

**14<sup>th</sup> World IASL Congress**  
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**Abstracts**  
(Dimitrios P. Panagiotopoulos, Ed.)

**Topic A**  
**National Legislation and Sport**

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**Lex Sportiva and Traditional Sports Legal Order**

**A fundamental approach of sports law: Bodily Agon – Gymnastics - Law**

**Dimitrios P. Panagiotopoulos**

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This Paper tries to offer fundamental answers to the questions how can the nature of sporting activities coincide with the law, who sets the law and what is the nature of the rules of law regulating these activities. In order to answer these questions we have to draw a distinction of these activities according to the form of the organization, the purpose and the function of the exercising as sporting exercise, education, health and civilization exercise. To this cause we analyze philosophical views on the exercise of the body and gymnastics, whereas on the basis of the modern legal theory and jurisprudence we analyze the nature of the rules of law in sports, the responsibility, the distinction of responsibility and the conditions of not imposing criminal sanctions on them. We also refer to the involvement of state law and legal principles to sporting activities and to the question which is the appropriate judge for sports. Our conclusion is that the classical greek thought has influenced the formation of the Lex Sportiva rules, whereas the legal rules of sports lato sensu are those which shape the sporting status quo at level of national and supranational legal entities. Sports jurisdiction, moreover, with the dominant competence of international sport institutions and the CAS offers sometimes not clear-cut solutions. Establishing a “Sports Court” has become a necessity.

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**Taxation of sports sponsorship in Spain**

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The article 24 of the General Act 34/1988 of 11 November 1988 on Advertising, defines the contract of patronage advertising, or of the sponsorship, as that in which the patronee undertakes, in exchange of a financial aid for the realization of his activity, in our case a sporting one, to contribute in the promotion of the patron. Departing from this concept, in principle its tax regime lacks of particularities in regard to the general taxation of any other type of advertising contract. In contrast to what happens with the activities in the patronage, it is not necessary for the sponsor to establish tax incentives, because he is paying for the advertising services provided by the sports entity. Nevertheless, the sponsor legal person – or natural person, if he

is subject to direct valuation- will be able to deduct as deductible item the total amount invested in the acquisition of the advertising services.

The sponsoree sports entity will be subject to the VAT and it will have to pass entirely the whole amount through the general tax rate 16%. The sponsor will be able to deduct this already taxed quota in its entirety or to apply the pro rata rule. If the sponsoree sports entity has the status of a non-profit organization especially beneficent, pursuant to the articles 2 and 3 of the Act 49/2002 of 23 December 2002, concerning the Tax regime of the non-profit organizations and the tax incentives to the patronage, the amount received as result of the sponsorship is expressly declared exempted in the Corporate income Tax. On the contrary, the sports entities either non-profit or not, which do not meet the requirements of the above mentioned Act 49/2002, must be taxed on the whole of the incomings obtained from this reason, these amounts considered taxable and not exempt. It is therefore essential the qualification of sports club as especially beneficent to avoid be taxed for amounts received by means of sponsorship and thus to be able to devote the total amount they have received to sporting purposes.

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### **Possible relations between legal regulation of sport and its effectiveness**

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Although its territory and population decreased, Hungary was still regarded as a great power in the world of sport until the last decade. Our group of researchers investigated the possible correlations between the state and the self governance of sport, the autonomy of sports organizations, and the different ministerial states of suborganizations-with special regard to the placements in the Olympic medal table. The Hypothesis of the research was that the success of elite sport is due to the fortunate coincidence of several factors. Presumably there is a correlation between the financing of sport, the sports-friendly law environment, and the effectiveness of the country. Regarding methodology we used the so called SPSS (Statistical Program for Social Sciences) informatics method alongside with the traditional comparative legal methods. Comparisons in the form of tables and diagrams were set up according to different aspects systems e.g.

- the change in the environment of the rules of law (e.g. state financing) – olympic successes;
- political crisis (was situations, reforms, change of political regimes) – and the olympic successes;
- independence of the sports organisations (from the state) – and olympic successes;

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### **Intellectual property rights, licensing and merchandising in sports: Comparative analysis USA-UK-Italy**

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Intellectual property rights (IPR) have an indiscussable value and they are very important in business generally and in sports in particular. In the sport context the most important IPRs are trade marks and copyrights. However, in the sport market there is another category of rights which needs to be protected, it concerns, specifically, the athletes: the personality right; like name and image rights. Particular, the image rights of professional athletes constitutes, nowadays, an essential component of the sport marketing. The licensing of intellectual property rights in connection with sport and sporting events is becoming an ever more popular phenomenon. Copyright, logos, patents and trademarks are licensed to persons or organizations who wish to exploit a name, reputation, event or personality and thus merchandising of natural and international sports events, emblems and mascots and personalities is now the norm for many major sporting events. Merchandisers may take licenses of these emblems or mascots and put them on their products so that the products may be associated with the particular event. Specific USA, UK and Italian cases will be analyzed.

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### **The Unification and Harmonization of the Asian Sport Law Kee Young Yeun**

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In this paper, I would like to present the required unification and harmonizing of the Asian Sport Law for the development of Asian Sport Laws. First, it is necessary to define and reassure the conception and the contents of the Asian Sports Law. And then, I will present the following agendas for the unification and harmonizing of the Asian Sport law:

1. The stimulation of Asian Sports Law Association
2. The Basic Preparation for Interchange and Cooperation of Asian Sports
3. The Establishment of Educational organization and Programs.
4. The Establishment of financial foundation for research and education of Asian Sports Law
5. The study of norm and convention to develop governmental and non-governmental organizations in Asia
6. The Establishment of Asian Sport Arbitration Organization

It is required for the Asians to establish the identity of Asian Law through introspection and rediscovery of Asia in the world. Despite the pluralistic circumstances in Asia, it seems to be easy to create comparatively consistent norms in sports field. It is because sports, the subject 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 Asian counties in order to unify and harmonize the Asian Sports Law.

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### **The right for exercise (sport) for all, in the greek law 1975 - 2008**

**Vasileios Oikonomou**

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The institutional contexture of the sport effect is accomplished in two levels, the biological one and the symbolic one, where the individual and the collective needs and wills of people are implemented. The athletic institution can be separated into three athletic sub-institutions, based on their aims and their general characteristics. a) The Physical Education, b) The Sport-Competition (Competitive athleticism), c) The Physical Activity for All (Athleticism for All). The Greek Constitution covers equally all the three athletic institutions, while internationally, the athletic institution is established in the Treaty of Amsterdam, the International Statute Map of the UNESCO and in many more treaties and international legal documentation. By inference, the physical activity for all constitutes individual and collective expression, which is free but organised, without any particular or imperative constraint in free time. There is mainly due to the recreation for the satisfaction of personal needs and wills during free time, such as the normal performance of the human organism for the accomplishment of the healthy way of life, aiming at the rejuvenation, the recreation, the physical vigour, well and healthiness. The protection of the right of every person to athletics, physical activity for all and exercise, led the state to the creation of the required legal and institutional contexture, as this was required also by the international and national reality. The existing legal regulations are confounded and improper both in the field of the regulation that concerns the physical activity of the people and in the context of this activity, resulting with clarity and accuracy the legislator to request a universal regulation for the effect of "Physical Exercise for All", as a distinct physical and athletic activity towards the rest of them, as a subtotal of the Athletic Institution, as a special institutional expression of it.

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### **The legal protection of sport moves in UK and US law**

**Vagelis Alexandrakis**

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In the present paper it will be examined whether the sport movements can enjoy a protection under the UK IP law. They cannot enjoy a patent protection under the PA 1977, since these categories are caught by the scope of the exclusion from patentability about the "rules of playing the game". In respect of the copyright, the vast majority of sports, sport moves could not be protected by the CDPA 1988 since, the spontaneity and the uncertainty of outcome that sport moves involve are inhibitory factors for its application. This is not the case, though, for routine-orientated sports such as rhythmic gymnastics, synchronized swimming and ice dancing. Athletes in these sports devise complex sets of movements which are intended to be performed with a high level of accuracy during competitions. These athletes are judged in large part on the aesthetic portions of their performance and often incorporate elaborate costumes, props, music and special lighting in their

routines. The certain combination of movements and sound that such sports involve produce a unique audiovisual effect, same as any other kind of choreography. In USA, though, things are quite different. As regards trade mark and copyright, despite the slight differences regarding the law preconditions, the result is quite similar to UK law. The situation, though, is totally different as regard patent. The Patent Act 1977 imposes very strict prerequisites for the grant of a patent, such as novelty and industrial applicability. The American law in this field is much broader. According to Section 101 of the Patent Act: "Whoever invents or discovers any new useful process, machine, manufacture or composition of matter, or any new and useful process thereof, may obtain a patent". All patentable inventions must be new, not obvious and must fall within at least one of the three statutory classes of patentable subject matter-processes, machines or composition of matter. Not only does the U.S. legislation seem to be quite wide but also the Supreme Court has given an even wider view of patent eligibility to "include anything under the sun that is made by man". So, according to the Supreme Court in theory anything could lead to the grant of a patent. Only laws of nature, natural phenomena and abstract ideas cannot be patentable when claimed alone. A process, machine, manufacture or composition, though, of matter which involves the exceptions mentioned above may enjoy the protection of a patent. So, the question is if sport movements are perceived as being "natural phenomena". A mere move of the body is definitely a natural phenomenon and obviously under no circumstances could be considered to be eligible for patent. A sport move, though, is definitely something more complicated. It involves a combination of movement, a process which aims at a certain goal. There is, also, the question if sport moves constitute a useful process. The answer seems to be positive as any innovation in a certain sport will be beneficial to the sport. For instance, in baseball if someone invented a technique for holding the ball to permit throwing 10mph faster than anyone now can, it would be really useful in the major leagues. Therefore, sport moves and methods seem to be caught by the ambit of the Patent Act as long as they are useful and novel.

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**Evaluation the by- law of volleyball coaches in Egypt**  
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The bylaw of volleyball coaches aim to determine the elements which include the system the work, the selection and training the coach in volleyball, in order to reach to high standard in volleyball. This study aims to evaluate the bylaw of volleyball coaches in Egypt, through analysis study of bylaws of professional that govern volleyball and ethical conduct in sport. The questionnaire was designed to evaluate bylaw of volleyball coaches. The sample included 24 person (member of the teaching staff "in sport and law", trainers, administrators and lawyers). The result showed lower the level of the bylaw of volleyball coaches which determine the elements to get on id to the coach in order to participate in the training process; this is elements effect on lower the level the coach in volleyball. This study suggests modifying some of elements in the bylaws of volleyball coaches in Egypt to contribute in development the level of volleyball coach. This study recommended to recruiting of

professional employer and introducing a series of punishments. Data could be added in the international literature related to the law sport and volleyball, which it could be most important factors effects on bylaw of volleyball coaches. These findings could be used for volleyball coach's selection.

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### **The Institution of Extreme Sports (E-X) Regulations and Re-Regulations**

**George Kipreos**

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- What is called institution law? E-X as an institution. Valid in Europe. How necessary is to examine the institution of E-X. The importance of its institutional substance.
- The problem is examined from the aspect of legal order that regulates the constitution of this group of sports and the activity developed in it. In order to look into this problem it should be taken under consideration not only Lex Sportiva but also more specific rules and regulations related to the function of these sports (activities)
- Some of the main problems in E-X according to the regulations:
  1. safety of the athletes while performing the E-X
  2. conditions of participation
  3. trainers
  4. enterprising activity
  5. safety and endurance of materials and instruments used during the performance
- Beyond the above great emphasis is given to what will actually take place after a potential accident. Which are the applicable rules and the possible responsibility of those evolved?

As far as Europe is concerned there isn't a unified codex to face accidents in E-X, neither in E.U nor in the rest European states. Especially in Greece it is indispensable to legislate a specific act as well as to found a correspondent academy.

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### **A Preliminary Analysis of the Chinese Sports Laws in the Post-Olympics Era**

**Hongjun Ma**

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In the Beijing Olympic Games, the Chinese sports delegation won a total of 51 gold, 21 silver, and 28 bronze medals, achieving an unprecedented success of the "Olympic Glory" campaign in China. However, such an achievement does not necessarily reflect a similarly significant progress in the fitness levels of all the Chinese nationals. After the Olympic Games, promoting physical activity participation and improving fitness and health of all the Chinese people represent the major challenges for Chinese Sports. In the meanwhile, the focus of Chinese Sports Laws needs to transfer from facilitating the realization of the "Olympic Glory" campaign to ensuring the effective promotion of physical activity and health in the

public. Sports administrators and professionals need to study and resolve a number of new but critical issues, such as modifying “Chinese Sports Laws”, establishing “Physical Activity Promotion Guidelines” and a sports arbitration system, improving the sports insurance system, and implementing policies that regulate and guide the sports industry and sports professionals.

In addition, the post-Olympics Chinese Sports law system will also generate many important research topics of enormous social implications, including the legal acknowledgement and protection of athletes, legal relationship between athletes and coaches and among sports organizations, athletes, and coaches, privileges and responsibilities of referees, legal certification and protection of sport agents, exploration and development of the sports industry, the specialty and legislative protection of school sports, legal rights of sports administrative agencies, and supervising and auditing of these agencies. After the Olympic Games, it is arguably very critical for China to establish a sports law system that is effective and feasible in the Chinese society.

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**Indian sports policy 2007, in making**  
**Amaresh Kumar**

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Sports, games and physical fitness have been a vital component of our civilization, as is evident from the existence of the highly evolved system of yoga and a vast range of highly developed indigenous games, including martial arts. The intrinsic linkage between sports and games and the human quest for excellence was recognized ever since the inception of human civilization, reaching its epitome in the ancient Greek civilization, which was the progenitor of the Olympic movement. As stated in the Olympic Charter, Olympism is a “philosophy of life, exalting and combining in a balanced whole the qualities of body, will and mind”. So also is yoga based on the complete control of body and mind. The United Nations General Assembly celebrated 2005 as the “**Year of Sport and Physical Education**” thereby emphasizing the need to integrate sport and physical education into the overall development agenda. This initiative highlighted sports as:

- (i) being integral to quality education with mandatory physical education as a necessary pre-requisite to foster education, health and personality development;
- (ii) improving the health standards of people;
- (iii) achieving sustainable development through inclusive growth; and
- (iv) building lasting peace.

The World Development Report 2007 entitled “Development and the Next Generation” published by the World Bank conveys a categorical message to governments and policy makers across the world that “Investing in young people is essential for development, as today’s young people are the next generation of workers, entrepreneurs, parents, active citizens, and leaders.”

The time, therefore, to put substantial national resources into sports and youth development is, therefore, now – before the window of opportunity closes. And the Prime Minister has, in recognition of this, given the “assurance” that: “our

government will do all that is within our power to exploit the vast untapped potential that undoubtedly lies in this area". Recently, while inaugurating the Indian Olympic Bhawan at Delhi on 28 April 2007, the Prime Minister specifically mentioned that "As a country of young people, India has great potential in the world of sports and games". He added that "We are yet to fully harness the talent of our youth in this vast field." To this end, he proposed "a new social compact involving all stakeholders to launch a nationwide movement of youth in sports ... and unleash a new wave of sports consciousness and sports development."

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### **Show Me 'My' Money!! Conflict of Interest for Sports Agents Jaekyoung Lee**

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Just like every agent in commercial industry, sports industry has the possibility of the conflict arising between the principal and the agent. An Agent is a person who is authorized to act on behalf of another to create a legal relationship with a Third Party. The relationship between the athlete and the agent is contractual in nature; the agent is subject to common law agency requirements throughout this relationship. The agent thus owes a fiduciary duty of loyalty, obedience, and reasonable care to the athlete. The duty of undivided loyalty requires that the agent must avoid actual or apparent conflicts of interest and the sports agent would be no exception. The conflicts of interest created by the trend of consolidation in sports industry will lead to conflict of interest for athlete clients, especially the multiple representations of players on the same team under the "salary cap" and it will potentially harm both the athlete and the agent. The agent can cure the conflict if he "reasonably believes" that he can provide competent representation to each affected client and if the attorney obtains each client's' express informed consent. However, this solution may be inapplicable to conflicts in which the agent represents multiple athletes on the same team, particularly in a league with a "salary cap" and the risk of harm to the athlete can be substantial. In this research paper, mainly with Model Rules of Professional Conduct (MRPC), Uniform Athlete Agent Act ("UAAA"), Sports Agent Responsibility and Trust Act of 2004 ("SPARTA") in the United States, the methodic approach and possible solution for conflict of interest regarding two or more athletes on the same team. Appropriate measure by the players association to avoid the conflict of interest, such as request of a list of all athletes represented by the agent, would be one of main issues.

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### **Roboref: the Future of Sporting enforcement Simon Gardiner**

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Sports are increasingly subject to validation by electronic technologies when it comes to issues such as whether a score has taken place or the extent and possible illegitimacy of physical contact between participants. As such it represents an increasingly 'juridification' of the internal application and adjudication of sporting

rules. This has happened in the context of the replacement of the human umpire by the electronic sensor. This paper considers both what are the implications for sport of the increasing reliance on technological adjudication and what impact this development will have on the ability to legally challenge sporting decisions. Examples will be presented from a range of jurisdictions and sports where this interface between law, sport and technology has emerged.

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**Business contracts for sports activities: the Italian discipline for the sale of television broadcasting rights**

**Barbara Agostinis**

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Both nationally and internationally, sports have been attributed with two fundamental functions: one educational, being an important component in the formation of the personal identity of the individual, and the other regarding health as it contributes greatly to psycho-physical wellness and the prevention of illness. However, we cannot disregard its economic value. The economical dimensions of sports is a well known fact: even the practice of sports at an amateur level can constitute, according to the Court of Justice of the European Community, a business activity, be it with particular characteristics, according to the specific aim of the sport in question. For this reason, it is extremely evident, the importance a sports contract can have, being frequently atypical and without legislative discipline. Some are specific to the sport practiced (for example contracts for ski-passes), while others represent situations parallel to the sport (for example that of sponsors). The sale of television broadcasting rights for sport event transmissions, especially of football matches, is one of the most frequent forms of sports contract, and constitutes an important means of income for the television operators. The market for sport event television broadcasting rights has seen a huge increase in recent years, also due to a profound technological evolution. This has revealed the inadequacy of the system. The legislator must repeatedly intervene to discipline this matter, and the Authorities who guarantee fair competition and marketing are often called to resolve the numerous episodes of controversy and abuse by a dominant party. Despite the many legal interventions, many aspects remain doubtful. The aim of this intervention is to analyze the legislative discipline regulating the above incidents and the controversial aspects of the Italian discipline for business contracts, regarding sports and the sale of television transmission rights, also through the decisions taken in practical cases.

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**Redefining Ambush Marketing: A review of ambush marketing at the Beijing Olympics**

**Dr. Lingling Wei**

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The term 'ambush marketing' was coined at the 1984 Los Angeles Olympics, when the International Olympic Committee (IOC) and official sponsors were faced with

competing ‘unauthorised’ attempts to cash in on the publicity value of the event, thus undermining the commercial function of sponsorship. The activities of would-be ambush marketers have been regulated increasingly tightly through event legislation, beginning with the Sydney Olympics (2000) and now extending beyond the Olympic movement (for example, International Cricket Council (ICC) World Cup). Ambush marketing is also increasingly restricted through contractual negotiations between event owners, host countries, local organisers, broadcasters and athletes. Despite the potentially large impact of the legal regulation of ambush marketing, financially and on fundamental freedoms, it is still not clear what constitutes ambush marketing. The discrepancy between what the marketing parishioners regard as ambush marketing and what the event organisers such as the IOC define as ambush marketing is evidently shown through the “legitimate” ambush marketing incidents which happened at the recent Beijing Olympics. The “legitimate” status of the ambush marketing incidents at the Beijing Olympics also challenged the effectiveness of the legal regulation mechanism of ambush marketing. This article aims at: a. developing a workable definition that both serves the purpose of the legal regulation of ambush marketing and reveals what is viewed as ambush marketing in marketing practice; b. examining the difficulty of outlawing ambush marketing. The theoretical context is provided by the literature on sponsorship (illustrating the relationship between event owner, sponsor, ambusher and audience), and on the regulation of commercial trade signs (in particular confusion and dilution theories underlying trade mark law). Collection of ambush marketing incidents at the Beijing Olympics and empirical data through market survey will be used.

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### **Sponsoring and TV advertising**

**Dr. Tone Jagodic**

*Secretary General of Olympic Committee, Slovenia*

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**Sergios Manarakis** (*L.L.M. – Candidate Dr.*)

*Lawyer, IASL member*

Modern sponsoring is the evolution of the ancient’s Greece Choregia. While, however the Greek Choregia was a duty ordered by the state, modern sponsoring is a contract decided and signed by two entities (legal or natural) for their personal reasons. Aim of this paper is firstly to clarify the differences of these terms and secondly (and more important) to try to look into possible problems of the application of the contract of modern sponsoring.

For that purpose, we will examine:

a) whether provisions in the contracts of sponsoring, between a sponsor and the organising committee of a sport event, restricting the rights of third entities (namely other companies competitors of the sponsor), infringe the provisions of articles 81 and/or 82 EC, and

b) the degree of dependency of the athlete against his sponsor and the rights of the latter for termination of the contract of sponsoring.

**Topic B**  
**Professional Sport**

**Lex Sportiva and European Union Law**

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**Convergence of different legal cultures, globalization of law and Lex Sportiva**

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Law is a part of a culture of every nation. Due to a multicultural nature of contemporary world there are different models of regulation of social relations. Even at the first glance it is not difficult to see that there are differences both on the level of fundamental principles and specific normative solutions as well as in the method of creation, interpretation and application of rules. Legal theory speaks of pluralistic and monistic concept of regulation of social relations. A distinctive feature of the former is that in the life of the community, apart from rules created by the state, spontaneously created rules (customs) or rules emerging under the influence of specific social groups (religious and professional rules) are of great importance. Disputes in such model, are most often resolved independently from the state organs, through different reconciliation procedures. This model, also referred to as the Eastern model, exists in many Asian and African countries. On the other hand, there is the Western model in which a dominant role is given to legal rules created by organ of state. In countries belonging to the Anglo-American legal sphere of influence these legal rules are set by the highest courts in the form of precedents, while in the countries of continental Europe, and their former colonies, legal rules are given in the form of laws and other general legal acts. Customary, religious and professional rules are legally binding only if a competent state organ has envisaged their application. Due to the influence of globalization, a process of mutual convergence of different legal cultures has been accelerated in last several decades. The role of state in Asian societies is gaining more influence. In Western societies, on the other side, we increasingly speak of deregulation of social relations and deetatization of legal rules. There is a tendency to decrease the role of state organs and to leave the regulation of many issues to non-state entities, among which are various professional associations. Supporters of such concept invoke positive experiences with *lex mercatoria* in the Middle Ages, as well as the solid foundation for development of universal system of autonomous sports law – *lex sportiva*. Such model of regulation of social relations fits in the process of globalization of law.

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**Sports and EC Competition Law: Judicial evolution**

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**Michael Fefes**, *Lecturer, University of Peloponnese, Greece*

In almost all cases concerning sports examined by ECJ till recently, the challenging athletes invoked the competition articles of the EC Treaty. The ECJ did not give time to examine their arguments (e.g., nationality clause, transfer clauses, transfer periods) in the light of the competition provisions either because “given that such types of rules do not comply with article 48, there is no need to examine articles 85 and 86” or because “the preliminary question does not offer enough data in order to satisfy the prerequisites as regards the competition provisions”. However, the Attorney General in Bosman case analysed in depth the relation between the relevant issues and the competition provisions, while the Attorneys General in Deliège and Lehtonen cases argued that the competition provisions did not apply on the specific facts of the cases. In the light of the mentioned cases it was obvious that the competition provisions would eventually come under the focus of the ECJ. Thus, in the recent cases C-519/04, Meca Medina and C-49/07 MOTOE the ECJ took under view the competition principles. The European Commission made as well a thorough analysis of the competition provisions in connection to sports in its recent White Paper on sports. Therefore, the present paper will dedicate a thorough examination to the above ECJ’s decisions and will analyse their impact on sports sector. It will also connect such decisions with the White Paper and try to describe the future developments in the sector. Briefly, the ECJ acknowledged that the restrictions caused to competition that are inherent to the organisation and proper conduct of competitive sport do not violate the community rules on competition, under the condition that they are proportionate to the proper and pure sporting interest under protection. Finally, the proportionality of each sporting rule will have to be assessed on a case-by-case basis while taking into account the relevant facts and circumstances.

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**Study into the identification of themes and issues which can be dealt within a social dialogue in the European professional football sector**

**Dr. Robert Siekmann**

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The White Paper on Sport states that in the light of a growing number of challenges to sport governance, social dialogue at European level can contribute to addressing common concerns of employers and athletes, including agreements on employment relations and working conditions in the sector in accordance with EC Treaty provisions. The Commission encourages and welcomes all efforts leading to the establishment of European Social Dialogue Committees in the sport sector. In previous years several initiatives were undertaken by FIFPro, EFFC and the Asser Institute in the form of EU subsidized studies, seminars and conferences in order to promote Social Dialogue in the European professional football sector and make potential social partner organisations aware of the instrument of Social Dialogue for settling issues through negotiations between management and labour by way of a European collective bargaining agreement for their mutual benefit. Additionally, in the so-called Louvain Report conclusions were presented on the representativeness of the parties concerned. The Asser Institute undertook a separate study into the position of G-14 regarding participation in a Social Dialogue at the European level. In

November 2006, at the concluding stage of the campaign, the outcome of a FIFPro conference in Brussels with all stakeholders, including the international football governing bodies UEFA and FIFA present, was that consensus in principle exists about the usefulness of initiating the process to establish an official Social Dialogue Committee under the EC Treaty. FIFPro and EPFL were prepared to take the lead. The purpose of this study was to identify the “content” of a Social Dialogue in the European professional football sector, once a pertinent Committee will have been officially established under EU auspices, that is possible themes and issues which are suitable to be considered and discussed in a Social Dialogue, the formal framework for setting an agenda of topics being Article 136 et seq. of the EC Treaty. This study will help social partner organisations and other stakeholders at international and national level to become aware of the possible options regarding themes and issues which can be dealt with between management and labour in a Social Dialogue at the European level. The study is expected to facilitate the start of negotiations now that per 1 July 2008 the official Social Dialogue Committee was established in the European professional football sector. It will offer social partner organisations a helpful instrument for determining their thematic framework. A similar effect is *mutatis mutandis* to be expected with regard to Social Dialogue in professional football at the national level of EU member states and candidate countries.

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### **Sport and EC Law: Application and Exemption**

**Ioannis E. Mournianakis**

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Sporting activity was traditionally considered to be outside of the scope of legal regulation. In the last decades, however, the rapid development of sports-related economic activities has resulted to an expansion into areas within the field of application of various legal orders. The autonomous sporting regulation is thus set before the claim of application of the rules of those legal systems. This announcement analyses the problems resulting from the existence of this claim of parallel application in the field of EC law and particularly EC financial law (basic freedoms and competition law). This analysis aims at defining principles of application and exemption which apply to the dispute and respect at the same time both the regulatory autonomy of sport and the field of application of EC law.

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### **Policy, European Sports Law and Lex Sportiva**

**Marios Papaloukas**

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As a result of the commercialisation of sports, the number of sports cases that were brought before the courts for a ruling, increased. At first it appeared that commercialisation was the only reason that the European Court of Justice (henceforth ECJ) issued a number of decisions that treated sports as an economic activity, the truth however is that inside the European Union (henceforth EU) there are different coalitions that support different policies. The ECJ’s decisions and the

legally binding documents issued by the EUs' institutions concerning sports, which can be called European Sports Law, represent merely the outcome of the debate between these different policy coalitions inside the EU. However, even if according to the Lisbon Treaty, the European institutions will have to recognize the «specificity of sport» this does not mean that European Sports Law can be included in the autonomous, independent, supranational legal order that is called *Lex Sportiva*.

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### **Treatment of breakaway structures in Sports under the EC competition rules**

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This short article presents a simplified version of the part of my Licentiate dissertation which takes a progressive view on the application of competition law to the issue of breakaway structures in sports sector. Therefore, it should not come as a surprise that I refer to the collective dominance of the disbanded G14 economic grouping as a matter of fact, or that there is an underlying assumption that the legal issue posed by the rules preventing formation of breakaway structures in sports will have to be dealt with by European regulators sooner or later: the organisational (pyramid) structure of European football in its current settings is not sustainable. However, for our purposes here the emphasis will be on one simple question: whether the rules of sporting federations which prevent, restrict or condition the creation of breakaway structures violate Articles 81 and/or 82 of the EC Treaty? Due to the heavy football focus of the European sports law, this question will be considered with the specific reference to football. Also, it is important to keep in mind that incremental commercialisation and profit maximisation strategies pervade the dealings in the professional sports sector nowadays.

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### **The sporting exception in the EC free movement rules**

**Vagelis Alexandrakis**

*L.L.M. Sports Law, Nottingham and University of Athens, Greece*

Nowadays, sport, even though unlike other economic activities, did not start out as a means to make money, has become a business like any other and its increased commercialization has culminated in sport undergoing thorough legal scrutiny. Thus, it is not surprising that the Court of Justice has appeared quite unsympathetic towards arguments relied on the special character of sport and has generally applied rigorously the free movements rules to sport. In the present essay, after presenting briefly the European legislation and the way that the Court has applied it to sporting cases, we will try to analyze the circumstances under which sport could enjoy an exemption from EC rules.

According to Article 3 EC Treaty, the abolition, between member states, of obstacles to the free movement of goods, persons, services and capital is required. Furthermore, according to Article 12, for this to be achieved, “any discrimination on grounds of nationality shall be prohibited”. Three further crucial Articles specify this

goal in the fields of employment (Article 39), establishment rights (Article 43) and service provision (Article 49).

In general, sporting rules, in order to be compatible with EC law must not involve nationality discrimination. However, according to ECJ rulings there is an exemption. So, what precisely constitutes the so-called “sporting exemption”? We should clarify the circumstances under which the sports governing bodies can legitimately deviate from the free movement principle. According to the judgments of the Court, sporting rules can avoid the consequences of the application of the EC law on the following occasions.

A. Firstly, the ECJ has made totally clear since *Welrave* that if the rule in scrutiny does not involve an economic interest, it falls outside the ambit of the freedom of movement rules. For example, in the *Meca-Medina* Case it was held by the Court of First Instance that anti-doping rules concern exclusively non-economic aspects of sport, designed to preserve “noble competition” and therefore fall outside the ambit of the EC Treaty. The ECJ, though, judging in appeal, held that antidoping rules fall within the scope of Articles 39 and 49 but not necessarily constitute a restriction of competition under Article 81 EC as they are justified by a legitimate objective, to ensure proper conduct of competitive sport.

B. Beyond the purely sporting matters, other matters can slip outside the EC law application, but they have to meet some standards. As the Court has decided, sport rules and regulations, even if they involve an economic effect, may not violate the Treaty as long as they can be justified by the organization of the sport itself. However, this is not enough. The sporting rule at stake will have to satisfy the test of proportionality. The courts will scrutinize the rules of sports organizations to see whether these exceed what is necessary to pursue the legitimate aim of the sport. If these prerequisites (legitimate sporting objective, proportionality test) are met, the rule will remain in force even if it involves a restriction of freedom of movement. In *Bosman* and *Lehtonen* the Court found the rules at stake disproportionate.

Of course, the rules at stake may not violate the free movements rule at all, as was held in *Deliege*. In *Deliege* it was made clear that the issue of selection for national teams constitutes an inherent limitation in the conduct of sport and therefore is not included by the ambit of EC law.

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## **Sports Law Contracts and Sports Regulation**

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### **The research on legal status of Olympic participants**

**Gao Fei**

*Assoc. Prof., China University of political science and law Secretary, China Sports Law  
Research Center, China*

Studying on Olympic Games participant's legal status may promote the Olympic Games to operate smoothly. The objective knowledge on Olympic Games participant's legal status comes from a systemic analysis about their rights and obligations. However, there is almost blank in this research area. According to this paper, the Olympic Games participants are the athletes, whose legal rights can be divided into fundamental rights and average ones. Responding to the legal rights,

their legal obligations can also be divided into fundamental obligations and average ones. On one hand, the athletes enjoy rights of equality, liberty, entering competition with no discrimination, and so on. On the other hand, they are obliged to observe the Olympics Charter and other related Olympic laws, obey rules of contest and sports disciplines, and carry out the obligation of tolerating light hurt.

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### **Modern trends in providing safety during Olympic Games**

**Iskander M. Amirov**

*(Ph.D.) Head of the chair of Theory of State and law of*

*Ufa Law Institute of the Ministry of Internal Affairs of Russia*

In the summer 1972 terrorism rushed into sports arena. Organizers of Olympic Games in Munich appeared to be completely unprepared to repel such threats. Practically the access to the Olympic village was not supervised. Terrorists without special efforts studied up to details of the house that was assigned for the Israeli delegation. The sad lesson has forced to think about the measures on maintenance of terrorist safety. The given problem has got a special urgency after the tragic events on September, 11th 2001 in New York. To hold Olympic Games after these sad events dropped out to the city of Athens. The budget on a safety of Games became a record for that moment, having made 1.2 billion euro - three times more than on the previous Olympic Games in Sydney. Greece developed the new concept of struggle against terrorism during Olympic Games, the so-called "Total doctrine of safety" which included aspects of high technology, international cooperation and preparation of qualified personnel. During the Games more than 70 thousand employees of police, representatives of special services and special divisions were involved. For the first time in history a group called the Olympic Advisers Group (OAG) was created which included representatives from the USA, Great Britain, Australia, Spain, Germany, France and Israel and which put the experience and resources at the disposal of the Greek special services. Unprecedented precautions concerning terrorist threat were accepted on winter Olympic Games in Turin. The Italian authorities had specially developed the so-called « Italian system of holding the Olympic Games in Turin» which was supervised by the Ministry of Internal Affairs and department of state security. 89 million euro had been allocated only for security measures, and during all 17 days 15000 people took part in its maintenance. Fighters F-16 patrolled the sky of Turin during the opening ceremony of Winter Olympic Games. Besides for the protection against possible acts of terrorism there were anti-aircraft missiles stand-by.

In 2003 the development of security measures on the forthcoming Olympic Games in 2008 in Beijing began. So on September, 22 the symposium "For safety of Olympic Games: preparation and counter-measures" was opened in the capital of China. According to experts actions of supporters of "Independence of Tibet", and also active workers of the terrorist organization "Islamic Movement of East Turkestan" could become a serious threat. In this connection, the Chinese special services highlighted three potential threats: terrorism, separatism and religious extremism. 52 plans on safety and 500 scripts of various incidents were worked out; means on protection of VIP-persons and ways of providing safety during ceremonies of

opening and closing were planned. For about 80 thousand specially trained employees of special services, policemen and volunteers were involved for the protection of Olympic objects, spectators and sportsmen. For the effective organization of work concerning protection of public order and maintenance of public safety during preparation and holding XXII Winter Olympic Games and XI Winter Para-Olympic Games in 2014 in Sochi, on the 17-th of July 2008 a special centre "Olympiad – 2014" was created in structure of the Ministry of Internal Affairs of Russia. It is planned, that than 40 thousand employees of the Ministry of Internal Affairs and military men of internal armies will provide safety of the Olympic Games. As a whole, following tendencies have been outlined in sphere of maintenance of terrorist safety:

- 1) Steady growth of the budget allocated for the safety of sports actions (including terrorist safety). The last Olympic Games in Beijing became the only exception, according to Organizing committee of the Games in Beijing charges on safety of participants and spectators were less, than at the last similar competitions;
- 2) Enforcement of the share of international cooperation in the sphere of organization of safety of participants and fans of competitions (both on consulting, and on organizational levels);
- 3) Increase in share of participation of the state structures and the intergovernmental organizations in provision of sports actions safety whereas initially safety was provided by the public sports organizations.

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### **The employee status for sportspersons in English and Greek law** **Vagelis Alexandrakis**

*L.L.M. Sports Law, Nottingham and University of Athens, Greece*

In the present essay we will try to present how English law and Greek define the term "employee", focusing on the effect on sportspersons. We will also try to cite how Greek law deals with this matter, making a brief comparison. In both England and Greece there is no useful statutory definition of an employee. In England the only definition of an employee can be found in the Employment Rights Act (ERA) 1996 and in the Labour Relations (Consolidation) Act 1992. According to this definition, an employee is "an individual who has entered into (or where the employment has ceased, worked under) a contract of employment". So, a contract of employment is required to be an employee while a contract of services corresponds to self-employment. The law remains silent as regards the definition of the contract of employment. So it is up to the Courts and the Tribunals to decide what constitutes a contract of employment. In the Greek law employment is classified in two categories: independent employment and dependent employment. Employment law is applied only in the latter category. Subsequently, in both jurisdictions it is vital to decide what constitutes a contract of employment and dependent employment respectively. In England the common law has introduced the following tests: 1)the control test 2)the economic reality test 3)the integration test and 4)the multiple test. The latter has prevailed over the others.

The football players were considered to be employees under the "control test" in *Walker v Crystal Palace*. We have to accept the same under the "multiple test" too,

since taking all the factors of this approach into account, football players as well as the players of any team sport are employees since they are remunerated to provide their skill for their clubs and they are subject to the control of their club. However, things are different in respect of individual sports, such as tennis and boxing. On these occasions, even when athletes represent a club, they appear to be their own masters, and they are not subject to any control, nor do they bear the risk of loss.

In Greek law, only workers who work under “dependent work” are considered to be employees. Workers who work under regime of independent services do not enjoy the advantages of the employment legislation. There was the problem of the definition of the term dependant work. The Greek theory and jurisprudence accept the criterion of legal-personal dependence (there has to be a personal obligation of the worker to obey to the employer) . So, what is crucial for the determination is that the worker is obliged to comply with the employer’s guidance and orders relevant to the work and accept the employer’s control.

On many occasions the legislation characterizes some relationships as *de lege* dependent work. Initially the relationship between the remunerated athletes and the sport clubs was characterized by Article 19 of the law 1958/1991 as a *sui generis* contract of sporting services and under no circumstances was considered to be “dependant” work. However, the law has now been amended and according to the new law 2725/1999, Article 90 the relationship is a *de lege* contract of dependent work and subsequently the employment legislation is applicable (except if it is contrary to the specific provisions about sport, provided by the law 2725/1999). Therefore, effectively both English and Greek law ends up with the same conclusion that athletes are employees. However, the situation under the Greek law seems to be much clearer since due to the legislative intervention there is no doubt that players are subject to the employment legislation. On the other hand, English law seems to be more flexible in this matter.

So, according to Greek law the professional remunerated athletes of clubs are *de lege* employees. All the other categories of athletes should be examined *ad hoc* under the test mentioned above to determine whether they are employees or not. Therefore, the situation in sport is approximately the same as England with the exception of remunerated athletes of team sports, who are *de lege* employees under the Greek law.

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### **The clearing salary of professional basketball player with fines**

**Joanna Maragou**

*L.L.M., Attorney at Law Athens bar Association*

This study examines the issue of clearing salary of a professional basketball player with fines. In particular, the establishment of the Law 2725/1999 sets the categories athletes regarded as professionals - employees. For these, the above Law provides for the existence of a collective nature structure characterized as Rule of Article 87, but it is actually a collective employment contract. Rule of 2001 for professional basketball players ratified by ministerial decision, set clearing salary with fines. Already, however, the term was considered by the Council of State with their decision 1276/08 of to be invalid, due to lack of legislative authorization and opposition to Article 22 of the Greek Constitution.

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**Labour rights of minor athletes****Ioannis K. Anagnostopoulos***Attorney at Law, Instructor, University of Peloponnese  
General Secretary, Hellenic Centre of Research on Sports Law*

Modern amateur and professional sports have become a significant financial activity, due to the publicity which athletes attract and the (often under-cover) contracts stipulating monetary clauses. A young talented athlete can be rather easily the subject of financial manipulation since, in most occasions, other persons are substituting his/her will and are making the necessary arrangements regarding his/her transfers to clubs, where he/she will offer sports services. The present study focuses on the rights of minor athletes at the outset of their professional sporting career, which has a financial character in the form of a labour contract. In particular, special mention is made to the following issues: minor athlete as an employee in comparison with the minor non-athlete employee; a minor athlete's right to sign an employment agreement as professional athlete before his/her 18th birthday; a minor athlete's obligation to sign his first contract with the Sports S.A. that formed him/her, if such Sports S.A. maintains an Athletes' Formation Academy; whether a contract signed by the parent/sibling of a minor athlete which extends to the period after the athlete's 18th birthday is binding on him/her.

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**Lawful Relation between Professional Football Player and Athletic Corporation****Nikolaos Michalinos***L.L.M., University of Brussels*

The need for the clarification of the lawful relation between the athletic corporation and the professional football player.

1. The elements of dependence, which highlight the employment relationship as a dependent employment relationship according to Labor law.
2. Current provisions of sports regulations in reference to Labor Legislation
3. Range of application of labour legislation upon Greek professional football disputes
4. Which provisions of labour legislation are exempt due to the prevalence (dominance) of other legitimate goods (?)
5. Findings / Conclusions.

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**Regulations that concerning rendering of gymnastics services in private gyms  
(article 2 PD 216/2006)****Theodora Gennimata***Bachelor degree DPh.E&Sp.S and Law Faculty, University of Athens*

In this work, is examination the content of regulations that concern the total of services of private gyms and the benefit of services from the personnel that is

required, according to the familiar provisions of pd 219/2006 about gyms. For the analysis and discussion of provisions of decree in question except the use of provisions of last one, it becomes also use of theory in the horizon of modern bibliography as well as case law in as far as this will concern benefit of services of teachers and training as in general services in areas of physical exercise and physical activity. Also so that it exists overall review of subject will be also analyzed the significance and the content of physical exercise hence also required services. The conclusion to which we lead is that the article of 2 pd initially it lent in the all specializations of [TEFAA] the character of services of physical exercise in the private gyms, while with the modifications it removed important fields of benefit of services from graduates [TEFAA].

### **Travels organization from sports club**

**George Printezis**

*Lawyer*

It is a current trend for people to participate in mountain sport and leisure activities/trips either in Greece or abroad. The organizers of these activities are usually climbing – mountaineering athletic clubs ruled by the Greek sport's law. The participants though are not considered as athletes but as tourists / consumers. This raises a number of legal issues:

Is there a legal framework under which these activities are organized?

To what extend is the travel and tourism law implemented in the organization of those activities/trips?

Is the organization of those trips inspected and/or regulated by any governmental body?

Which are the responsibilities of the organizing clubs towards the participants?

In my talk I will attempt to address all the above by defining core concepts, such as what constitutes an organized trip, what is mountain walking / trekking, which are the outdoor activity centers responsible for organizing tourism and sport events and finally what should be the legal framework under which these centers should operate.

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## **Topic C**

### **Human Rights in Sports Activities**

#### **Sports Ethics - Doping and Violence**

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#### **The Equation of «ΕΥ» (excellence): Meta ethic and Theory of Sports Law**

**Georgios D. Farandos**

*Prof., (Em.), University of Athens, Greece*

Sports Ethic can be combined with the theory of Sports Law. A deployment of the ancient greek sources of Sports Ethic may suggest a thought re-orientation to the basis of Sports Law. Subject of the discussion concerning the problem of the relationship between Ethics and Law in general are also similarities and differences. The discussion about Sports Ethics is extremely interesting nowadays due to the

negative phenomena of modern sports and the rapid developments in related fields. Can the moral horizon of the ancient greek «εϋ» mark a signum for the language, knowledge and praxis of modern sports? Can the «εϋ» mark the discussion on modern Ethics and Theory of Sports Law? These questions form the basis of this interrogation and at the same time a contribution to the modern quest of moral and legal problems of sports, without ignoring the current problems related to Ethics and Sports Law under discussion.

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### **The ethics of victory**

**Ioannis Panousis**

*Prof., University of Athens*

At the end of 20th century the conditions changed. The “production” of athletes and the “industry” of sports didn’t avoid “sports chatter” (according to Umberto Eco) that praises wasting money, abolition of privacy, show-off in lifestyle, remove from public area, and function in the name of a retrogressive and fluctuating public opinion. The image of an athlete, as well as that of every human, is not protected. The informative buzz of mass media, tv cameras as the mediating mean for sports events, sports language for an alleged global communication/ understanding have totally dominated. If sports are only a spectacle, then mass media are allowed to take over the production, direction, and the selection of first players.

On the other side, if sports are a social good and a right, then mass media have to demonstrate social liability in sports activities. The fact that sports events have become spectacle does not aim to distinguish “sports values” nor to improve the language of mass media, but to attract more publicity. This function will not be out of this modern way of “intervention” of mass media – for some this is accepted for some others is not – in the instances of political, social, and cultural life, if it was not evolved in a “spectacle by piece” or “pay for a game”. This pay society, that conceals a pay-per-society, seems to lead as well to “pay mass media” and not mass media for getting information. The avenues of information are not accessible to all since there are tolls to pass.

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### **Doping Control Procedures in Athletes with Disabilities**

**Dimitra Koutsouki**

*Prof., University of Athens, Greece*

As the Paralympic Games continue to develop and gain promotion, athletes with disabilities may be more and more tempted to improve their athletic performances through doping. Therefore, doping control in sport competitions of athletes with disabilities is equally important and necessary as in able-bodied athletes. Unofficially, doping control was applied to athletes with disabilities for first time during the Stoke Mandeville 1984 Paralympic Games. Official doping control program was firstly applied during the Seoul 1988 Paralympic Games. Since then, systematic doping control programs are conducted before and during all the Paralympic Games, as well as all the international competitions for athletes with

disabilities, governed by the International Paralympic Committee (IPC). The great emphasis given by IPC to doping issues is indicated by the 1155 doping control tests, which were conducted to 893 athletes with disabilities before and during the Beijing 2008 Paralympic Games. Only 3 athletes (all in the sport of power lifting) were found to be positive in these doping tests.

IPC is the organization in charge of planning, organizing and implementing doping control programs for athletes with disabilities. The philosophy of these programs is quite similar to the philosophy of doping control programs for able-bodied athletes setting two basic goals: a) to protect athletes with disabilities from health-related side effects of using illegal doping substances and b) to ensure “fair-play” among athletes with disabilities participating in national and international disability sport competitions. Furthermore, basic goal of IPC is to coordinate doping control policy through structuring efficient partnerships with national and world anti-doping associations like WADA. Towards this goal, IPC has recently published the “IPC Anti-Doping Code”, whose most rules and articles are in full agreement with the rules and articles of WADA.

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## **SPORTING BOYCOTTS: LEGAL INTERVENTION IN THE SPORTING ARENA**

**Bandini Chhichhia**

*Researcher Court of Appeal, New South Wales, Australia*

“I don’t want to play with you anymore!” an athlete screeches across the field with silent moral indignation. This typical kindergarten psychology has steeped into the human gene over the years. But what if such statements were made in the realm of international sport where national and international sporting codes, domestic legal systems, national policies, individual athlete contracts all militate against such symbolic acts of idealism? Many have found the answer in sporting boycotts.

Sports and politics have had an incorrigible affair for centuries, where movements in one have undoubtedly yielded movement in the other and sporting boycotts have been perennially used against nations whose human rights records are abysmal as a manifestation of both collective ideals and national policy. A classic example of such theatrics is the Olympic movement. The present enquiry is why have sporting boycotts been employed? Are they utilitarian or effective? Are they legal? And if their use cannot be prohibited how should this interrelationship be governed both at a national and international level to strike a balance between the autonomy of a sport, an athlete’s civil liberties and ultimately sovereign sporting teams. The task is not easy.

My paper sought to examine the complex legal issues raised by sporting boycotts particularly in the absence of any clear legislative authority by analysing the decision of *Finnigan v NZFRU* [1985] 2 NZLR 19. The case touches upon legal standing, justiciability and ultimately the remedies being sought in a common law system. At the heart of the decision is judicial review of a fundamentally private decision. The paper further explores the potential legal consequences of sporting boycotts in an Australian setting focusing particularly on legal actions instigated by “disrepute clauses” of private athlete contracts. Once again what is the justiciability of decisions made by sporting tribunals? Are courts the new vanguards of individual athlete

morality, bastions of civil rights or the place of last resort when political decisions remain unanswered?

The paper also examined the legitimacy under international law given the global face of sport today touching upon individual international sporting codes, the Olympic Charter and international human rights law. The ultimate question that begs to be answered is: how and when should law intervene in sport when fundamental enquiry is political?

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### **The prohibition of suspension award for violence crimes in courts**

**Dr. Mavromatis Achilleas**

*Lawyer, Greece*

The aim of this research paper is to examine in a theoretical level the subject of the prohibition of suspension of penalties for violence crimes committed in sport grounds. The prediction for execution of penalties under condition and in custody is standardised in the Penal Code (articles 99-104) and is recognized as an institution of particular value and necessity for the penal treatment of those who commit a penal crime for the first time, preventing thus the danger of a so called "criminal infection" of somebody who has never committed a crime before and has been condemned to imprisonment for the first time. In the past, there were several legal provisions, which excluded the suspension of penalties. Those provisions were abolished by the article 5b of the law 1419/1984. Nowadays, and despite the general extension of the institution of the suspension, especially after the law 2207/1994, the prohibition of suspension is predicted by the article 20 of the law 3472/2006 for the violence crimes committed in sport grounds, described in the paragraphs 1-4 of the article 41ΣΤ of the law 2725/1999, as it is in value. In the present research paper the compatibility of this provision with the Constitution and the general principles of our Penal Law and its practical effectiveness are examined and an alternative way of encountering these crimes is proposed, so that the provisions will remain severe without the creation of extreme conditions, to which the present provision could lead.

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### **Doping and patrimonial interests**

**Anna Di Giandomenico**

*Law's Philosophy Researcher, Faculty of Political Science of Teramo's University, Italy*

This is a reflection that moves from a General Theory of Law's point of view, aiming at the reconstruction of case of doping. I'll focus with particular reference to examining if there is the possibility to admitting significance and involvement of interests in doping.

First I'll describe the case of doping; then I'll examine the injured goods by doping, however focusing on interests' injury. In fact, if *vulnus*, caused as much to the fairness in competition (s.c. *level playing field*) as to the sportsman's health, is immediately detected, not the same happens for the interests' injury, considered for a long time, maybe still yet, accidentally and indirectly involved. Sport's evolution (especially the increasing of professional practice, even in those sports defined as dilettantistic practice at present) strengthens the unaffirmability of this thesis: I think

that this thesis is valid even for dilettantistic sport. In fact, I may affirm that competition constitutively requires the identification of winner, whose acknowledgement may consist merely in award of symbolical prizes (cups of medals), as much as in award of prizes that have an economical valuation. Just the acknowledgement's essentiality may prefigure an intrinsic patrimonial character in competition: the loser hasn't the same importance of the winner. Today, this is a distinguishing tract that gains more and more importance, also considering the spreading of sport professional practice (more or less officially acknowledged).

Taken as true this thesis, I'll go on examination of this profile and I'll analyze some problematic juridical points. This will be an examination that goes on according to the point of view that the UNESCO's *International Convention against Doping in Sport* already signed. Without giving a preference to sport juridical rules and regulations or to International / State rules and regulations, this examination want to identify its possible development, also considering same judgements that seem to strengthen this thesis.

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### **"Doping" scandal of Hungarian gold medallist swimmer**

**Dr. Emese Simon - Eszter Vivien Kiss**

*SportJus, Hungarian Association of Sportslawyers*

Agnes Kovacs, Hungarian Olympic gold medallist swimmer was notified of an Out of Competition / No Advance Notice Sample collection in the early morning of 30 October 2007 in the swimming pool after finishing her training. She was about to leave, because on the previous evening she had been informed that Sir Roger Moore would invite her to a meeting in a hotel in Budapest at 9 o' clock next morning and would officially ask her to be a pro bono ambassador of UNICEF.

Doping Control Officers (DCOs) showed up at 7:55 in the swimming pool and Agnes Kovacs immediately signalled to them that she had to leave urgently, but wanted to cooperate and did not want any future problem from the situation. She tried to provide a sufficient sample, however, she only could produce 25 ml, instead of 75. Understandably she was excited and asked the DCOs to accompany her to the meeting until she would be able to provide a sample of sufficient volume. The DCOs however did not accompany the athlete, but made her signed the document of the refusal of submitting to the sample collection, while verbally ensuring her that nothing wrong would happen subsequently. Maybe she was naïve or committed a mistake, maybe did not know the rules satisfactorily. Quite certainly, nor did the DCOs.

A few days later the whole media was full of the news with the heading: "Agnes Kovacs committed a doping violence". This happened before any doping procedure began in the case.

Finally, the athlete was cleared both on national and international levels (but this information is hard to find on the Internet when searching on this topic today). Many legal questions arise from this case, basically concerning the standards and laws for testing. It looks like the parties had serious problems with the interpretation and even with the knowledge of the relevant rules. We will attempt to elaborate and compare the applicable national and international (i.e. WADA) laws, bylaws and

regulations for testing that are connected to this special case, and highlight the obscurities and doubtfulness in the practice of the interpretation of such laws. This case also concerns human and personal rights, since, she has been cleared in the end, but this has only happened after having been completely dragged through the mire, so to speak. This scandal was one of the reasons why her amazing sporting career ended shortly after these things had happened.

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**The penal confrontation of violence in sport**  
**Yiannis Papadogiannakis**

*Lawyer, Greece*

Aggression and violence are some of the more complex demonstrations of the human behavior. Sports as social activity could not avoid the entrance of violence to its field, the competition being a substantial element of sports at its modern version. Constant increase of violence on occasion of sport meetings is a fact globally, having as a result severe consequences. At first this phenomenon occurred in the sport venues, but it gradually expanded, mainly through organized groups of fans and outside them (public spaces, underground stations, streets). Persons that may resort to violence are the sportsmen and –women among them or other persons involved to the sporting activity (referees, coaches, sports actors), as well as fans among them or against persons somehow participating to a sporting activity (sportsmen, referees, police officers, reporters), before or after that. The term “hooliganism” is used internationally for the latter form. The increased violent incidents forced the greek legislator to set several criminal rules and define crimes committed in sport venues as special ones, imposing severe criminal sanctions for them. For instance the sports legislation in Greece (Act 2725/1999) has been amended five times in the past few years making the criminal sanctions more severe, but the problem still exists.

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**The modern challenges of confrontation of crimes in sports and the role of sport**  
**Public prosecutor according to Law 2725/99**

**Ilias Konstantakopoulos**

*Sport Public prosecutor, Piraeus, Greece*

I. Role of the Public Prosecutor according to art. 128 of the Law 2725/1999. Public Prosecution for criminal offences of the Law 2725/1999. Supervising the execution of the criminal sanctions threatened by the law. Coordinating the work of the police authorities to deal with violence on occasion of sport events. Supervising the implementation of the Law 2725/1999. Calling to meetings on occasion of coming sport events.

II. Modern challenges of dealing with crimes in sport venues. Supervision of sport venues with electronic means according to art. 41E of the Law 2725/1999. Use and function of those systems. Data collected by supervision systems – Management and use of this data by the competent authorities and relevant limitations. Cases.

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## Human Rights of athletes



### **Sport, racial discriminations and United Nations: The fight against apartheid**

**Kostas Chatzikonstantinou**

*Prof., Law Faculty, Aristotle University of Thessaloniki, Greece*

Apartheid from a political and social view. Apartheid in the UN 1948-1966. Embargo & Boycott. The banning of South Africa from the 1964 Games. The all-white-sport teams of South Africa. Racial Discrimination in Sports: immediate breach of the Olympic Principles. The Expulsion of South Africa from the Olympic movement. Commonwealth Games and the Gleneagles Agreement. Relations with Australia and New Zealand. Third party boycott. The list of sport meetings with South Africa in the UN. The Declaration against apartheid in sports. The International Convention against apartheid in sports (1985). The beginning of the end of the isolation.

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### **Rôle et influence du mouvement sportif international dans le règlement des contentieux : une indépendance renforcée**

**Gérard Auneau**

*Prof., Université Paul Sabatier – Toulouse III, France*

La forte diffusion du phénomène sportif a eu pour conséquence également une multiplication des contentieux dans les différents secteurs de la vie sociale. Dans ce contexte le droit coutumier du sport dont la source émettrice demeure les organisations sportives internationales (fédérations internationales et CIO) s'est retrouvé très souvent confronté au droit commun des Etats mais aussi opposé de manière frontale au droit communautaire.

Ces interactions ont certes contribué à la construction d'un droit du sport qui dans un pays comme la France a été reconnu par l'Etat comme une nouvelle branche du droit (ordonnance du 23 mai 2006). Mais au-delà de ce résultat ponctuel propre à un pays on peut essayer de situer de façon plus globale et au niveau international la position des autorités sportives face aux contraintes qui leurs sont imposées et la manière de les traiter. Dans ce cadre, le règlement des contentieux est un indicateur signifiant. En effet on constate une prise en compte très relative par le mouvement sportif des décisions des justices nationales de droit commun. Dans certains cas elles ne sont jamais exécutées. Dans d'autres cas des groupes de pression se mettent en place afin de relativiser les effets de l'application des jugements rendus.

Il faut néanmoins souligner la détermination de la justice communautaire et en particulier le rôle important de la C.J.C.E qui a partir de quelques arrêts de principe (Bosman – Kolpak – Simutenkov – Méca-Medina) a contraint le mouvement sportif européen à composer. Toutefois ce dernier a su mettre en œuvre des stratégies de contournement en particulier pour légaliser les indemnités de transfert en exploitant le régime juridique du contrat à durée déterminée.

Une étape essentielle a été franchie par le mouvement sportif international quand le CIO a su mettre en place l'arbitrage en 1983 reconnu par le Tribunal Fédéral Suisse en 1993. Par ailleurs en 1994, la Constitution du Conseil International de l'Arbitrage

en matière de sport n'a fait que consacrer cette évolution. 1426 demandes d'arbitrage ont été enregistrées depuis la création du TAS et au 31 décembre 2007, 849 décisions ont été rendues. On peut donc constater que de par la nature juridique de cette structure et le fait que les contentieux sportifs mettant en jeu une dimension internationale ne peuvent pas être résolus par des juridictions de droit commun, l'arbitrage apparaît comme le seul recours utile. Par voie de conséquence le TAS est le symbole du renforcement de l'indépendance du mouvement sportif international.

Un autre phénomène qui a pour cadre le terrain communautaire semble caractériser une évolution significative vers une plus grande autonomie du mouvement sportif. Il s'agit de la publication du livre blanc européen sur le sport assuré par la commission européenne. Ce texte traite de la spécificité sportive, et reconnaît de réels particularismes qui peuvent même à terme remettre en cause une partie des décisions prises par la justice communautaire.

C'est pourquoi et de manière plus globale le mouvement sportif est en train de réussir sa « mondialisation sociale » au point que sur la base de ses particularismes la réglementation coutumière sportive se transforme en partie en règles de droit commun opposables à tous citoyens susceptibles d'être interpellés par des questions sportives.

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### **The right to identity and the commercial exploitation of the individual's public image**

**S. J Cornelius**

*Prof., Law Faculty, University of Johannesburg, Director: UJ Centre for Sport Law, South Africa*

The outward image and physical attributes of the individual have become commodities. The advertising world takes notice of the popularity enjoyed by the stars and realise the value of associating merchandise or trade marks with superstars. On the one hand, this leads to a whole new source of income for the superstars themselves and greater profit for the enterprises that associate their products with the stars. But on the other hand, it leads to difficulties when the attributes of a person is apparently used without consent. The purpose of this address is to determine firstly to what extent the individual should be protected against the unlawful use of his or her image. Secondly, what is the legal nature of such protection? Thirdly, protection of the individual's right to identity must be weighed against the fundamental right to freedom of expression. In South Africa the common law approach has thus far been followed where the attributes of a person has been used without consent for commercial purposes. This position can be summarised as follows: Everyone has a right to identity. Identity includes the collection of unique congenital and acquired attributes which are unique to the individual and distinguishes the individual from others. When the attributes of a person is used without consent for commercial gain, the right to identity can be violated in one of two ways. Firstly, a person's right to identity can be infringed upon if the attributes of that person is used without permission in a way which cannot be reconciled with the true image of the individual concerned. Secondly, the right to identity is violated in

the attributes of a person is used without consent by another person for commercial gain.

Where the right to identity is violated, a personality right is infringed upon, to wit the right to dignity and satisfaction can be claimed by means of the *actio iniuriarum* from the wrongdoer. Violation of the right to identity can also result in patrimonial loss, in which case damages can be claimed with the *actio legis Aquiliae*.

The user can, in certain appropriate cases justify the unauthorised use of a particular person's attributes on the basis of public interest if such use takes place mainly in connection with public interest reporting, jest or art.

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### **Participation of transgenders in sports competitions – an issue of human rights**

**Luiz César Cunha Lima**

*Lawyer in Brasília/DF (Brazil), FIFA Player Agent, Brasil*

In 2004, the International Olympic Committee allowed the participation of transsexual athletes in the new gender, if observed some rules. According to the Harry Benjamin International Gender Dysphoria Association, transsexualism is a “gender dysphoria”. The most famous cases of transsexual athletes involve the north-american tennis player Renée Richards, the canadian cyclist Michelle Dumaresq and the danish golf player Mianne Bagger. The authorization is up to each international sports federation, but it is not enough. Not allowing the participation of transgenders in sports competitions (once observed some rules in order to keep the fair play and to avoid inequity) violates the rules of the United Nations Organization and the European Convention of Man's Rights. Allowing the participation of transgenders in sports competitions is a way of respecting the rights of the transsexuals as a minority group among the sexual minorities.

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### **The athlete's right to respect for his private file and his home**

**Dr. Janwillem Soek**

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Competition cyclist Andrej Kashechkin was caught on a charge of blood doping during an unannounced check on 1 August 2007 while holidaying in Turkey. On 31 August he was fired by his team Astana, after a countercheck also proved positive. The cyclist also faced a two-year suspension and an additional two-year Pro Tour suspension. He then laid a charge with the court in Luik (Belgium) against the International Cycling Union UCI. He maintained that carrying out a doping check during a personal holiday is a violation of human rights. Judicial testing against fundamental human rights rules, of the regulations which give sporting and anti-doping organisations the right to carry out doping checks outside the competition context, is vitally important. Should the court have found that the checks are a violation of a sportsperson's right to privacy, and then one of the most important elements in the existing doping control system would have fallen away? Unfortunately the procedure met a premature end, because the Luik court declared itself to be unqualified to consider the issue for ‘territorial reasons’: the cyclist no

longer lived in Belgium and the UCI's base is in Switzerland. It is anticipated that Kashechkin will launch a case against the UCI in Switzerland in the near future. Indeed, on the eve of the case in Belgium Kashechkin's lawyers indicated their willingness to proceed through to the European Court of Human Rights.

The possibility of disturbing a sportsperson in his private life and home to take a doping sample, gives rise to a number of interesting questions. What follows will attempt to provide answers to the questions. The first issue which arises is the legal basis of such checks performed outside a competition context, and the status of the legal basis. If the basis resides in 'purely sportive rules', does the court then have the possibility to test the rules? Can it be taken as a point of departure that no single objective of the sporting sector can justify that the more fundamental social interests and rights of the sportsperson are violated? In other words: are the interests of the sporting world only related to the autonomous private rights, or are these interests subordinate to rules of the human rights treaties? If the answer to this is that the sporting world must step aside for fundamental human rights, the follow-up question must be whether the right the sporting world accords itself to carry out doping checks at the home of a sportsperson or during his or her holiday, is in conflict with basic rights. Finally there is the question as to whether in choosing to exercise a sport, the sportsperson has voluntarily renounced the protection human rights offers.

### Topic D

#### Sports Jurisdictional Order Sports disputes and sports justice

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#### **"PIL" and lex sportiva issues in the field of international sport dispute resolution**

**Charis Pamboukis**

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1- The topic will deal with the interaction in more concrete terms of the Lex Sportiva and national laws in particular in a PIL perspective.

The topic has two aspects. The first is a clear PIL aspects. The second is a material dispute aspects.

2- The first axe refers to many issues, as the applicable law in the arbitration agreement, arbitrability, internationality of the dispute, the applicable lex arbitrii and its control by national courts, recognition of arbitral awards of TAS and the possibility of localization in the Lex Sportiva. In particular there are two important subjects: the first one is the relation of PIL and the Lex Sportiva and the second – less original- the limits to the Lex Sportiva by national laws

3- The second aspect -International Sport Dispute Resolution- deals with broad material issues as nationality of players, doping control etc. Due to the fact that these subject matters are heterogeneous a specific and differentiated PIL approach is probably needed.

4- The topic will thus try to demonstrate the need of specific PIL rules in the field of the Lex Sportiva or expressed in different terms to construe the hypothesis of a Sports PIL (within the Lex Sportiva).

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## **Occupiers' liability in sport and recreation**

**AP Agbonjinmi**

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Law School of Law, Faculty of Management Sciences and Law University of Limpopo,  
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This paper examines the common law and statutory principles of occupiers' liability for injuries sustained on land as applicable to sport and recreation with particular reference to Nigeria and South Africa. The common law occupiers' liability principles for injuries suffered by lawful visitors are based on "occupancy" and "activity" duties. These principles slowly evolved as a result of the value attached to landownership – the unrestrained use and enjoyment of land subject only to the laws of neighbour, nuisance and trespass. Landowners were immuned from liability for injury sustained on land irrespective of the dangers posed by the land. Increased dangers associated with industrial production forced a partial change in judicial attitude to landownership. Instead of directly applying the *Atkinian model* of negligence, the judiciary evolved liability principles coloured by mid-Victorian conviction that *bargain* alone could create a duty of affirmative care. The "material interest" principle led to classification of lawful visitors as *contractual visitors*, *invitees* or licensees leaving a lacuna for those who entered land as of right. The legal consequence of classification of lawful visitors is the "graduation" of duty of care owed by occupier to different categories of lawful visitors – highest for contractual visitors and least for trespassers, and subject to the purpose for which entrance was granted. The confusion created by occupier's different duties of care to categories of entrants led to the enactment of *Occupiers' Liability Act* which prescribes a "common duty of care" for all lawful visitors. The occupiers' of sporting and recreational facilities and organisers of events owe participants a duty of care subject to the principle of assumption of risks inherent in the particular sport or recreation. The decision in *Watson* has extended the duty of care to cover proper treatment of injury sustained during participation. Occupiers' liability in South Africa is based Roman-Dutch principle of *lex Aquila* which is in *pari materia* with Atkinian principles on negligence. Occupier's liability in Nigeria is based on the common law rules that were in force in England before 1957 except in Lagos State where it is based on *Law Reform (Torts) Law*. Some hypothetical questions on occupiers' liability during games such as the Olympics were raised.

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## **Resolving Sport Disputes of administrative nature before the Supreme Council of Resolution of Sport Disputes (ASEAD)**

**Katerina Karfaki**

*Judge at the Administrative Court of Appeal, Greece*

This paper aims at showing the true nature of the Supreme Council of Resolution of Sport disputes, distinguishing between the disputes attributed to it and examining the procedure by which disputes of administrative nature are resolved. Also the application of general principles of the administrative law is a part of this research. The scientific problem of this study is being dealt with in accordance with modern

bibliography and case-law of the greek administrative courts. The conclusion of this analysis is that before the Supreme Council of Resolution of Sport disputes are being examined not only disputes of an administrative nature, but also disputes concerning the judge of the contract and disciplinary disputes concerning the violation of the sporting spirit. It is a necessity the application of the principles of the moral value, of the free evaluation of the evidence and fair trial, whereas the necessity of establishing a Sports Court is being stressed.

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### **The evolution of the European Court of Justice's case law on sports betting and gambling: an internal market perspective**

**Thomas Papadopoulos**

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This paper will discuss the evolution of the ECJ's case law on the field of sports betting and gambling. Sports betting and gambling constitute a sector of the economy sometimes heavily regulated by Member States which could potentially impose obstacles on new (often foreign) market operators planning to penetrate into their market. Some Member States are particularly in favour of state companies exercising this business activity. Member States have introduced restrictions in the exercise of this activity within their domestic markets due to social and ethical considerations. In its previous case law (*Zenatti and Gambelli*), the ECJ held that the specific national legislation imposing a licensing requirement for the exercise of this business activity of collection of bets on sporting events breaches the fundamental freedom of establishment (Art. 43 EC Treaty) and the fundamental freedom to provide services (Art. 49 EC Treaty). Moreover, the ECJ admitted that this kind of trade barriers could be justified by mandatory requirements of the public interest, such as protection of consumer public and protection of the sports' integrity. Nevertheless, the ECJ did not specify if this national legislation regulating sports betting and gambling respects the principle of proportionality in order to be characterized as lawful. This constituted a serious gap in the jurisprudence of the ECJ because national courts were entitled to decide alone on this crucial condition for the justification of a trade barrier. The recent *Placanica* case is a further step towards the understanding of which barrier complies with the proportionality principle. In this case, the ECJ also discussed the exclusion from the sports betting and gambling market of companies whose shares are listed on stock exchanges and other regulated markets. This evolution of the case law calls once more for the consideration of the possibility of positive harmonization in this part of the internal market. Negative harmonization through ECJ's case law does not always offer legal certainty for market operators planning to enter into a new market. Positive harmonization through secondary Community law will provide a framework for the operation of sports betting and gambling activities and, as a result, the conditions of market access will be known in advance to market participants. It is obvious that a legislative initiative of the Community in this area will contribute significantly to the completion of the internal market. The Commission has already added in its internal market agenda the issue of sports betting and gambling.

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### **The right to be previously heard to the sports adjudicatory authority**

**Marieta Kotsifaki**

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The interpreter of law is often confronted with the legal issues that are raised in case of observing (or not) the right to be previously heard to the athletic adjudicatory authority. This paper attempts to examine some of the questions that arise as to

- if the constitutional requirements permit the restrictions to the right to be previously heard set by the case law
- if the fact that the adverse act is adopted based on objective data justifies sufficiently the evasion observing the constitutional requirement
- if the administrative effectiveness conflicts with the right to be previously heard, and by what means the interpreter of law can cope with this conflict.

The conclusion reached is that while the interpreter of law is weighting the administrative effectiveness and the right to be previously heard he has to resort to the principle of proportionality, of practical harmonization and the principle of not assaulting the hard core of the conflicting principles or rights. And of course the less weighting is demanded, in other words the more impersonally directed and independent of the athlete's behavior the adverse act is, the more justified the omission observing the right to be previously heard to the adjudicatory authority is regarded.

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### **Compensation as a consequence of a contract's termination without just cause by a professional football player: Webster case**

**Alkis Papantoniou**

*Post graduate Student on sports law, Univ. of Athens, Lawyer Greece*

The present is aimed at the research regarding the definition of the due compensation in case of a unilaterally termination of a professional contract by a professional football player to his club, as the aforementioned compensation is settled by the provisions of FIFA regulations and the relative jurisprudence.

Article 17 of the FIFA Regulations on the Status and Transfer of Players defines the way of the determination of the due compensation which the party who violates the terms of the contract shall pay, on the basis of some, indicative mentioned, criteria.

The decision of the body in charge of FIFA (Dispute Resolution Chamber) regarding the definition of the due compensation in Webster Case, deals for the first time with this matter and attempts to specify the measure which take into account the calculation of the compensation. The CAS decision (2007/A/1298-1230) upon the same decision brought down a lot of the criteria which DRC accepted and sets restricted boundaries.

The present look into the above mentioned decisions – with emphasis to the CAS' decision, their differences, such as the definition of a principle of calculation and its importance for the manner of the settlement of future disputes.

The definition of the due compensation in the case of a contract's termination without just cause is considered as one of the most interesting subjects of Lex Sportiva in the field of the professional football and it's a ground on a conflict between the clubs (FIFA) and the professional football players (FIFpro).

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**Misunderstandings on the character of sports committees  
of Hellenic Football Association (E.P.O)**

**Ioannis Voultzis**

*Attorney-at-Law*

The composition of first and second degree committees of Hellenic Football Association (EPO) according to Law or according to the articles and the regulations of the Association (which is composed either of three or five members or of judges or only of one judge as a president) has not changed their character as organs of a legal person of the private law sector, such as Hellenic EPO and EPAE (Association of Football companies). This character has been assured also by the ordinary courts and the Council of State in cases that those affected by the decisions appeal to them regardless if the constitution allows the participation of ordinary judges in the composition of the above committees.

To make their decisions those committees apply the official regulations that are compatible with the nature and the forms of the case that have to decide but also with the general rules of justice that are the characteristic of every legal right and legal obligation either this has to do with dispute between persons or between legal persons, taking always into consideration the idea of justice and right. In order to protect freedom in the process the lawgiver didn't impose any regulation concerning the process because he intended to give justice following the idea of the spirit of athletics.

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**Sports jurisdiction and fair trials**

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**The establishment and assumption of Chinese sports law arbitration**

**Wang XiaoPing**

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*Vice director, China sports law research center, China*

To date, a comprehensive sports arbitration system has not yet been established in China. Hence, to better resolve conflicts and disputes of multiple natures in Chinese sports, it is critical to establish an arbitration system that is not only practical in China but also compatible with international standards. To this end, relevant government agencies and experts in Chinese Sport Laws have made enormous efforts and achieved substantial advancements. China is arguably a large country that is competitive and successful in sports, improving the law system represents a particularly important task for Chinese sports. The current study examined the current status of Chinese sports arbitration system, in particular, analyzed some conflicts between the "Sports Laws" and "Legislative Laws" in China from a

legislative perspective. Subsequently, we discussed the feasibility of establishing a Chinese sports arbitration system, and proposed a blueprint of the future Chinese sports arbitration system. Such work should help establish and innovate the legal systems in Chinese sports.

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**Case law of administrative court – Council of State for sport disputes**

*Kostas Remelis, Prof, Law Faculty, Democritus University of Thrace, Greece*

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**La juridiction sportive à l'encontre de la juridiction légale ordinaire en droit turc:**

**Evolution et enjeux**

**Dr. Özgerhan Tolunay**

*Lawyer, Turkey*

Cette étude sera subdivisée en 3 parties essentielles :

1. La première partie va traiter la genèse et le développement de la justice étatique (justice ordinaire) ainsi que la situation actuelle en droit turc.

On y parlera la procédure devant les tribunaux ordinaires ainsi que l'exécution des jugements d'arbitrage par les autorités d'exécution étatiques.

2. La deuxième partie sera consacrée à l'organisation de la justice sportive dans les associations, notamment dans la fédération turque de football qui est la plus développée dans ce domaine.

Je parlerai également d'une nouvelle et intéressante solution apportée par la fédération turque de football en créant un Comité de médiation afin de faciliter et accélérer la résolution des litiges en matière de football en Turquie.

3. La troisième partie contiendra l'évolution dans les décisions de la Cour arbitrale de la fédération turque de football ainsi dans la procédure. Cela sera illustré avec quelques cas pratiques jugés par la Cour arbitrale de la fédération turque de football.

Les cas jurisprudentiels illustrant les recours contre les décisions de Cour arbitrale de la fédération turque de football auprès des tribunaux ordinaires seront également traités dans ce chapitre.

Le recours auprès du Tribunal arbitral du sport (TAS) à Lausanne contre les décisions de Cour arbitrale de la fédération turque de football fera aussi l'objet de ce chapitre.

*Comme conclusion*, tout en indiquant l'évolution et les enjeux attendus en droit turc en matière de sport au sujet de la justice étatique et la justice associative, nous quitterons le cadre strict de la Turquie et donnerons notre avis sur cette évolution face à la position de la CE et les limites du pouvoir décisionnel du TAS.

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**Emphasizing juridical foundations of children's protection against exploitation through work/sport in a constitutional state- Romania**

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Considering the social-judicial bibliography in connection with the system of child's well-being, we can identify two major tendencies: the „paternalistic” and „self determination”. In spite of the controversies of these doctrinally tendencies, it is essential that in this domain/ a notable social phenomenon/ physical education and sport, the principle of child's superior interest to be imposed in all the decisions concerning children and taken by public authorities and private authorized organizations, as well as the causes solved by courts of justice. In this paper, I intend to emphasize the existence of judicial adjustments, which guarantee the protection of child's rights in connection with exploitation through work and/or similar activities, especially sport activities. In this sense, I consider that the rapport between the existence of judicial frame of promotion and the assurance of child's rights and putting them into practice, that is the rapport between declaration and the effectiveness of the law are reference points of appreciation and measure of the existence of the constitutional state.

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### **Le modèle futur de Sports Coréen Arbitrage : hybride d'e-dr et ADR**

**Joseph Hwasuk Oh**

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Après les “Californies”, cas d'un gymnaste coréen qui aurait mérité de gagner une médaille d'or mais qui a été forcé d'accepter une médaille de bronze pendant les jeux olympiques d'Athènes de 2004, la Corée s'est rendue compte du besoin d'établir une méthode alternative de résolution des conflits dans les sports, et d'engager des gens compétents, qui connaissent le métier, plus à même de résoudre les conflits de manière juste. Enfin, le « Coreen Arbore Arbitrage Comitee » fût fondé au mois de mai 2006. En comparaison avec les autres forums de résolution dans les pays d'Asie de l'Est, le modèle coréen d'arbitrage des sports a plusieurs caractéristiques distinctives. La Corée est aussi connue pour son infrastructure d'Internet haut débit. En concevant la résolution alternative des conflits du pays (ADR), les ministères de gouvernement et les établissements publics ont introduit Internet de plusieurs manières. Parmi les procédures d'arbitrage, l'application est la première étape dans le choix et la mise en place d'une résolution, sachant que les applications en ligne et manuelles sont toutes deux acceptées. Comme les autres méthodes de résolution de conflits, la commission d'arbitrage de sports de Corée accepte des applications en ligne, ce qui facilite l'accès des différentes parties à l'arbitrage de sports.

En plus, la plupart de coûts d'arbitrage sont subventionnés par l'Etat. La commission coréenne a diminué le paiement initial exigé, pour encourager les plaignants à utiliser l'ADR des sports au lieu d'intenter d'un procès. En ce qui concerne les conflits liés aux tendances simultanées et pandémiques de mondialisation et de régionalisation, la jurisprudence de l'Asie de l'Est devrait renforcer l'arbitrage comme moyen de résolution préféré des conflits dans le domaine des sports. Une version d'Asie de l'Est de « Californies » pourrait être présentée dans un avenir proche. La Corée de demain devrait adopter un arbitrage hybride, à mi-chemin entre la RDE (la Résolution de Dispute Electronique) et l'ADR, transcendant les barrières

temporelles et spatiales. A cet égard, le modèle futur d'arbitrage de sports coréen devrait prendre l'initiative en innovant continuellement ses sports ADR.

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### **Arbitration and alternative disputes resolution (adr) in sport**

**Vagelis Alexandrakis**

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In the present paper, we will try to present the advantages and disadvantages of the different forms of arbitration and ADR in sport.

Arbitration is the adjudication of disputes by an independent third party or parties. It is the reference of a dispute or difference between not less than two persons for determination after hearing both sides in a judicial manner by another person or persons, other than a court of competent jurisdiction. There are several advantages in arbitration. The most important ones are the following: expertise, speed, privacy, flexibility, enforceability (New York Convention 1958)

A factor which could be perceived as being a disadvantage of arbitration is its final and binding decisions. If one of the parties feels aggrieved by the decision, they cannot easily challenge it. Nevertheless, usually arbitration is much speedier and much less expensive than ordinary litigation and this makes it very appealing for sport disputes, where these factors are vital. That is why specialist arbitration forums have been created in the sport field, such as the Court of Arbitration for Sport (CAS) and the Sport Dispute Resolution Panel (SDRP).

ADR has been defined as "any process that leads to the resolution of a dispute through the agreement of the parties without the use of a judge or arbitrator". ADR originated in the States and has quickly spread throughout the world. ADR mechanisms are considered to have various advantages over traditional litigation as a means of dispute resolution, some of them generally applicable and some others specific to sports. They could have, though, quite serious disadvantages as well. There are various forms of ADR, like the conciliation, the Med-Arm, the mini trial and the neutral Evaluation. The most important form, though, is the mediation, a form which is now offered by the CAS. The basic advantages of the ADR involve the creation of a unitary system of dispute resolution, speed, expertise, privacy and low cost.

The most important and common form of ADR is mediation. Mediation is a voluntary, non-binding, without prejudice process that uses a neutral third party (mediator) to help the parties in a dispute to reach a mutually agreed settlement without having to appeal to a court. Its main difference from litigation and arbitration is that its decision is not imposed on the parties. If mediation is not successful, the parties keep the right to resort to a court or arbitration. In fact, mediation has led to very successful results. The case that made mediation famous is Woodhall/Warren case. Woodhall, a WBO middle-weight world champion tried to terminate his co-operation with Warren, his manager. The latter refused to let Woodhall go. So, Woodhall appealed to the court, but because of the nature of the case he realized that it would be better to refer the dispute to mediation. Within 72 hours the dispute was resolved.

Its speed makes mediation really effective in sports disputes. Its confidentiality and its “without prejudice” character as well as the fact that it can lead to the avoidance of the time-consuming and expensive procedure of traditional litigation, all make mediation very attractive.

However, mediation is not always effective. It can work only if both sides are willing and determined to find a solution and reach a settlement. Otherwise, no matter how efficient the mediator might be, mediation is not going to succeed and resort to court seems unavoidable. Besides, parties cannot be always trusted. Mediation would be the ideal solution in an ideal world. In our world, though, it is argued that a binding decision, which leads to permanent solutions and stability, is indispensable in the sports field. That is why arbitration seems to be more effective.

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### **“Sporting spirit” violation - The way that justice is provided by the Committee of Sporting Spirit**

**Aikaterini Asimakopoulou**

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The aim of this study is to perform the limits of the athletic spirit and the cases where is forced, according to the Olympic Constitutive Chart and also by the 130 article of the athletic law. The goal is to find out how the anti- athletic behaviors are faced by the Court of the Hellenic Law which is the Sports Spirit Committee (a non public jurisdictional body). In order to achieve this provisions of 130 Athletic Law are being studied in correlation to the provisions of O.C.C. At the same time the C.S.S decisions that concerns violation of the O.C.C are being also examined .This is to conclude, the way that justice is being attributed in cases that athletic spirit is being violated. All the above are being studied according to the modern bibliography of the Athletic Law. The conclusion is that the Sports Spirit Committee somehow affects in a negative way the whole community as much as the sports activities.

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### **Who is the Judge in Sport?**

**Ioannis Zoumpoulis**

*Advocate, Attorney-at-law*

The Greek democracy and the Greek citizens need a jurisdictional system that will democratically solve, also with devotion in the Greek Constitution and in the traditional principles of the Greek and world justice, the differences of the Greek athletic family. Today exists only a not constitutionally placed secondary court (ASEAD), which judges using a hermaphrodite system that mixes the administrative and political procedure without taking in mind rules of elementary guarantee of the rights of athletes, citizens and professionals participating in the athletic life, but on the contrary taking in mind rules in favour of those parties publishing the offended decisions, causing lack of democracy in Greek athletic jurisdiction. Numerous and continuous contradictory and discriminatory juridical decisions are being published and today confusion and chaos prevails in the Greek athletic justice. Only the powerful parties, which publish the offended decisions (the Greek athletic

federations), profit from this situation. It is proposed that two new different courts will be founded, a administrative athletic ruling the differences between the state and private individuals, and a political athletic court ruling the differences between private individuals in which the athletic federations are included.