the country. Similarly, the level of professional sports development, availability of a significant sports club, accommodation and trainings of a world-class professional athlete can be of importance to the image of a settlement, area, or region.

Thus, the state financial support of construction, reconstruction, use of sports facilities (stadiums, tracks, race circuits, springboards, etc.) can be of importance even for highly profitable segments of professional sports.

Thus, an outstanding Canadian hockey player, the owner of the "Pittsburgh Penguins" NHL club [National Hockey League's (NHL) Pittsburgh Penguins] (since 1999) Mario Lemieux said, "State financing of the sports stadium is very important [for professional sports]. If such financing hadn't been available, I would probably have had to sell my team to someone who would manage to move it [to another base]"[25].

Subsidies for professional sports are rationalized on the grounds that teams generate substantial economic and hedonic value for host cities, external benefit, for which individual teams receive no compensation. If teams qualify as public goods, those that are collectively consumed, then the optimum provision of teams and their playing facilities require equating the sum of individual marginal utilities, marginal rates of substitutions, for host city residents with the marginal cost of attracting and maintaining the team. If the external economic benefit

[23]*Holland J.K.* Determinants of Public Funding for Professional Athletic Venues // <http://scholarship.claremont.edu/cgi/viewcontent.cgi?article=1929&context=cmc_theses>. – 2014. – 32 p. – P. 13–14.

[24]*Groothuis P.A., Johnson B.K., Whitehead J.C.* Public Funding of Professional Sports Stadiums: Public Choice or Civic Pride? // Eastern Economic Journal. – Fall 2004. – Vol. 30. – № 4. – P. 515–526. – P. 516. <http://libres.uncg.edu/ir/asu/f/groothuis_peter_2004_public_funding.pdf>.

[25]Cited from: *Simonich M.* Teams squeeze cities to finance new arenas. But in some places, officials have squeezed back // Post-Gazette (Pittsburgh). – June 26, 2001.

provided by professional sports teams, however, is negligible then the rationale for subsidies rests on a contingent valuation or hedonic argument[26].

8. Complexity of exhaustively distinct differentiation of professional sports and amateur sport in the legal regulation of sports in many countries.

Conclusion

The prime minister of Hungary, Viktor Orbán very precisely characterized the nature of interaction of the state and sports field in the opening of the FIFA congress in Budapest: «The power structure and sports walk alongside: they must unite people. The power structure can be a blessing for sports, and it can be damnation»[27].

The issue of legal justification and possibility of the state financial support of professional sports remains unclear. It is unclear primarily owing to sharp reducing of financial means of the state as a result of the current global crisis financial phenomena. But this issue also remains unclear because the state money involve the state intervention into internal affairs of sports, which has certain limitations following from the autonomy of sports that has obviously not been studied well enough yet.

[26]*Matheson V.A., Baade R.A.* Have Public Finance Principles Been Shut Out in Financing New Sports Stadiums for the NFL in the United States? / College of the Holy Cross // <http://college.holycross.edu/RePEc/hcx/Matheson_PublicFinance.pdf>. – 2005. – 27 p. – P. 5.

[27]Cited from: *Dzichkovsky E.* Grigory Surkis, "I would never appoint a Lawyer as a national team trainer" // Sport-Express. – 27.06.2012.

FENCING: THE OLYMPIC SPORT THROUGH ART. THEORETICAL APPROACHES

Karagianni Maria
City University London Master Programme: Culture, Policy and Management,UK

Karabekou Amalia
Panteion University[*]*, Department of Economic & Regional Development, Greece*

Abstact: *This article attempts to explore fencing that is not only a sword handling sport and, but also an Olympic sport practiced with three different styles of weapons. We outline the weapons used by each opponent. It raises questions depicted in art, in the mists of time. It refers to the philosophy of fencing, records details of the technique and the way it is presented in the art of painting, sculpture, even photography for example.*

Keywords: *Fencing, Olympic sport, art.*

Introduction

Fencing is a modern complex sport that in its current form has a history of about five centuries. Historical data reveal that fencing as a martial art or sport has been in existence for at least 3,500 years.

Fencing, or weapon fighting, as it is sometimes called, is one of the main Olympic sports, which was included in the Olympic Games program since the 1st Olympiad in 1896 in Athens and since then its presence in every Olympic organization has been ongoing.

Fencing is a sword-handling sport, practiced with three different styles of weapons, which are: fleuret, épée and sabre. It is known that each of the above weapons has its own style and an exclusive set of rules. The goal of every athlete is the same for all the weapons used, to hit his opponent without being hit. Fencing offers a comprehensive fitness for the entire body, as well as intellectual qualities, such as the sensation of the body in space, the neuromuscular coordination and the improvement of balance and rhythm.

First of all this sport is a hall sport governed by the philosophy of a match, during which each athlete tries to touch the opponent without being touched. The beginning of the art of fencing is lost in the mists of time, where fencing matches take place. Of great interest is its philosophy, technique as well as the way in which it is reflected, in the art of painting for example.

[*]Authors email: markarag1990@yahoo.co.uk , karabekou@gmail.com

Figure 1, Fencers

The history of the sport

The beginning of the art of sword-fighting is lost in the mists of time: 4000 BC. References of sword-fighting from the Egyptians. 2700 - 2200 BC.

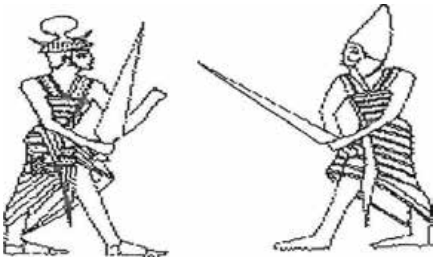


Figure 2, Egyptians fighting with swords

There is written evidence about fencing in China. 1200 BC. This is documented also by the performances with weapon fighters, fighting in the presence of a referee and judges. Both in Egypt and in Greece, for many years there had been the military class that trained in weapons; the swords at that time were double-edged. Characteristic are the duels between Menelaos and Paris as well as Hector and Ajax in the Iliad and the Odyssey.

In the middle ages have the appearance of protective iron uniforms which offered comprehensive coverage of the body, as the guns gradually evolved into large, heavy and quite sharp. The first special fencing schools were founded then and very quickly the sport was spread dramatically across Europe. Therefore, at the beginning of the 16th century we have the first weapon-fighting schools, the early writings from: Spanish, Italian and French weapon-fighting masters. The main purpose of those schools was to prepare the nobles, so that they can defend their honor in duels and not to take part in competitions. Thus, it gradually evolved into a modern sport.

Besides, it was the most popular method of dispute resolution. In 1474 AD for example, there is the first evidence of regulations in Spain. There is also evidence of recording technical data regarding the positions, lines and parries

back in 1530 AD. In 1567 AD the Academy of Arms was founded in Paris. In the 17th century appears in France a weapon lighter and more user-friendly for exercise (fleuret). Then we have the coverage of the face with a mask, while until then that had been considered feminine and offensive. Later appear the full details (in legitimate Encyclopedias) the secrets of the particular sport. That was probably the beginning of the creation of schools with characteristic differences from the Italians, Hungarians and French.

For a long time Italy, Hungary and France cultivated fencing in accordance with their own standards, which even today are considered among the greatest forces of world fencing. Over time, the Soviets and later the Germans, Amberger[1], having absorbed many elements of the above schools, exploited of both their physical qualifications, and temperament and psychosynthesis, creating their own schools respectively.[2]

Figure 3, Fencing lesson at a German School

The first legendary fencers

Classical fencing [3] focuses on national schools of the 19th and 20th century and the most famous are: the French and the Italian, from which arose modern fencing, which is also an Olympic sport. Even legendary names that have formulated modern fencing as we know it now, were proficient in classical fencing, such as Aldo Nadi who is considered the greatest swordsman of all times, who won in 1920 at the age of 21 years 3 gold medals in team fleuret, team épée, and team sabre, as well as a silver medal in individual sabre, and was a trainee at the Italian school of (classical) fencing, instructed by his father, Beppe Nadi.

Another great name in modern fencing was also Giuseppe Radaelli, who lived in

[1]**Amberger Johann Christophe** (1999), The Secret History of the Sword, Burbank Multi Media.

[2]**Pyrgos N. (1872)**, Oplomachiki. Fencing and spathaskia (Teaching Manual in the Military School). In Athens Press: Athens.

[3]https://medievalswordmanship.wordpress.com/2013/08/01/ .....

the 19th century, a Milanese fencer and student of the Italian school of fencing. He was also an instructor of cavalry and taught soldiers how to fight with the sabre in times of war. In fact he is especially known for his book "Istruzione per la Scherma de Sciabola e di Spada". In modern Greece, swordplay appeared after the national liberation struggles of 1821, as a course in the Military Academy, where the first master was the German F. Müller. Also a great teacher of the Military Academy was the gymnast N. Pyrgos, who in 1872 published a comprehensive book entitled "Swordplay-Fencing-Swordsmanship", where the secrets of traditional swordplay are analyzed. Leon Pyrgos won in fencing between sword masters in the Olympic Games in 1896, which were held in Athens.[4]

Chinese calligraphy and sword art

Calligraphy is another expression of the same fashion, another way to show what can be done with the movement of the sword.

Calligraphy and the art of sword are based on spirit. Calligraphy and fencing are based on the same principles and through calligraphy one can practice in fencing. The art of calligraphy comes from the soul, and so does fencing. The superior idea of fencing is to unite man and sword. The sword is in the heart when absent from the hand, you can hit the enemy from afar unarmed. Fencing and calligraphy are meditation exercises, inner transformation exercises leading man to develop an open conformation to his particular nature. [5]

Modern fencing as an Olympic sport

Fencing is one of the main Olympic sports and has been included in the Olympic Games program since the first modern Olympic Games held in Athens in 1896, while the women's events were included in the Olympic Games in Paris in 1924. The man who suggested to include fencing as an Olympic sport was Baron Pierre de Coubertin (reviver of the modern Olympic Games, also a swordsman). The valid range of the swordsman, is covered by an electrically conductive vest which, once hit by the tip of the sword of the opponent, closes an electrical circuit gives a signal to the device and activates a light and a buzzer, with the help of which the point is recorded. The sabre games are characterized by the speed and explosiveness of athletes, as the time required for each point rarely exceeds 7-8 seconds.[6]

[4]**Komitoudis Dimitrios** (1980), Introduction to Oplomachitiki, A textbook.

[5]http://www.nea-acropoli-athens.gr/ Chinise writing, retrieved on May 30, 2016, from http://www.nea-acropoli-athens.gr

[6]https://el.wikipedia.org/wiki/ Ξιφασκία_στους_Ολυμπιακούς_Αγώνες, retrieved on May 30, 2016, from Wikipedia

Fencing in art

Fencing has been and is more than a sport, it is in itself an art form, a timeless symbol of strength, pride and glory, a personal and unique form of expression. Is an integral part of the history of mankind from the battles of the past and the movies, until its modern athletic form![7]

Figure 4, Advertising poster of sabre matches in the city of Warsaw

Theater fencing

Fencing is the only Olympic sport that is taught to drama school students. The introduction of this course, is not associated with the finesse of fencing athletes, nor its theatricality as a sport. Neither is it related to the physical condition it requires, but also with the beautiful costumes of the athletes or their so careful and studied movements.

Playwriters, especially the senior ones, undertook the task of teaching the course in drama schools! Although the outcome of each duel on stage is specified by the script, each move must be performed with flair and grace to achieve the best result. The director determines the style of dueling in order to be integrated smoothly into the play and not steal impressions against it.

The choreography is taught step by step, initially at a very low speed, then the speed increases. Absolute speed is not usually preferable in a play, ¾ of it. It is good for the actors to be properly prepared and have enough experience, as even in its theatrical version, fencing can be dangerous. It has been proven that the audience show a negative reaction to violence on stage if there is an impression

[7]**Evangelista Nick** (1996), The Art and Science of Fencing Indianapolis, Master Press: Indiana.

that the actors are in danger. For example, if the face of an actor is traumatically injured, the audience will stop thinking his theatrical role and will deal with the physical integrity of the actor.

Some of the well-known classical plays which contain battles with swords: The history of European theater fencing has its roots in medieval theater, while it largely took its current form in Elizabethan drama. Richard Tarleton, who lived in the late 16th and early 17th century and was a member of the troupe of William Shakespeare[8] as well as the London Masters of Defense fencing company, is said to have been among the first choreographers of martial scenes in the modern sense of the term. In the late 19th and early 20th century, fencing masters who participated in those plays, started to process various techniques and experiment with various kinds of swords. Among them, the most famous was George Dubois from Paris, who enriched theater fencing with techniques of Roman gladiators and Renaissance swordsmen. Other major choreographers of the kind were Egerton Cosile and captain Alfred Hutton from London, who contributed to the revival of some techniques of the past in teaching the actors.[9]

Fencing in cinema

The cinema duels with swords contributed greatly to bring fencing into contact with modern man. In 1920 the silent film of Douglas Fairbanks, pioneer in the introduction of fencing choreographies in films, «The mark of Zorro» gave the world a new hero model, that of the intrepid and romantic swordsman.

Figure 5, Snapshot from one of the first films with the Spanish hero Zorro (the role of the actor Douglas Fairbanks).

[8]**Shakespeare William** (2002), Hamlet by Roma Gill.

[9]**Georgiadis Ch.** (2013), Theatrical fencing - The illusion of battle, Private Press: Athens.

The hero is repelling using the fifth parry the direct attack on the head of the Governor Ramon, sworn enemy of the hero, whilst attempting to protect his beloved Lolita.

Before the film of Zorro, fighting with swords in films consisted of completely amateurish and clumsy movements that had nothing to do with fencing. Fairbanks was the first to ask the advice of a fencing master in film production. Other similar films by the same producer followed, with the element of fencing remaining equally intense and exciting! Such were the Three Musketeers (1921), Don Quixote (1925), the Son of Zorro (1925), The Black Pirate (1926) and the Iron mask (1929). At the same time other famous actors of silent movies, like Ramon Navarro, Rudolph Valentino and John Barrymore often used the sword for the needs of the script of their own films, as swordplay were then in fashion, and all this under the instructions of Henry Uttenhove and Fred Caverns, who were the two most famous fencing masters in films at that time. Few were the long films of the 50s and 60s that included Fencing.

Fencing through painting

The association of fencing with painting is based on the use of the sword by people in the past, which was often a source of inspiration, but also a way of life for many painters of the time, who could not stay immune to social events like duels, and depicted sword and duels in an excellent way in several famous paintings. A characteristic example of a painter whose heavy impulses and love for sword duels directed his artistic style is Michelangelo Merisi Caravaggio (1571-1610)[10], while the consecutive wars and atrocities seen by Francisco Goya (1746 -1828)[11] marked his works and characterized him as a 'dark' painter, especially in his latest works.

Figure 6, The Cavalier 's Sword, by William A. BreaLspcare (1855-1914)

[10]**Lambert Nigel** (2004), Caravaggio.

[11]**Hagen Rosen Marie and Rainer Francisco Goya** (2004).

Fencing in sculpture

Another kind of artistic expression is sculpture, which is also influenced by fencing. Wanting to capture the individual the courage, strength, heroism and struggle against oppression, slavery and obscurantism, each artist found in the sword a very expressive element. It soon became a favorite subject, partly because of the difficulty in supporting the work - since the thin body of the sword should be worked enough to not break easily, but also to not destroy the overall image of the work. National heroes, local legends, even general ideas were carved in marble, stone, limestone, bronze and placed in places open to the world to admire the protagonists of the past and remember the sacrifices made. Typical examples in Greece and especially in Athens, are the statues of the king of the Greeks Constantine in Pedion tou Areos in the heart of Athens, and Theodoros Kolokotronis in front of the Old Parliament. Both on horseback, educated in large armies of Europe at that time, they could only be girded with their sabres with curved blades. Another sabre-bearer on horseback can found in Thessaloniki this time. It is the statue of Alexander the Great on the coastal route, carrying a cavalry sword of the era of the great commander, similar to that of the pedestrian Spartan Leonidas, in Thermopylae.

Fencing through the art of photography

There are many photographs having athletic fencing as their subject. These impressive scenes contribute both to the dissemination of the spectacle and the preservation of the aura of the sport. The athletes, in their attempt to surprise their opponent, perform spectacular moves, but also terribly difficult, which, however, give us wonderful photographic results (there is relevant material from the International Fencing Federation[12] and occasionally from various websites).[13]

Conclusion

Fencing is not only a sword-handling sport, but also an Olympic sport. We outlined the sport overall in art, recording various elements in painting, sculpture, photography. Fencing is governed by the gaming philosophy on the one hand, on the other hand it is of great interest in the philosophy of technique and art as well as the way in which the art of fencing itslef is imprinted in all its manifestations.

[12]FIE official site, retrieved on May 30, 2016, from www.fie.ch

[13]FIE official photo site, retrieved on May 30, 2016, from www.fencingphotos.com

II. Jurisprudence - Case law

A. Court of Arbitration for Sport

CAS 2015/A/3875 Football Association of Serbia v. UEFA ARBITRAL AWARD

rendered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President:
Mr. Massimo Coccia, *Professor and Attorney-at-law, Rome, Italy*

Arbitrators:
Mr. Efraim Barak, *Attorney-at-law, Tel-Aviv, Israel*

Dr. Martin Schimke, *Attorney-at-law, Düsseldorf, Germany*

Ad hoc clerk:
Mr. Francisco A. Larios, *Attorney-at-law, Florida, USA*

in the arbitration between
Football Association of Serbia
Represented by Dr. Marco Del Fabro and Mr. Roy Levy
Attorneys-at-law, Winterthur, Switzerland
- ***Appellant*** -

and

Union des Associations Européennes de Football (UEFA)
Represented by in-house counsel Dr. Emilio García Silvero and
Mr. Carlos Schneider, Nyon, Switzerland
- ***Respondent*** -

* * *

I. INTRODUCTION

1. The present case centers on incidents that occurred during a qualifying match, held in Belgrade on 14 October 2014, for the 2016 UEFA European Championship between the Serbian and Albanian national football teams. The appeal is brought forth by the Football Association of Serbia against a decision of the UEFA Appeals Body dated 2 December 2014 (hereinafter the "Appealed Decision") upholding the decision of the UEFA

Control, Ethics and Disciplinary Body (hereinafter also the "CEDB") dated 23 October 2014, which sanctioned the Football Association of Serbia with a deduction of three points in the 2016 UEFA European Championship qualifying round, two home matches behind closed doors and a fine of EUR 100,000.

II. THE PARTIES

2. The Appellant, the Football Association of Serbia (also referred to as the "Appellant" or the "FAS"), is the football governing body in the Republic of Serbia. It is a member of FIFA and UEFA and has its headquarters in Belgrade, Serbia.

3. The Respondent, the Union des Associations Européennes de Football (also referred to as "UEFA" or the "Respondent"), is the governing body of European football and one of the six continental confederations of FIFA. It has its headquarters in Nyon, Switzerland.

III. FACTUAL BACKGROUND

4. This section of the award sets out a brief summary of the main facts, as relevant and as established on the basis of the Parties' written submissions, the CAS file and the content of the hearing that took place on 16 April 2015. Additional facts are set out, where material, in other parts of this award.

5. On 14 October 2014, the national teams of Serbia and Albania played each other in a qualifying match for the 2016 UEFA European Championship (hereinafter the "Match"). The Match took place at the Partizan Stadium in Belgrade, Serbia. The Match referee was Mr. Martin Atkinson, from the United Kingdom (hereinafter also the "Match Referee").

6. A total of 25,550 spectators attended the Match. Due to an agreement reached between the FAS and the Football Association of Albania (hereinafter also the "FAA"), no Albanian supporters attended the Match. In fact, only approximately 100 individuals CAS 2015/A/3875 Football Association of Serbia v. UEFA P.3

linked to the FAA (staff, delegates, family, sponsors, etc.) attended the Match from the Albanian side.

7. Before the start of the Match, the director of international relations of the FAA

informed the UEFA delegate that its president had been hit by a piece of concrete as he stood on the sidelines in the tunnel corner of the stadium.

8. According to several reports and video clips, both during the pre-Match ceremony – in particular when the Albanian national anthem played – and throughout the Match, the Serbian supporters chanted xenophobic slogans including "*Ubi Shiptara*" (translated from Serbian to English as "*Kill the Albanians*").

9. It is undisputed by the Parties and confirmed by the official reports of the Match Referee and UEFA officials that prior to the 42nd minute of the Match, the Serbian supporters committed the following incidents:

- throwing a fire cracker onto the field from the section near the players' tunnel in minute 13;
- burning a NATO flag in minute 14;
- setting off two flares, one of which was thrown onto the field and landed by

the corner flag nearest to the players' tunnel in minute 15;
- using a laser pointer to disturb Albanian players in minute 24;
- throwing a number of flares and objects when the Albanian side attempted to take a corner kick in minute 35; and
- throwing two large lumps of rock towards the Albanian side's technical area in minute 38.

10. It is also undisputed by the Parties and confirmed by the same reports that, in minute 41 of the Match, a number of unknown Serbian supporters set off and threw a number of flares, one of which landed on the field and caused the Match Referee to stop play.

11. During this stoppage, a drone carrying a banner depicting the map of an area that is sometimes referred to as "Greater Albania" – an area said to comprise the territory of Albania along with various parts of Serbia, Montenegro, Macedonia and Northern Greece, as well as Kosovo, and considered to form the lost national homeland of Albanians – and showing several Albanian nationalistic symbols was seen to hover above the field. Upon spotting the drone, one of the Serbian players, Mr. Danko Lazović, alerted the Match Referee of the drone's presence. The Match stoppage continued as the drone hovered over the field.

12. Eventually, the drone began descending closer to the ground, until it was observed to come within reaching distance of a Serbian player, Mr. Stefan Mitrović, who reached the banner and began pulling the drone down by the cords from which the banner hung. CAS 2015/A/3875 Football Association of Serbia v. UEFA P.4 According to Mr. Mitrović, who testified at the hearing, his intention was only to take down the drone and hand it to the fourth official so that the Match could resume.

13. As soon as Mr. Mitrović grabbed the banner, two Albanian players, Mr. Andi Lila and Mr. Taulant Xhaka, were seen to approach him and take the banner from his hands. At this point a greater chaos erupted across the entire playing field.

14. The Serbian substitute players abandoned their bench and ran onto the field towards the commotion. One of them went straight to headbutt Mr. Xhaka in the back of the head.

15. As this was occurring, a number of Serbian supporters invaded the field. The exact number is unclear, as the video footage available in these proceedings does not allow the number to be ascertained with precision. The Appellant claims that about 15 Serbian supporters invaded the field, while the Respondent considers 50 to be a fair count.

16. One of the Serbian supporters who invaded the field was observed to grab a plastic chair (which appertained to one of the security stewards around the field), and to then run with it all the way to the rim of the center circle, and then use the chair to hit one of the Albanian players, Mr. Bekim Balaj, on the shoulder. This same Serbian supporter then attempted to tackle Mr. Balaj, but instead took down the Albanian captain, Mr. Lorik Cana, who had intervened, seemingly to prevent an escalation of the scuffle. As they fell to the ground, a security steward was seen to run towards them, and, with his fists seen to be clenched, to throw punches. It is disputed between the Parties, however, whether the punches were aimed at the Albanian player or the Serbian supporter. The Panel finds, nonetheless, that based on a close examination of the evidence before it, that the security steward's punches were intended to hit the Albanian player.

17. In other parts of the field of play, the following facts were observed (i) a Serbian supporter punched the Albanian player, Mr. Mergim Mavraj; (ii) a Serbian substitute

player punched the Albanian player, Mr. Ermir Lenjani, in the face; (iii) a Serbian substitute player punched the Albanian player, Mr. Orges Shehi; and (iv) a notorious Serbian supporter, Mr. Ivan Bogdanov, accompanied by other Serbian supporters, walked calmly around the field waving and clapping his hands to incite the crowd (Mr. Bogdanov is recognized as an individual who took center stage in, and even faced criminal charges for, the incidents that occurred in 2010 during the 2012 UEFA European Championship qualifier match between Italy and Serbia).

18. From the stands, the Serbian supporters were observed to throw objects, including chairs, at the Albanian side's bench.

CAS 2015/A/3875 Football Association of Serbia v. UEFA P.5

19. Throughout these events the Match stoppage continued. Due to the chaos and massive disorder, the Match Referee decided for the players' safety to instruct the players to head back into the locker rooms.

20. Following the Match Referee's instructions, the Albanian players ran towards the players' tunnel in order to exit the field. As they approached the tunnel, the Serbian supporters were seen to be throwing objects towards the Albanian players, including coins, bottles and chairs. At the entrance of the players' tunnel, the Albanian players were met by two Serbian supporters who physically attacked them with shoves, punches and kicks.

21. One of these two Serbian supporters, after attacking the Albanian players at the entrance of the tunnel, subsequently walked to the nearest corner flag and calmly sat down beside it. No security personnel approached him. He remained there until one of the Serbian players urged him to leave the field. As the supporter stood up, one of the security stewards was observed to walk right in front of him and to wave his arms up and down as though to encourage the crowd to chant louder. After the security steward passed, instead of returning to the stands, as the Serbian player had urged him to do so, the Serbian supporter attempted to enter the players' tunnel. A security steward who was inside the players' tunnel stopped him from doing so and finally escorted him off the field.

22. Once all players and officials returned to their respective dressing rooms, a crisis group meeting was held. It was attended by the Match Referee Mr. Atkinson, Mr. Harry Been (the UEFA Match Delegate), Mr. Vincent Egbers (the UEFA Security Officer), Mr. Lutz Michael Fröhlich (the referee observer), Mr. Zoran Laković (the General Secretary of the FAS), Mr. Aleksander Bošković (the Serbian national team manager), Mr. Armand Duka (the President of the FAA) and Mr. Milivoj Mirkov (the Security Officer of the FAS). During this time, according to the evidence before the Panel, the UEFA officials were apparently in constant dialogue with the UEFA Match Centre in Nyon (Switzerland), and in particular, with Mr. Kenny Scott (UEFA Consultant and Security Adviser).

23. According to the evidence before the Panel, the UEFA personnel at the UEFA Match Centre apparently encouraged the UEFA officials in the Belgrade stadium to try to resume the Match once safety was ensured and the UEFA officials adopted this view.

24. While the Match was suspended, the FAS security officials gave assurances that extra police forces and stewards were being sent into the stadium to control the unruly fans and increase the level of protection of the field of play.

CAS 2015/A/3875 Football Association of Serbia v. UEFA P.6

25. In the dressing rooms, the Match Referee and the UEFA delegate spoke with both national team captains and asked them whether they would be prepared to continue the

Match, to which the Albania captain, Mr. Cana, answered in the negative, declaring that his team was not physically and mentally prepared to restart the Match.

26. Thereafter, the Match Referee decided to abandon the Match.

IV. RELEVANT UEFA DISCIPLINARY REGULATIONS 2014

27. The following provisions of the UEFA Disciplinary Regulations, Edition 2014 (hereinafter "DR"), are relevant to this case:

28. Article 6 ("Disciplinary measures") provides:

"1 The following disciplinary measures may be imposed on member associations and clubs:

a) warning;

b) reprimand;

c) fine;

d) annulment of the result of a match;

e) order that a match be replayed;

f) deduction of points (for the current and/or a future competition);

g) order that a match be forfeited;

h) playing of a match behind closed doors;

i) full or partial stadium closure;

j) playing of a match in a third country;

k) withholding of revenues from a UEFA competition;

l) prohibition on registering new players in UEFA competitions;

m) restriction on the number of players that a club may register for participation in UEFA competitions;

n) disqualification from competitions in progress and/or exclusion from future competitions;

o) withdrawal of a title or award;

p) withdrawal of a licence;

q) community football service.

[…]

3 Fines must not be less than €100 or more than €1,000,000. In the case of individuals, a fine may not exceed €100,000.

4 The above-mentioned disciplinary measures may be combined."

29. Article 8 ("Responsibility") provides:

"A member association or club that is bound by a rule of conduct laid down in UEFA's Statutes or regulations may be subject to disciplinary measures and directives if such a rule is violated as a result of the conduct of one of its members, players, officials or supporters and any other person exercising a function on behalf CAS 2015/A/3875 Football Association of Serbia v. UEFA P.7 *of the member association or club concerned, even if the member association or the club concerned can prove the absence of any fault or negligence.*"

30. Article 14 ("Racism, other discriminatory conduct and propaganda") provides:

"1 Any person under the scope of Article 3 who insults the human dignity of a person or group of persons on whatever grounds, including skin colour, race, religion or ethnic

origin, incurs a suspension lasting at least ten matches or a specified period of time, or any other appropriate sanction.

2 If one or more of a member association or club's supporters engage in the

behaviour described in paragraph 1, the member association or club responsible is punished with a minimum of a partial stadium closure.

3 The following disciplinary measures apply in the event of recidivism:

a) a second offence is punished with one match played behind closed doors and a fine of € 50,000;

b) any subsequent offence is punished with more than one match behind closed doors, a stadium closure, the forfeiting of a match, the deduction of points or disqualification from the competition.

4 If the circumstances of the case require it, the competent disciplinary body may impose additional disciplinary measures on the member association or club responsible, such as the playing of one or more matches behind closed doors, a stadium closure, the forfeiting of a match, the deduction of points or disqualification from the competition.

5 If the match is suspended by the referee because of racist and/or discriminatory conduct, the match may be declared forfeit. […]."

31. Article 16 ("Order and security at UEFA competition matches") provides:

"1 Host associations and clubs are responsible for order and security both inside and around the stadium before, during and after matches. They are liable for incidents of any kind and may be subject to disciplinary measures and directives unless they can prove that they have not been negligent in any way in the organisation of the match.

2 However, all associations and clubs are liable for the following inappropriate behaviour on the part of their supporters and may be subject to disciplinary measures and directives even if they can prove the absence of any negligence in relation to the organisation of the match:

a) the invasion or attempted invasion of the field of play;

b) the throwing of objects;

c) the lighting of fireworks or any other objects;

d) the use of laser pointers or similar electronic devices;

CAS 2015/A/3875 Football Association of Serbia v. UEFA P.8

e) the use of gestures, words, objects or any other means to transmit any message that is not fit for a sports event, particularly messages that are of a political, ideological, religious, offensive or provocative nature;

f) acts of damage;

g) the disruption of national or competition anthems;

h) any other lack of order or discipline observed inside or around the stadium."

32. Article 17 ("General principles") provides:

"1 The competent disciplinary body determines the type and extent of the disciplinary measures to be imposed in accordance with the objective and subjective elements of the offence, taking account of both aggravating and mitigating circumstances. […]."

33. Article 18 ("Concurrent offences") provides:

"If the party charged has committed multiple offences, the disciplinary body takes the disciplinary measure to be imposed for the most serious of those offences and increases it accordingly."

34. Article 19 ("Recidivism") provides:

"1 Recidivism occurs if another offence of a similar nature is committed within:

[…]

d) five years of the previous offence in all other cases.

2 Recidivism counts as an aggravating circumstance."

35. Article 38 ("Official reports") provides:

"Facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided."

V. DECISION OF THE CONTROL, ETHICS AND DISCIPLINARY BODY

36. The CEDB found that the FAS committed the following offences:

– The setting off of fireworks in violation of Article 16 para. 2(c) DR;

– The throwing of objects in violation of Article 16 para. 2(b) DR;

– The use of laser devices in violation of Article 16 para. 2(d) DR;

– Crowd disturbances in violation of Article 16 para. 2(h) DR;

– A field invasion in violation of Article 16 para. 2(a) DR;

– Illicit chants in violation of Article 16 para. 2(e) DR; and

– Insufficient organisation in violation of Article 16 para. 1 DR.

CAS 2015/A/3875 Football Association of Serbia v. UEFA P.9

37. In determining the appropriate disciplinary measure for said violations, the CEDB took into consideration:

– the seriousness of the offences committed;

– the multiplicity of the offences committed;

– the FAS' poor disciplinary record;

– that due to the improper conduct of its supporters during the 2012 European Championship qualifier match between Italy and Serbia in 2010, UEFA sanctioned the FAS with a fine of EUR 120,000 and ordered it to refrain from ordering tickets for Serbian supporters for all away matches in that stage of the competition, as well as ordered the match forfeited by the FAS;

– the fact that stones and dangerous objects were thrown at the Albanian team's bench, putting at jeopardy their safety;

– the fact that a high number of supporters entered the field (including the criminal Ivan Bogdanov, who entered and left the field without any opposition whatsoever from security) despite there being approximately 4,000 policemen, security officers and stewards surrounding the field, which illustrates the poor security measures taken to protect the field of play;

– the fact that a supporter was able to hit an Albanian player with a plastic chair, placing him in great danger, which illustrates the poor security measures taken to protect the field of play;

– the fact that poor behaviour of the spectators greatly tarnished the image of UEFA and the world of football; and

– the behaviour of the stewards, particularly that the stewards were involved in a fight between players and supporters instead of trying to calm down the situation, which illustrates the negligent attitude of those responsible for guaranteeing safety at the Match, as well as the poor security measures taken to protect the field of play.

38. The CEDB concluded:

"*101. As regards the appropriate disciplinary measures, the* [CEDB] *deems that, in this particular case, the extent of such measures needs to fulfill two conditions: to punish the Association for being liable, strict and direct, for the occurrence of such despicable incidents and to impose those disciplinary measures that may lead to deter such incidents from happening again.*

[...]

107. First and foremost, the [CEDB] *deems that a situation in which security has been completely override*[n], *the integrity of players has been directly harmed and the game had been stopped as a consequence of the surge created by the* [FAS'] *supporters with the Albanian players and security representatives, merit the most serious punishment possible.*

CAS 2015/A/3875 Football Association of Serbia v. UEFA P.10

108. Briefly, the incidents occurred during the above mentioned match, the circumstances surrounding the conflict, such as the numerous security failures, and the previous records of the [FAS], *are of such magnitude that the alternatives offered to the* [CEDB] *in order to reach a balanced and adequate disciplinary measure are extremely limited, being the exclusion from the competition a legitimate and reasonable sanction.*

109. However, the [CEDB] *considers that to deduct the* [FAS] *three points (3) for the current 15th UEFA European Championship qualifying round is, as a first approach to the determination of an adequate disciplinary measure, a decent first step as to achieve the above aims, which shall certainly be accompanied with other sanctions aimed at balancing the damage provoked to the world of football, as well as to ensure the deterrent effect expected when imposing such measures.*

110. Bearing the above in mind, the [CEDB] *deeply doubts that in further matches to be played by the* [FAS] *as the host team such regretful attitudes won't happen again. It derives from the fact that some years ago, and only a few matches distance from the* [FAS] *A-team playing at UEFA level, incidents of the same nature and gravity occurred even with the same protagonists, as it has been the case for the criminal called Ivan Bogdanov.*

111. Subsequently, the [CEDB] *has no doubts in that additional disciplinary measures shall touch both the Association and the supporters.*

112. Therefore, the [CEDB] *deems that, apart from the exclusion of the competition which this UEFA disciplinary body is temped, but hesitates to take, and bearing in mind all the above circumstances, as well as the above considerations, the adequate additional disciplinary measures* [to the three-point deduction] *are: to order the* [FAS] *to play their next two (2) UEFA competition matches as host association behind closed doors, as well as to fine* [FAS] *€100'000.*"

39. In light of the above, the CEDB decided to (i) deduct the FAS three points for the current UEFA European Championship qualifiers; (ii) order it to play its next two UEFA competition matches as host association behind closed doors; and (iii) fine it EUR 100,000.

VI. DECISION OF THE UEFA APPEALS BODY

40. On 2 December 2014, the UEFA Appeals Body adopted the decision now in appeal before the CAS. On 22 December 2014, the same body issued the grounds for its decision.

41. The UEFA Appeals Body explained in the Appealed Decision that, since the FAS did not contest the order to play its next two UEFA competition matches as host CAS 2015/A/3875 Football Association of Serbia v. UEFA P.11 association behind closed doors, the issue before it was whether the CEDB respected the regulations and the principle of proportionality or if it abused its discretionary power in deducting three points and imposing a fine of EUR 100,000 for the infringements committed during the Match.

42. After discussing the applicable legal framework, the UEFA Appeals Body confirmed that the FAS committed the following offences:

– Illicit chants in violation of Article 16 para. 2(e) DR, citing specifically that the FARE report and the video footage evidences that the Serbian supporters chanted "*Ubi Shiptara*" ("*Kill the Albanians*");

– Use of a laser device in violation of Article 16 para. 2(d) DR;

– Throwing of objects and lighting fireworks in violation of Article 16 para. 2(b) and (c) DR, respectively;

– Insufficient organisation in violation of Article 16 para. 1 DR. The UEFA Appeals Body held that, as established by the UEFA official reports and the CEDB decision, several security and organisation failures of the FAS permitted a number of supporters to invade the field and attack the Albanian players. The UEFA Appeals Body noted that on top of that a known criminal, Mr. Ivan Bogdanov, freely and without any opposition entered and left the field, illustrating the poor security measures taken to protect the field of play; and – Field invasion in violation of Article 16 para. 2(a) DR. The UEFA Appeals Body stressed that a field invasion is fundamentally unacceptable and rejected the FAS' allegation that the invasion was linked to the appearance of the drone carrying the banner with the map of "Greater Albania" and to the subsequent grabbing of the banner by the Albanian players. To the UEFA Appeals Body, the FAS' allegation was unsupported by the video footage of the Match, which shows that even before the appearance of the drone the Match Referee had already interrupted the Match due to the behaviour of the Serbian supporters.

43. The UEFA Appeals Body subsequently assessed whether aggravating and mitigating circumstances existed.

44. The UEFA Appeals Body considered the following as aggravating circumstances: (i) the throwing of rocks at the Albanian team's bench; (ii) the fact that Albanian players were actually attacked; (iii) the "*appalling*" disciplinary record over the past four years of the FAS, with particular reference to the 2012 European Championship qualifiers match between Italy and Serbia in Genoa in 2010; (iv) the fact that the Match Referee had to interrupt the Match in the first place due to flares and other objects being thrown by the Serbian supporters onto the field.

45. With regards to mitigating circumstances, the UEFA Appeals Body found as follows:

CAS 2015/A/3875 Football Association of Serbia v. UEFA P.12 (i) First, the alleged provocation of the drone carrying the banner and the subsequent grabbing of the banner was not an exonerating or mitigating circumstance. According to the UEFA Appeals Body, "*before the banner appeared, the referee interrupted the match in order to clear the pitch, since flares had been ignited and thrown onto the pitch and supporters were performing offensive chants and throwing missiles. This proves that the home supporters' misbehaviour was not provoked by the drone or the banner. Even if the Albanian supporters' displaying of the banner was clearly reprehensible, and the Control, Ethics and Disciplinary Body has already quite rightly, held the Football Association of Albania responsible for their conduct. However, this does not entitle the Serbian supporters to take justice into their own hands by invading the pitch and attacking the Albanian players. It is important to remember that the referee, who held full authority for matters on the pitch, was the only person empowered to take a decision, and that all other parties were obliged to submit to his authority and respect it under all circumstances. The presence of the banner cannot constitute an exonerating or mitigating factor for such misconduct on the part of the Serbian supporters (…)*".

(ii) Second, the alleged safety measures taken by the FAS were not a mitigating circumstance; the UEFA Appeals Body so reasoned: "*the measures allegedly taken by the* [FAS] *to guarantee safety, although laudable, form part of the general duties of any UEFA member association participating in UEFA competitions. In the case at hand, the* [FAS] *appears however to have failed in taking some of the security measures expected by UEFA from an organizing federation. The training of the steward seems to have been insufficient as a steward, who was supposed to be well trained (…) instigated supporters to behave in a bad manner. However, how can a steward who is supposed to be well trained incite supporters to behave in such a way? How can a well trained steward attack an opposing player? It is thus legitimate to agree with the Control, Ethics and Disciplinary Body's conclusion that there was a lack of organisation on the part of the organiser*."

46. In light of the above, the UEFA Appeals Body concluded: "… *the* [CEDB] *correctly interpreted the applicable regulations and case law in the case at hand. It took account of all the facts in proper proportion. The seriousness of the offences committed by the home supporters, i.e. illicit chants, throwing of missiles and fireworks, pitch invasion and other security breaches, warranted a severe penalty. In fact, considering the very poor disciplinary record of the* [FAS]*, the punishment seems rather lenient. There is certainly no reason to amend the* [CEDB]*'s decision*."

CAS 2015/A/3875 Football Association of Serbia v. UEFA P.13

47. As a result, the UEFA Appeals Body upheld the decision of the CEDB of 23 October 2014 to deduct from the FAS three points in the 2016 UEFA European Championship qualifiers and to fine it EUR 100,000.

IX. JURISDICTION AND APPLICABLE LAW

IX.1 *Jurisdiction*

84. The jurisdiction of the CAS, which is not disputed, derives from Article R47 of the CAS Code and Article 62 para. 1 of the UEFA Statutes (Edition 2014).

85. Article R47 of the CAS Code stipulates as follows: "*An appeal against the decision of a federation, association or sports-related body may be filed with the CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies* CAS 2015/A/3875 Football Association of Serbia v. UEFA P.30 *available to him prior to the appeal, in accordance with the statutes or regulations of that body.*"

86. Article 62 para. 1 of the UEFA Statutes provides that "[a]*ny decision taken by a UEFA organ may be disputed exclusively before the CAS in its capacity as an appeals arbitration body, to the exclusion of any ordinary court or any other court of arbitration*".

87. The Respondent did not raise any jurisdictional objection and both Parties confirmed the jurisdiction of the CAS by signing the Order of Procedure.

88. It follows that the CAS has jurisdiction to decide on the present dispute.

IX.2 *Applicable Law*

89. According to Article 63 para. 3 of the UEFA Statutes (2014 edition), *"…proceedings before the CAS shall take place in accordance with the Code of Sports-related Arbitration of the CAS*".

90. Pursuant to Article R58 of the CAS Code, in an appeal arbitration procedure before the CAS, the "*Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision*".

91. According to Article 5 of the UEFA Disciplinary Regulations (2014 edition), "*the disciplinary bodies base their decisions on UEFA's Statutes, regulations, directives and decisions, as well as the Laws of the Game and Swiss law and any other law that the competent disciplinary body considers applicable*".

92. Therefore, the applicable law under which the Panel will decide the present dispute is to be found in the UEFA regulations, including the UEFA Disciplinary Regulations (2014 edition) and, subsidiarily, Swiss law.

X. DISCUSSION ON THE MERITS

93. The Appellant does not contest that it has committed several infringements at the Match, including the use of a laser device (Article 16, para. 2(d) DR), the letting off of fireworks (Article 16 para. 2(c) DR), the throwing of objects (Article 16 para. 2(b) CAS 2015/A/3875 Football Association of Serbia v. UEFA P.31 DR), crowd disturbances (Article 16 para. 2(h) DR), illicit chants (Article 16 para. 2(e) DR) and a field invasion (Article 16 para. 2(a) DR). Nor does the Appellant deny responsibility for said infringements, it having correctly accepted that the principle of strict liability applies pursuant to Article 16 para. 2 DR, which reads in the relevant part "*all associations (…) are liable for the (…) inappropriate behaviour on the part of their supporters and may be subject to disciplinary measures and directives even if they can prove the absence of any negligence in relation to the organisation of the match*" (emphasis added).

94. The Appellant also does not contest the sanction of two matches played behind

closed doors, which it accepts for the incidents that happened before the 42nd minute, when the drone carrying the Albanian nationalistic symbols appeared (see *supra* at para. 11). In this connection, the Respondent objects to the Appellant's apportionment of the sanctions between the incidents that occurred prior to the appearance of the drone and those that occurred thereafter and draws attention to the fact that neither the Appealed Decision nor the CEDB decision made such a distinction in imposing the sanctions.

95. What the Appellant does contest is (A) the infringement of Article 16 para. 1 DR for insufficient organisation and (B) the proportionality of the sanctions of a three-point deduction and EUR 100,000 fine in relation to the incidents that occurred after the appearance of the drone.

96. Therefore, the issue before the Panel is not to determine whether the Appellant is guilty of infringing Articles 16 para. 2(a), (b), (c), (d), (e) and (h) DR, which is undisputed by the Appellant and thus need not be analyzed, but rather only to determine (A) whether the Appellant violated Article 16 para. 1 DR for insufficient organisation and (B) whether the sanctions imposed in the Appealed Decision are disproportionate. In this regard, the Panel bears in mind the longstanding CAS jurisprudence, according to which a CAS panel does not revise the measure of a disciplinary sanction unless it is evidently and grossly disproportionate (see *infra* at para. 108 *et seq.*).

97. Also in connection with the assessment of the sanction, on a preliminary basis, the Panel notes that the Appellant has complained that the Appealed Decision did not distinguish between the different sanctions in order to attribute them to some specific incidents prior to or after the appearance of the drone. In the Panel's view, to appraise and inflict an overall punishment (composed of several types of sanctions set forth by the UEFA rules, such as the deduction of points, the matches behind closed doors and the pecuniary sanction) for everything that happened during the Match is wholly legitimate under Articles 17 and 18 DR, as these provisions include no obligation to state which specific sanction corresponds to which misbehaviour. On the basis of the CEDB decision and the Appealed Decision, it was perfectly possible for the Appellant CAS 2015/A/3875 Football Association of Serbia v. UEFA P.32 to examine the contested misbehaviour and challenge the sanctions imposed by UEFA, as was indeed very competently done before the CAS by the Appellant's counsel. The Panel thus rejects this complaint of the Appellant.

X.1 ***Appellant violated Article 16 para. 1 DR for insufficient organisation***

98. Pursuant to Article 16 para. 1 DR, the host association – here the Appellant – is responsible for order and security inside the stadium before, during and after a match and is liable for incidents of any kind and thus subject to disciplinary sanctions, unless it can prove lack of any negligence in the organisation of the match (see *supra* at para. 31).

99. Thus, in order for there to be a violation of Article 16 para. 1 DR, the Panel must first assess whether there occurred any incidents related to order and security at the Match, which would be imputable to the Appellant, and, second, if such incidents did occur, whether the Appellant has proven that it lacked any negligence in the organisation of the Match, which would absolve it of liability.

100. With respect to the first issue before the Panel, it is quite clear that several incidents did occur during the Match that are violations of Article 16 para. 1 DR. The Panel refers to the fact that:

(i) a number of Serbian supporters were able, with seemingly relative ease, to invade the field of play and to attack the Albanian players. While the number of invaders cannot be ascertained with precision from the video footage of the Match, the Panel finds that, at minimum, as the Appellant has admitted, 15 supporters were able to invade the field of play, which to the Panel is a considerable amount.

(ii) the security stewards took a lackadaisical approach and failed to react appropriately to the incidents occurring after the 42nd minute of the Match. In this regard, the Panel must make reference to the following: (i) one security steward was involved in a fight between a Serbian supporter and the Albanian captain Mr. Cana and even threw punches at Mr. Cana; (ii) another security steward waved his hands up and down as though to pump up the crowd; (iii) security stewards did not prevent Serbian supporters from grabbing plastic chairs appertaining to the stewards and using them against Albanian players; (iv) security stewards failed to immediately remove a Serbian supporter who, after having attacked the Albanian players at the entrance of the players' tunnel as they exited the field, was left to calmly walk to the corner flag and sit down for some time, his removal coming only after having subsequently attempted to enter into the players' tunnel; and (v) CAS 2015/A/3875 Football Association of Serbia v. UEFA P.33 security stewards permitted Mr. Bogdanov – a well-known hooligan with a criminal record – accompanied by other Serbian supporters, to freely walk around the field.

101. As such, as previously mentioned, the Appellant must be held to have violated Article 16 para. 1 DR unless it can prove that it lacked any negligence in the organisation of the Match.

102. The Panel finds, however, that the Appellant has failed to establish that it lacked any negligence in the organisation of the Match, particularly in consideration of the fact –

well-known to the Appellant, as acknowledged in its submissions – that this was a high-risk match in light of the historical hostility between Albanians and Serbians, particularly exacerbated by the notorious political events concerning Kosovo. In fact, the Panel finds, in relation to the risks specifically posed by the Match, (i) that the planned security measures were inadequate for the Match and (ii) that the security stewards, judging by the fact that they were part of the problem rather than part of the solution, were not sufficiently well-trained.

103. Regarding point (i) above, the Panel agrees, and history has proven, that field invasions and attacks on players are indeed avoidable. However, the security measures the Appellant took to avoid such incidents from occurring during the Match were inadequate. First of all, the Panel observes that in the case at hand the Appellant itself has confirmed that 947 out of the 1,200 stewards available were deployed for the Match, meaning that 253 stewards were left undeployed even though they could have been used. Second, the Panel observes the Appellant has confirmed that during the first half of the Match, most of the security stewards and the police officers deployed were not even stationed inside the stadium, but rather outside. In fact, only 109 out of the deployed 947 security stewards and 210 out of the deployed 4,000 police officers (including riot police) actually surrounded the field at the beginning of the Match. It was not until after the incidents of the 42nd minute of the Match that additional police officers (including riot police) and 210 more security stewards were sent in as reinforcement. According to the declarations of its own representatives, the Appellant, with these additional security

stewards and police officers, would have been able to ensure order and security until the end of the Match had the Match Referee not abandoned it. For the Panel, this is a confirmation that the number of security personnel deployed for the Match and stationed inside the stadium were insufficient, and, thus, that the planned security measures were inadequate for the Match. Therefore, in the absence of evidence to the contrary, the Panel finds that the Appellant has failed to establish that there was a complete lack of negligence on its part with respect to the adequacy of the planned security measures.
CAS 2015/A/3875 Football Association of Serbia v. UEFA P.34

104. Regarding point (ii) above, the Panel is of the opinion that the Appellant has not provided convincing exculpatory proof that the security stewards were adequately welltrained.

105. The Panel finds the training of security stewards paramount given that security measures cannot be assessed solely on a quantitative level and in absolute terms (which in any case the Panel declared to be insufficient in this case), but also on organisation and effectiveness of the security measures, as well as their adequacy in relation to the specific match at stake.

106. The Panel finds that the testimony of Mr. Pantić on the adequacy of the security stewards' training was not sufficiently persuasive given that he had a self-serving interest in not being blamed for the incidents occurring and, thus, in maintaining that the hiring, selection and training of the security stewards was handled professionally. In the Panel's opinion, some objective evidence on this issue is missing and should have been submitted to the record by the Appellant, such as documents or testimony by non-interested parties explaining/confirming, *inter alia*, what standards the security stewards were required to meet in order to be employed, that they were regularly trained, that their criminal records were checked before being employed, that any possible affiliations to violent fan clubs were investigated, that they had not been previously involved in stadium or political incidents and that they were not subject to any stadium bans. Bearing in mind this lack of evidence, and with the blatant misconducts of some security stewards in mind (see *supra* at para. 100(ii)), the Panel is not convinced the Appellant lacked any negligence with respect to the training of the security stewards.

107. Having determined that the Appellant failed to establish that it lacked any negligence in the organisation of the Match, the Panel holds that the Respondent has infringed Article 16 para. 1 DR and is subject to disciplinary measures for that infringement.

X.2 *The Appealed Decision is not evidently and grossly disproportionate*

108. According to well-established CAS jurisprudence, even though CAS panels retain the full power to review the factual and legal aspects involved in a disciplinary dispute, they must exert self-restraint in reviewing the level of sanctions imposed by a disciplinary body; accordingly, CAS panels should reassess sanctions only if they are evidently and grossly disproportionate to the offence:

"[t]*he measure of the sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rule can be reviewed only when the sanction is evidently and grossly disproportionate to the offence*" (CAS 2012/A/2762; CAS 2013/A/3139; CAS 2009/A/811-844).
CAS 2015/A/3875 Football Association of Serbia v. UEFA P.35

109. Further, the CAS has held as follows:

"*Far from excluding, or limiting, the power of a CAS panel to review the facts and the law involved in the dispute heard (pursuant to Article R57 of the Code), such indication only means that a CAS panel "would not easily 'tinker' with a wellreasoned sanction […]". Therefore, a panel "would naturally […] pay respect to a fully reasoned and well-evidenced decision […] in pursuit of a legitimate and explicit policy". In other words, this Panel does not consider warranted, nor proper, to interfere with the Decision, to slightly adjust it*" (CAS 2011/A/2645, with reference to CAS 2011/A/2518 and CAS 2010/A/2283, citations omitted).

110. In the present case, the Appellant does not deny that some sanction is appropriate for the incidents that occurred at the Match; it merely requests the CAS to review the measure of the sanctions imposed in the Appealed Decision. The Appellant argues that the sanctions are grossly and evidently disproportionate given the Appealed Decision purportedly (i) failed to take into account exonerating and mitigating circumstances and (ii) wrongly considered a few incidents as aggravating factors.

111. The Panel first turns its attention to the legal framework for assessing the proportionality of a sanction based on the applicable UEFA Disciplinary Regulations and notes the following.

112. The CEDB and the UEFA Appeals Body have full discretionary power when it comes to sanctioning. They must, nevertheless, in determining the disciplinary measure to be imposed, consider the objective and subjective elements of an offence and take into account the aggravating and mitigating circumstances (see Article 17 DR *supra* at para. 32).

113. In case of multiple offences, the CEDB and the UEFA Appeals Body take the disciplinary measure to be imposed for the most serious of those offences and increase it accordingly (see Article 18 DR *supra* at para. 33).

114. Recidivism, which occurs if another offence of a similar nature is committed within five years of a previous offence, counts as an aggravating factor (see Article 19(d) DR *supra* at para. 34).

115. Among the disciplinary measures that may be imposed on member associations for the infringements committed are a fine, the playing of a match behind closed doors, the deduction of points for the current and/or future competition, and the disqualification from the competition in progress and/or exclusion from future competitions (see Article 6 DR *supra* at para. 28).

116. Here, it is undisputed that the Appellant did violate Articles 16 para. 2(a), (b), (c), (d), (e) and (h) DR for a field invasion, the throwing of objects, the setting off of fireworks, CAS 2015/A/3875 Football Association of Serbia v. UEFA P.36 the use of laser devices, illicit chants and crowd disturbances, respectively. Further, as the Panel established in the preceding section of this award, the Appellant also infringed Article 16 para. 1 DR for insufficient organisation.

117. As just mentioned, in determining the disciplinary sanction for said infringements, mitigating and aggravating circumstances, if any, must be taken into account pursuant to Article 17 DR. The Panel will therefore assess whether there are any mitigating or aggravating circumstances that should have been considered by the UEFA Appeals Body.

118. The Panel finds that there is only one applicable mitigating circumstance, consisting in the fact that UEFA showed some degree of unwariness in dealing with such a high-risk match.

119. In fact, UEFA is not totally removed from what occurred at the Match. The Panel draws attention to the fact that (i) UEFA seems to have somewhat underestimated, when drawing the qualifying groups, the high risks posed by a match between Serbia and Albania, and (ii) UEFA failed to raise any objections as to the Serbian security measures prior to the Match (indeed, no report by a UEFA representative was submitted to the record indicating that, prior to the Match, UEFA believed the security measures to be implemented on match day would be inadequate). That said, the Panel does not consider UEFA as jointly responsible for what occurred at the Match, as, ultimately, the duty to ensure security fell on the home association as per the relevant UEFA regulations, namely Article 16 DR.

120. On the other hand, the Panel does not consider as a mitigating circumstance the fact that the Appellant took certain security measures, arranging for the presence of 4,000 police officers and 947 stewards at the Match. To be sure, the Panel recognizes that in CAS 2013/A/3139 it was held that while the taking of certain security measures and arranging for the presence of a certain number of security personnel inside and around the stadium are circumstances that cannot serve as a ground for excuse or exculpation of a club, they "*may however be taken into account in the determination of the proportionality of the sanction*" (see 2013/A/3139 at para. 55 and 126). The Panel finds that the applicability of said circumstances as a mitigating circumstance, in light of the operative word "*may*", is not automatic; rather the Panel must look to the particularities of each case to determine their potential applicability. In doing so here, the Panel considers that the security measures taken by the Appellant in the present case do not warrant serving as a mitigating circumstance for three reasons. First, the Panel considers that the provision of security is a standard duty of home teams (be it clubs or national teams) and, as such, should not easily be considered as a mitigating factor. Second, the Panel must point out that, even if this was the highest level ever of security CAS 2015/A/3875 Football Association of Serbia v. UEFA P.37 at a football match in the Partizan stadium, the security forces lacked considerably in organisation and effectiveness, not to mention that several stewards proved to be unfit for the job during the course of the Match (cf. *supra* at paras. 100(ii) and 106). Third, as already remarked (see *supra* at para. 107), the fact itself that after the field invasion and the suspension of the Match many police forces were deployed inside the stadium (and in particular in the stands) and would have been supposedly able, as alleged by the FAS representatives, to ensure full order and security for the rest of the Match, demonstrates that the original deployment of those forces was inadequately planned and implemented.

121. The Panel also rejects that the appearance of the drone carrying a banner depicting Albanian nationalistic symbols can be considered as an exonerating or mitigating circumstance. It is obvious that the appearance of the drone, as well as the subsequent Albanian players' snatching of the banner from Mr. Mitrović, had some influence in the commotion that occurred within the stadium after the 42nd minute of the Match. However, the Panel does not see this as a "*provocation*" that, in legal terms, might help the Appellant's case, because (i) when the fans of both teams are present in the stands – as normally occurs in national teams' matches – it is normal that each group of fans is

forced to witness the showing of the other fans' national and even nationalistic symbols, and (ii) players' brawls are unfortunately not exceptional in football matches.

122. In this connection, the Panel notes, first, that while the appearance of the drone was indeed unforeseeable, the same cannot be said about all of the incidents that preceded and ensued it, including the particularly brutal crowd chants, the throwing of dangerous objects from the stands, the abandonment of the bench by the Serbian substitutes and their confrontation with Albanian players, the invasion of the field by Serbian supporters, the attack of the Albanian players by the Serbian supporters and the consequent Match Referee's interruption of the Match and, in short, the inacceptable general commotion in the stadium. All such incidents were absolutely foreseeable to the Appellant and could have occurred with or without the appearance of the drone. In fact, these are the exact kind of incidents that are typically at risk to occur during the course of a football match of high risk and for which an association must be prepared in coordination with the governmental and local authorities.

123. Second, the Panel does not accept that the drone and/or Albanian players' snatching of the banner from Mr. Mitrović was the sole catalyst for all the incidents occurring after the 42nd minute of the Match. The Panel is of the view that it was rather the actions of some Serbian players, namely the substitutes' abandonment of the bench and confrontation with the Albanian players, which played a considerable role in provoking all of the incidents occurring after the 42nd minute of the Match. It cannot be ignored, moreover, that while a fracas between the competing teams is unfortunately a relatively CAS 2015/A/3875 Football Association of Serbia v. UEFA P.38 recurrent occurrence, an invasion of the field and the attacking of players by a nonnegligible number of violent supporters is the most serious and despicable of incidents, given that it can put at risk the players' and refereeing team's safety, and even their lives.

124. The Panel also finds that there are two very significant aggravating factors applicable, which were correctly considered by the UEFA Appeals Body.

125. The first of the two aggravating circumstances is that under Article 19(d) DR the Appellant is a recidivist. Indeed, in the previous five years the Appellant has been sanctioned for offences of a similar nature six times, three in connection with matches of the senior national team and three of the U-21 team. The most notable is the UEFA 2012 European Championship qualifiers match between Italy and Serbia of 2010, in which UEFA sanctioned the FAS with a forfeit of that match by the score of 0:3, two matches behind closed doors (one under probation), the prohibition to order tickets for Serbian supporters for any away matches of the senior national team during the qualifying stages of that competition, and a fine of EUR 120,000 for having committed the following infringements: the throwing of objects, the setting off/throwing of fireworks, the displaying of banners with forbidden content, the setting of an Albanian flag on fire, an attempt to invade the field, and acts of damage. The Panel observes that the incidents in that match, while serious, were not nearly as severe as those which occurred in the Match. The Panel makes specific reference to the fact that in the Italy v. Serbia match of 2010 there was not an invasion of the field nor the attack of players by supporters, which is a considerable and grave distinction. As such, the sanction imposed in the Appealed Decision (or even disqualification and/or exclusion as discussed *infra* at para. 127) is in the Panel's view "*a logical further step taken by UEFA in light of the range of sanctions at its disposal*" pursuant to Article 6 DR (see CAS 2013/A/3139).

126. The second aggravating circumstance is that the incidents that occurred at the Match were of a severe nature and, as already remarked, posed a very serious threat to the safety of the players and the refereeing crew. The Panel refers namely to the field invasion of a considerable number of Serbian spectators (at least 15) and the attack of Albanian players by Serbian supporters. The Panel finds particularly severe and worrisome that some of the Serbian supporters who invaded the field (both immediately after the confrontation between the Serbian and Albanian players and also at the moment the Albanian players exited the field) were able, without any appreciable resistance from the security personnel, to reach the players and even attack them aggressively by tackling and throwing punches, and that one even managed to grab a chair and use it to hit one of the Albanian players on the shoulder. It is only by sheer good fortune that the consequences of the attacks were not far worse. The Panel CAS 2015/A/3875 Football Association of Serbia v. UEFA P.39 envisions, for instance, a scenario in which the Serbian supporters who invaded the field could have been armed with switchblades or other dangerous weapons that could have led to the permanent injury or even fatality of one of the Albanian players or, under different circumstances (e.g., if there had been a penalty kick awarded against the home team), of the refereeing crew. This is not an implausible scenario, considering that the Appellant has admitted that objects could have been sneaked into the stadium through concealment in body cavities. In any case, even the tackles, punches and the chair shot, if done with sufficient force and in the right place, not to mention the throwing of rocks, chairs, flares and other dangerous objects, all of which actually occurred at the Match, could have lead to severe, and conceivably fatal, injuries of the Albanian players.

127. The Panel finds that the actions perpetrated by the Serbian supporters are intolerable (as acknowledged by the Appellant itself) and that, accordingly, it would be entirely appropriate and proportionate to apply much harsher sanctions, such as the loss of the Match and the disqualification from the current UEFA European Championship competition pursuant to Article 6, letters g and n, DR, given the multiplicity of infringements, the status of the Appellant as a recidivist and the seriousness of the offences committed, especially those that put at serious risk the safety of the players and the refereeing crew. The Panel observes that the CEDB was in fact tempted "*to apply the harshest sanction possible, which is the exclusion from competition*" and that the UEFA Appeals Body considered the CEDB sanctions to be "*rather lenient*". In the Panel's view, the mentioned mitigating circumstance (see *supra* at para. 118 *et seq.*) is, by far, insufficient to reduce what the Panel would virtually consider as the appropriate sanction – no less than the disqualification from the current UEFA competition. Accordingly, the Panel finds that the sanctions actually imposed in the Appealed Decision – a three-point deduction, two matches played behind closed doors and a fine of EUR 100,000 – are lenient and, *a fortiori*, not evidently and grossly disproportionate.

128. Further, the Panel finds that the sanctions imposed on the Appellant in the Appealed Decision are not disproportionate, and even too lenient, when compared with previous UEFA cases. The cases the Appellant cites to establish a favourable comparison – Italy v. Croatia of 16 November 2014, Bulgaria v. Croatia of 10 October 2014, Romania v. Hungary of 11 October 2014 and FC Basel and FC Real Madrid of 26 November 2014 – are not analogous, as none of them dealt with a considerable number of support-

ers invading the field and attacking the players with tackles, punches and even a chair. This is not a negligible distinction, but rather puts the case at hand in a far more serious category deserving of much harsher sanctions. As for the comparison with the CAF disciplinary case in connection with the Equatorial Guinea v. Ghana match, the Panel CAS 2015/A/3875 Football Association of Serbia v. UEFA P.40 finds it completely irrelevant, as it was rendered by a distinct disciplinary body of another confederation under other rules, regulations, jurisdiction and jurisprudence.

129. Further, the Panel rejects the Appellant's request to have the three-point deduction suspended. To be sure, Article 20 DR stipulates that all disciplinary measures, with the exception of warnings, reprimands, bans on all football-related activities and disciplinary measures related to match fixing, bribery, and corruption, may be suspended. However, given that in the Panel's view even disqualification from the current UEFA competition or, at the very least, the loss of the Match, would have been an appropriate sanction, there is no reason to suspend the three-point deduction.

130. Finally, the Panel remarks that this decision should not be taken as a rebuke of the current executives, staff and players of the FAS. They are in the very unfortunate situation of having to deal, without any fault of their own, (i) with a portion of their supporters that ranks among the most dangerous groups of hooligans in today's European football, (ii) with the absence of State legislation – as alleged by the Appellant and not denied by the Respondent – which could allow the FAS on a preventive basis to not admit into the stadium potentially violent supporters, and (iii) with the consequences of an explosive political situation that has plagued the Balkans for some time, in particular in the last couple of decades. However, the principle of strict liability for supporters' misbehaviour – whose lawfulness under Swiss law has not been contested by the Appellant and has been endorsed by CAS jurisprudence (see CAS 2013/A/3094 and the awards quoted therein) – is a fundamental facet of the current football regulatory framework and one of the few legal tools that football authorities have at their disposal to deter hooliganism and, more in general, supporters' improper conduct. Accordingly, the Panel has considerable sympathy for FAS executives, staff and players, as well as for the highly competent defence put in place by the Appellant's counsel, but cannot avoid confirming the sanction imposed by UEFA on their association.

XI. COSTS

131. Since this appeal is brought against a disciplinary decision issued by an international sports-body, pursuant to Article R65.1 and 2 of the CAS Code, the proceedings are free of charge, except for the Court Office Fee, which the Appellant has already paid and is retained by the CAS.

132. For the awarding of legal fees and expenses the Panel turns to Article 65.3 of the CAS Code, which stipulates as follows: "*Each party shall pay for the costs of its own witnesses, experts and interpreters. In the arbitral award, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses* CAS 2015/A/3875 Football Association of Serbia v. UEFA P.41 *incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and the outcome of the proceedings, as well as the conduct and financial resources of the parties.*"

133. In exercising its discretion with regards to legal fees and expenses, the Panel holds as follows. Considering that the Respondent did not resort to an external counsel, no contribution for legal fees must be granted in its favour. That said, the Panel deems it fair and appropriate to hold the Appellant responsible for contributing CHF 1,000 towards the Respondent's expenses incurred in connection with these proceedings.
CAS 2015/A/3875 Football Association of Serbia v. UEFA P.42

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed on 30 December 2014 by the Football Association of Serbia against the decision adopted on 2 December 2014 by the UEFA Appeals Body is dismissed in its entirety.

2. The Football Association of Serbia is ordered to contribute to the expenses incurred by UEFA in connection with these proceedings in the amount of CHF 1,000 (one thousand Swiss Francs).

3. All other or further requests or motions submitted by the Parties are dismissed.

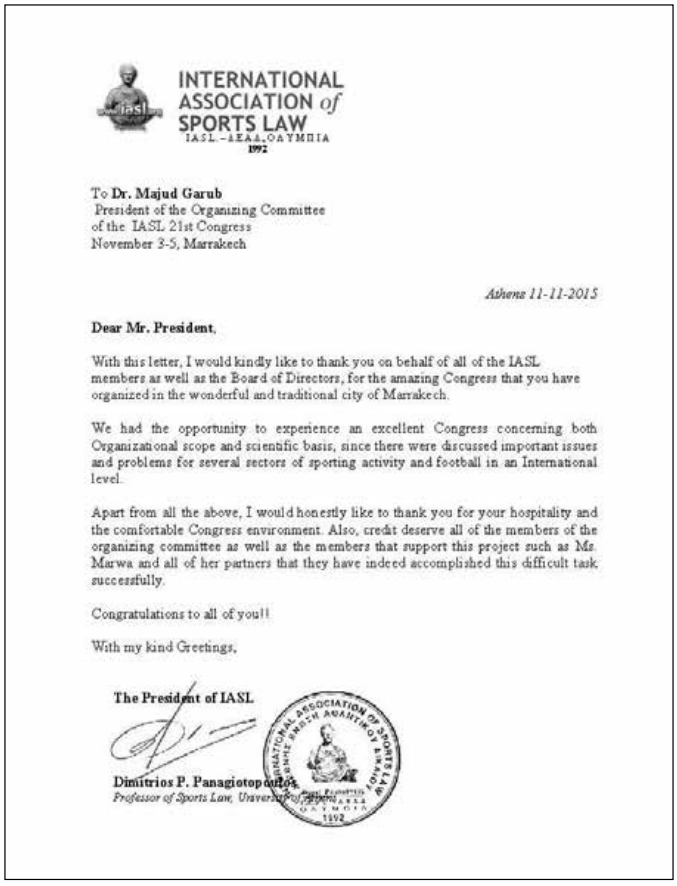
Done in Lausanne, 10 July 2015

IV. News

A. IASL News

• 21st International Congress of IASL in Marrakech

Successfully completed the 21st International Congress of IASL in Marrakech (Morocco) 3-5 November 2015 .It was indeed another very important IASL congress. I would also like to express my feelings for our colleagues that wanted to come but they did not have the chance and I hope to avoid such difficulties in the future, see more: h ttp://iasl-sltc.org/



INTERNATIONAL ASSOCIATION of SPORTS LAW
ΙΑΣΛ.-ΔΕΔΑ.ΟΑΥΜΠΙΑ
1992

To **Dr. Majud Garub**
President of the Organizing Committee
of the IASL 21st Congress
November 3-5, Marrakech

Athens 11-11-2015

Dear Mr. President,

With this letter, I would kindly like to thank you on behalf of all of the IASL members as well as the Board of Directors, for the amazing Congress that you have organized in the wonderful and traditional city of Marrakech.

We had the opportunity to experience an excellent Congress concerning both Organizational scope and scientific basis, since there were discussed important issues and problems for several sectors of sporting activity and football in an International level.

Apart from all the above, I would honestly like to thank you for your hospitality and the comfortable Congress environment. Also, credit deserve all of the members of the organizing committee as well as the members that support this project such as Ms. Marwa and all of her partners that they have indeed accomplished this difficult task successfully.

Congratulations to all of you!!

With my kind Greetings,

The President of IASL

Dimitrios P. Panagiotopoulos
Professor of Sports Law, University of Athens

• IASL Board's and General assembly's decisions

1. There will be an increase in the annual fee (subscription), from 50 € to 60 € which agreed by majority (the president was opposite).

2. The treasurer is responsible to activate the members to pay their dues as well as to subscribe new members.

3. Creation of an organizational structure of IASL in order to collaborate with other groups familiar to Sports Law in every country.

4. The contribution of IASL towards the collaborating with the Municipality of Delphi, in order to create the International Academy of Sports Law and International Relations and Institutions for educational programs, seminars and Summer Schools.

5. Reply through email concerning the 4th issue of the Agenda from all of the IASL board members.

6. Acceptance of the Olympic University proposal in order to organize the 22nd IASL Congress in Sochi, from which we do expect the proposal for the subject and date in due time.

I. IASL Congresses

a. The 22nd I. Scientific events IASL Congress will take place in Sochi (Russia), **17-19 November** 2016, with topic: **"Mega Events in Sport: Legal Environment"**.

We are sure for the success of this Congress and for the complete favourable impression which will have not only in the scientific world and in the world of sports in Russia but also in an international level. To this direction we will put our efforts in order for us to have in a unique way a successful Congress in Sochi. http://iasl2016.olympicuniversity.ru/en/home

Contact: Russian International Olympic University (RIOU), Sochi, Professor Nikolay Peshin, Vice-Rector of the Russian International Olympic University.

E-mail: npeshin@olympicuniversity.ru
Phone Number: +7 926 535 6921
Address: 23, Novoslobodskaya Str., of. 640, Moscow, Russia
Zip Code: 127055

b. The IASL had cooperation to organize Sports law Conference with, with general topic Lex Sportiva and Sports Jurisdiction in Istanbul, June 27th 2015, Kadir Has University, Kadir Has Campus, Cibali Hall, Turke. See More: http://www.khas.edu.tr/sports-studies-research/85.

In this Congress was invited lecturer the IASL's President Dimitrios Panagiotopoulos, which presented the topic: Sports Law theory: Lex Sportiva.

c. IASL and University of Teramo organized in Italy at the 8 July 2016 Memorial Symposium to Prof. Avv. Lucio Colantuoni

It is with great sadness that the IASL has learned of the tragic death of Prof. Avv. Lucio Colantuoni on 7 January 2016.

Lucio Colantuoni was a Professor at the Law Faculty of the Milan University, Director of the Sports Law Research Center (Italy), Attorney at Law and Arbitrator at the Court of Arbitration for Sport. He was a member of the IASLsinse 1994 and member of Board of Directors since 2004.

Lucio Colantuoni was an outstanding sports lawyer and a friend to all of us who knew him.

Our thoughts are with his family. He will be greatly missed.

For the International Sports Law Association

The President

Dimitrios P. Panagiotopoulos

Professor at the University of Athens

The IASL, in memory of unforgettable and dear colleague Prof. Lucio Colantuoni, has dedicate the next Volume of the Journal: International Sports Law Review Pandektis Issues (2016) , which will published before Lucio Symposium in the university of Teramo 8 July 2016.

II. Scientific events

• World Soccer Congress Shanghai 2016

World Soccer Congress Shanghai 2016, Will be held on June 1-3 in Shanghai, focusing on the World Soccer Industry Development and China Soccer Reform, Soccer Match Management and Commercial Exploration, Operation and Management of Professional Clubs, Big Data of Soccer Industry and Application of New Technologies, Soccer Medical and Rehabilitation Innovation, Field Construction Operation and Maintenance. World Soccer Congress aims to build an interconnected international platform connecting China and global soccer industry, to push forward the development and prosperity of China's soccer industry.

We are looking forward to meeting you in Shanghai 2016!

IASL is an international scientific association founded during the 1st International Congress on Sports Law, December 11-13, 1992 in Athens and seated in Olympia, Greece. Since then IASL is activated as far as administrative matters are concerned in Athens and in its President's country of origin
http://www.worldsoccercongress.net/

• The St. John's LL.M. in International Sports Law Practice is a first-of-its-kind program in the U.S. This program is designed for attorneys with a passion for sports and a clear desire to practice in this rewarding global legal specialty. The Program accepts U.S. and international applicants.
http://iasl.org/pages/posts/sports_law_news/sports_law_news356.php

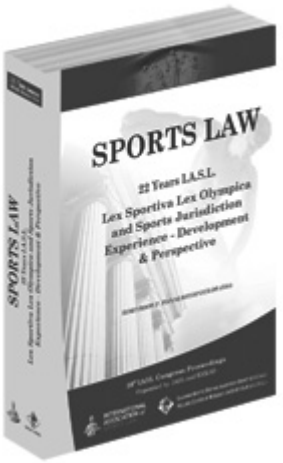
• Postgraduate students of the Russian International Olympic University
We, postgraduate students of the Russian International Olympic University, express our concern over the fact that many negative phenomena threaten the sports integrity.
http://iasl.org/pages/posts/sports_law_news/sports_law_news363.php

• Lex Sportiva and Sports Jurisdiction
Sports Law Conference, June 27th 2015, Istanbul (Kadir Has University, Kadir Has Campus, Cibali Hall).
http://iasl.org/pages/posts/sports_law_events/sports_law_events362.php

B. EKEAD News

• The Hellenic Center of Research on Sports Law and the Athens Bar Association on 27/1/2016in Athens , organized Scientific Event on Sports Law, with topic:
Professional Sports Activities & the Changes of the new Greek Sports Law.
http://www.ekead.gr/images/pdf/prosklisidsa.pdf
http://www.ekead.gr/images/pdf/programdsa.pdf

IV. Book Review



SPORTS LAW, 22 Years I.A.S.L: Lex Sportiva - Lex Olympica and Sports Jurisdiction Experience - Development & Perspective (20th IASL Congress Proceedings)

Editor: Dimitrios Panagiotopoulos (Athens, 2015)

See more: http://iasl.org/media/File/20thcongress/20th_IASL_Proceedings-TABLE%20OF%20CONTENTS.pdf

• Sports Law Dr. Michal Králík

For persons interested in Sports Law the Publishing House offers **exclusive extraordinarily manuscript** which includes civil and criminal liability of athletes for sports injuries. The book maps the conditions of liability, from the historical background till today in Europe and in some another countries outside of Europe.

The book is a result of almost twenty years of interest of author, Judge of the Supreme Court of the Czech Republic, in Sports Law.

The publishing of complete bundle **depends with respect to the extent on binding order of at least twenty publications** via email chci@knihyleges.cz.

Brief content of the book:

(The whole content of the book is available in the section "Obsah"):

1. Basic questions of the legal liability of athletes for sports injuries.
2. Historical background of the legal liability of athletes for sports injuries (Ancient, Middle Ages).
3. Liability of athletes in the 19th and 20th century.
4. Civil and criminal liability of athletes for sports injuries in the continental – European legal system (Germany, Austria, Switzerland, Poland, Italy, Portugal, Spain, Romania, Slovenia).
5. Civil and criminal liability of athletes for sports injuries in the United Kingdom and outside of Europe (Great Britain, Ireland, Scotland, Australia, Iran, South Africa, USA, Canada).
6. Czech and Slovakian development of the civil and criminal liability of athletes for sports injuries.

About author: Dr. Michal Králík – After graduating from the Faculty of Law, Masaryk University in Brno in 1995 he becomes a judge of the District Court in Zlin, then of the Regional Court in Brno and since 2009 he is a judge the Supreme Court of the Czech Republic. He works also as a lecturer at the Department of Civil Law at the Faculty of Law of Masaryk University in Brno. He is a member of the Justice Magazine and another Czech magazines, as well as of the editorial board of the Research Handbook law, ethics, and Integrity in the sport (USA). He has publicised in and outside of Czech Republic more than 40 articles in Sports Law.

IV. INDEX

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Yeun Kee-Young (2015), "Development Of The Sports Industry And Product Liability", In: Sports Law, 22 Years I.A.S.L (Dimitrios Panagiotopoulos Ed), Hellenic Center Of Research On Sports Law: Athens] Pp. 451-456

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Tikhonova Mariia (2015), "Responsibility Of Athlete For Use Of A Prohibited Substance Or Method", In: Sports Law, 22 Years I.A.S.L (Dimitrios Panagiotopoulos Ed), Hellenic Center Of Research On Sports Law: Athens] Pp.471-477

Giandomenico Anna Di (2015), "The Convention On Manipulation Of Sports Competition: A First Comment", In: Sports Law, 22 Years I.A.S.L (Dimitrios Panagiotopoulos Ed), Hellenic Center Of Research On Sports Law: Athens] Pp.478-490

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Kyprianou Anna (2015), "A World Against Corruption; Match Fixing", In: Sports Law, 22 Years I.A.S.L (Dimitrios Panagiotopoulos Ed), Hellenic Center of Research on Sports Law: Athens] Pp. 522-525

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Shokri Nader (2015), "The Bung In Sports", In: Sports Law, 22 Years I.A.S.L (Dimitrios Panagiotopoulos Ed), Hellenic Center of Research on Sports Law: Athens: Athens] Pp. Pp. 573-577

Zaksaitė Salomėja (2015), "Chess And Doping: A Call for More Studies and Adapted Anti-Doping System", In: Sports Law, 22 Years I.A.S.L (Dimitrios Panagiotopoulos Ed), Hellenic Center of Research on Sports Law: Athens Pp. 578-583

Öztürk Hande (2015), "Financial Fair Play Regulations and The Future of European Football", In: Sports Law, 22 Years I.A.S.L (Dimitrios Panagiotopoulos Ed), Hellenic Center of Research on Sports Law: Athens] Pp. 584-596

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(i) Vol. 11: Issues 1-2 (2015)

Alfonso León (2015) "Recent changes on the applicable regulations legally binding upon players' agents and jurisprudence related thereto", International Sports Law Review Vol. 11, Issues 1-2, Pp.106-120

Anagnostopoulos Ioannis C. (2015) "Employment relations in sports activities", International Sports Law Review Vol. 11, Issues 1-2, Pp.195-196

Giandomenico Anna Di (2015) "The Convention On Manipulation Of Sports Competition: A First Comment", International Sports Law Review Vol. 11, Issues 1-2, Pp.28 -40

Giraldo César (2015) "The new sports regulations in Colombia", International Sports Law Review Vol. 11, Issues 1-2, Pp.149-159

Kang Raehyouk (2015) "Dealing with sports disputes in the Olympics: previous cases and future prospects", International Sports Law Review Vol. 11, Issues 1-2, Pp.41-54

Kędzior Magdalena (2015) "State aid in sport in the European union law and its application at the national level in the member states ", International Sports Law Review Vol. 11, Issues 1-2, Pp.73-83

Kulik Alexey (2015) "Responsibility of subjects in sports area for distribution and use of prohibited preparations, methods and substances as doping in accordance with legislation of Russian federation", International Sports Law Review Vol. 11, Issues 1-2, Pp.139-148

Kushida Yoko (2015) "How a dispute resolution body can make a contribution to the enhancement of sport ", International Sports Law Review Vol. 11, Issues 1-2, Pp.93-97

Panagiotopoulos Dimitrios P. (2015) "Employments Relations In Sports Activities And Protection Of Individual And Economics Freedoms A Corpus Juris Athletiki", In *International Sports Law Review* Vol. 11, Issues 1-2, Pp.8-20

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Papaloukas Marios (2015) "Sports image rights in Greece", International Sports Law Review Vol. 11, Issues 1-2, Pp.172188

Patronis Aggelos, Panagiotopoulos Dimitrios (2015) "Disciplinary penalties to people involved in professional sport. Consequences - enforceability", International Sports Law Review Vol. 11, Issues 1-2, Pp.189-194

Patsantaras Nikolas (2015) "Can sports law contribute to regulating the under-representation of women in sport governing bodies? a case study in Greece", International Sports Law Review Vol. 11, Issues 1-2, Pp.128-138

Rapha Stéphane (2015) "The control of regulated professions in the field of sport in France: between specificity and anachronism", International Sports Law Review Vol. 11, Issues 1-2, Pp.160-171

Tikhonova Mariia (2015) "Responsibility of athlete for use of a prohibited substance or method", International Sports Law Review Vol. 11, Issues 1-2, Pp.121-127

Yong Tang (2015) "Global sports law and its challenge to jurisprudence ", International Sports Law Review Vol. 11, Issues 1-2, Pp.84-92

Xiang Hui-Ying (2015) "THE MOTIVATION FUNCTION OF SPORTS LAW", International Sports Law Review Vol. 11, Issues 1-2, Pp. 21-27

Zagklis Andreas (2015) "Three pointer: an overview of how the basketball arbitral tribunal handles financial disputes", International Sports Law Review Vol. 11, Issues 1-2, Pp.98-105

Zhang Xiaoshi, Zhao Jing (2015) "Public power sources of china's sports associations and analysis of relevant problems", International Sports Law Review Vol. 11, Issues 1-2, Pp.55-72

Alfonso León (2015) "Recent changes on the applicable regulations legally binding upon players' agents and jurisprudence related thereto", International Sports Law Review Vol. 11, Issues 1-2, Pp.106-120

Anagnostopoulos Ioannis C. (2015) "Employment relations in sports activities", International Sports Law Review Vol. 11, Issues 1-2, Pp.195-196

Giandomenico Anna Di (2015) "The Convention On Manipulation Of Sports Competition: A First Comment", International Sports Law Review Vol. 11, Issues 1-2, Pp.28 -40

Giraldo César (2015) "The new sports regulations in Colombia", International Sports Law Review Vol. 11, Issues 1-2, Pp.149-159

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Kulik Alexey (2015) "Responsibility of subjects in sports area for distribution and use of prohibited preparations, methods and substances as doping in accordance
with legislation of Russian federation", International Sports Law Review Vol. 11, Issues 1-2, Pp.139-148

Kushida Yoko (2015) "How a dispute resolution body can make a contribution to the enhancement of sport ", International Sports Law Review Vol. 11, Issues 1-2, Pp.93-97

Panagiotopoulos Dimitrios P. (2015) "Employments Relations In Sports Activities And Protection Of Individual And Economics Freedoms A Corpus Juris Athletiki", In *International Sports Law Review* Vol. 11, Issues 1-2, Pp.8-20

Panagiotopoulos Dimitrios P. (2015) "Sport features as activities form individual actions of common sport distinction sport from "contests - competitions": legal framework - interpretation -application", International Sports Law Review Vol. 11, Issues 1-2, Pp.197-205.

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Rapha Stéphane (2015) "The control of regulated professions in the field of sport in France: between specificity and anachronism", International Sports Law Review Vol. 11, Issues 1-2, Pp.160-171

Tikhonova Mariia (2015) "Responsibility of athlete for use of a prohibited substance or method", International Sports Law Review Vol. 11, Issues 1-2, Pp.121-127

Yong Tang (2015) "Global sports law and its challenge to jurisprudence ", International Sports Law Review Vol. 11, Issues 1-2, Pp.84-92

Xiang Hui-Ying (2015) "The Motivation Function of Sports Law", International Sports Law Review Vol. 11, Issues 1-2, Pp. 21-27

Zagklis Andreas (2015) "Three pointer: an overview of how the basketball arbitral tribunal handles financial disputes", International Sports Law Review Vol. 11, Issues 1-2, Pp.98-105

Zhang Xiaoshi, Zhao Jing (2015) "Public power sources of china's sports associations and analysis of relevant problems", International Sports Law Review Vol. 11, Issues 1-2, Pp.55-72

(ii) Vol. 11: Issues 3-4 (2016)

c. *e*-Lex Sportiva Journal, Vol. III: Issues 1-2 (2015)

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Mokarrami Mahsa (2015), "Explaining Athletes' Civil Liability: A Strategy for Reducing Sport Offences", In: e-Lex Sportiva Journal, Vol. III:1-2, Pp.57-63

Panagiotopoulos Dimitrios P., Patronis Angelos (2015), "The Function of The Hellenic Football Federation Within the Legal Framework", In: e-Lex Sportiva Journal, Vol. III:1-2, Pp.95-102

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Ponkin Igor V., Ponkina Alena I. (2015), "Autonomous Extralegal Regulatory Order in the Field of Sports", In: e-Lex Sportiva Journal, Vol. Iii:1-2, Pp.64-71

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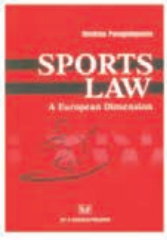

A European Dimension

Dimitrios Panagiotopoulos
Table of contents

- Preface • Sports Law: A Specialised Scientific branch • Liability for injustices in sports activities
- Filed of application of community law to sports activities • Tv broadcasting of Sports Games
- Judical competence in Sport • Court of Arbitration for sports • Bibliography

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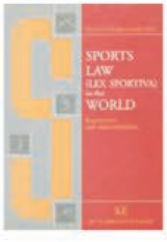

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Table of contents

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- International Aspects of Sports Activities • Various National Sports Legal Systems
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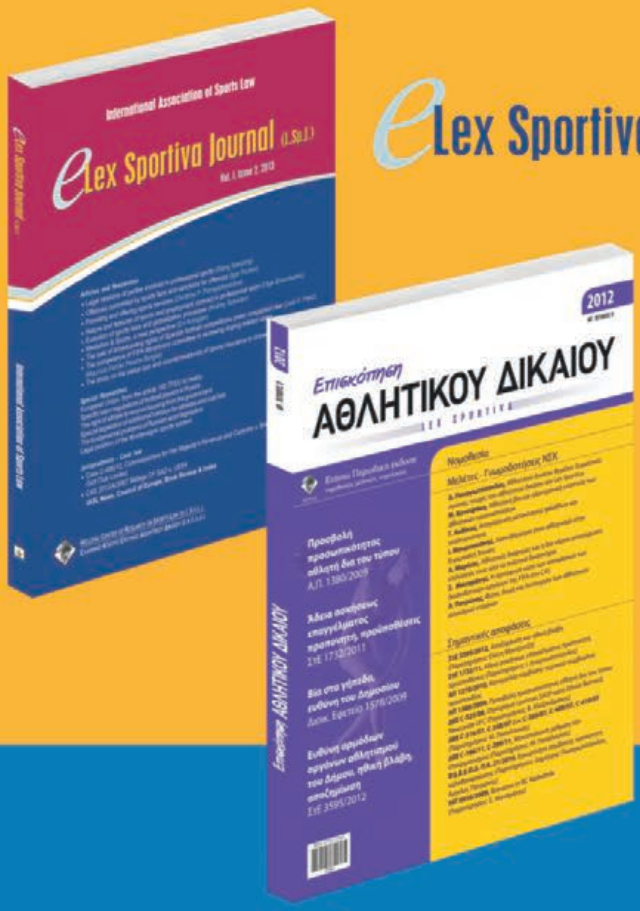

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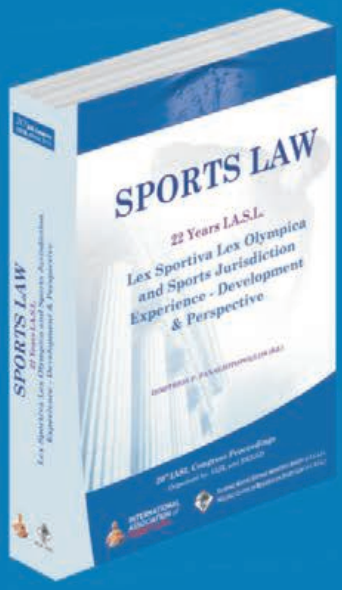

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13, Veranzerou str., GR-10677, Athens, Greece
tel.: +(30) 210 3839440, fax: +(30) 2103839540
e-mails: ekead@iasl.org, info@iasl.org