

12th IASL Congress - Findings

by:

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The 12th IASL Conference on Legal Aspects of Professional Sport was held from 23 to 25 November 2006 in Ljubljana. The conference was attended by most members of the Board of Directors and many members of the IASL. Over the two days of the conference proceedings (Friday 24 and Saturday 25 November) 22 speakers addressed the conference, providing an in-depth presentation of developments in the academic discipline of sports law and the wider area of law which touches upon sporting and competitive activities from both an international viewpoint and the national perspective of the legal order the speakers represented.

Conference proceedings opened with an address entitled "Lex Sportiva and its application to the national framework of Sports Law" by Asst. Professor of Sports Law and Secretary General of IASL, Dimitrios Panagiotopoulos. Key points of his presentation were an explanation of the nature of Lex Sportiva as the law of international sporting and competitive activity which develops within the context of the private autonomy of sporting bodies, coupled with an exploration of the interface between, and parallel implementation of, that law and traditional legal orders: namely those of international law, European law and individual national legal orders.

Following that on the first day of the Conference Janwilliem Soek talked about the results of a comparative survey of the sports legislation and the meaning given to the term 'sport' in various national legal orders while Cathryn Claussen examined issues of equality in US school sports. Luc Silance explored the issue of rights and obligations of athletes from various legal orders and then Prof. James Nafziger, IASL President, set forth the differences between the US model on the one hand and the European model of professional sport on the other, while Prof. Gerard Auneau, President of the IASL Scientific Committee, explored the influence of the special features of sport -and in particular professional sport- on shaping national and Community law. Prof. Andras Nemes presented a recent case brought before the Hungarian National Olympic Committee related to a claim for autonomy of the sports

associations while the first day proceeded with papers covering issues such as taxation of sale by an athlete of the right to commercially exploit his image (Jernej Podlipnik), the security of sports events and individual rights of spectators (Cathryn Clausen), compliance with contractual obligations to participate in events where there are security shortcomings (Urvasi Naidoo) and the EU policy on preventing violence in sport seen from the perspective of the British experience (Jack Anderson). Prof. Klaus Vieweg, Vice President of IASL, opened the second day of proceedings by analysing the issue of protecting and utilising the right to commercially exploit athletes' names and images under German and US law. Jean-Christian Drolet talked about the new FIFA transfer rules in the post-Bosman era and about the developments in NHL and modern professional hockey. Prof. Brian Brooks explored the commercialisation of sport in the Republic of South Africa. The scandal in Italian football was analysed and presented in comparison to similar disciplinary provisions in other countries by Lucio Colantuoni, while Simon Gardiner talked about issues of corruption in British football, Tone Jagodic explored sponsorship agreements in modern sport, Vesna Bergant Rakocevic talked about the commercial exploitation of sporting venue names and Spelca Meznar examined the trademarks of international sports events.

Towards the end of the second day of proceedings and the thematic unit entitled "Jurisdiction systems in professional sport" two recent cases from the French and Greek sporting legal orders were examined: one case which was brought before CAS concerning a dispute between a footballer and his team presented by Giangiacomo Bausone, and an extremely interesting case about the temporary expulsion of the Hellenic Football Federation from FIFA due to failure to comply with the provisions of the latter's statutes on the independence of national federations presented by Dimitrios Panagiotopoulos and Ioannis Mourniannakis).

The impact of European competition law on sporting activity was then examined in light of the recent ECJ judgement in the Meca-Medina case by Alexandros Rammos (and presented by Panos Panagiotopoulos) and in the light of EU Council Regulation (EC) No 1/2003 on application of the provisions of the treaty to protect competition (Ioannis Mourniannakis). Conference proceedings drew to a close with a series of presentations on specific topics such as the anti-doping legislation and an evaluation of state policy (Simona Kustec Lipicer) and the option for social dialogue between

employers and employees in professional football based on the procedures followed for enacting Community labour law (Robert Siekmann).

The issues explored by the delegates during the two days of conference proceedings are of particular importance both from a theoretical perspective since they relate to fundamental concepts of the academic discipline of sports law, and from a practical viewpoint for implementers of the specific branch of law. The issues expounded upon in his paper by University of Athens Asst. Professor and Secretary General of IASL, Dimitrios Panagiotopoulos, deserve particular attention.

One illustrative extract from his paper reads as follows: The origin and legal nature of the rules of law in the world of sport are serious issues in the field of Sports Law. The particular features of the sports legal order as a *Lex Sportiva* are of definitive importance for providing a wide-ranging definition of the particular legal nature of this field. It is a legal order which incorporates state-adopted law and the law adopted by the national and international bodies representing organised sport.

These bodies operate to the standards of unions and in the context of the autonomy granted to such bodies and operate within states in a pyramid-like fashion and at international level in the form of a special relationship linking them to the relevant international sports federation or the IOC.

The law produced in this manner is thus a law which is, in essence non-national law, which claims for itself direct and preferential application within national sports legal orders and the *par excellence* law in sports life. [...] However, this special feature of the *Lex Sportiva*, raises a series of questions concerning: a) the application of its provisions in each national sports legal order and b) the case of conflicts which arise concerning which law will prevail and for which reason. The issue of the jurisdiction of the *Lex Sportiva* also requires special analysis. [...] The interest in sports law is consequently focused on the limits of institutional autonomy in sport, in other words how far can individuals and entities lay down rules for sport and to what extent is central government able to adopt laws on sport, a situation which cannot be characterised as 'heteronomy'.

This is because in this case the state cannot be considered to be a third party unrelated to sporting activity, which activity is carried out not only within its jurisdiction but also to promote the public interest. From the foregoing points it is clear that the basic problem in the academic discipline of sports law is the institutional autonomy of international sports federations and the problem of reviewing the legitimacy of the provisions of the Lex Sportiva the legal regime and the body exercising review. States must adopt an international sports charter to establish a truly international Lex Sportiva, a framework supporting the institutional autonomy and operation of international sporting bodies which provides international judicial review.

The establishment of an International Institute of Sports Law which would record, study, research and utilise international case law on sports and competitive activities would contribute to achieving this objective.

The overall picture emerging from the Conference proceedings is that sports law as an academic discipline has a strong dynamic. As a relatively new academic discipline, based on developments in the field of professional sport, it would appear that sports law is constantly expanding its scope and penetrating further into the extensive field of what we call financial law.

However, despite that, key theoretical concerns in the field are open for discussion and in particular the relationship between the autonomous system of Lex Sportiva rules and traditional legal orders, and resolution of problems which arise where several rules of law may apply, possibly from several legal systems, to the same true facts of a case.

Resolution of such problems will prove to be of vital importance for the further development of sports law as a branch of knowledge. The term sport in various national legal orders takes on a different meaning and there the issue of the rights and obligations of athletes from various legal orders becomes an academic problem. The impact of the special features of sport –and professional sport in particular- is definitive in shaping national and Community law where the impact of European competition law on sports activity after the recent ECJ judgement in the Meca-Medina case has become extremely clear. Sporting activity raises particular issues especially

in relation to matters such as the taxation of the sale by athletes of the right to commercially exploit their image, the safety of sporting events and the individual rights of spectators, compliance with contractual obligations to participate in events and preventing violence in sport, sponsorship agreements, the commercial exploitation of the names of sporting venues, and international sporting event trademarks. The major differences that exist between legal orders can be seen in the US model on the one hand and the European model for professional sport on the other, and in the relevant disciplinary provisions for competitive and sporting disputes within legal orders or disputes in professional football which follow the procedures for adopting rules on the labour law model.

Disputes often arise from application of the rules of *Lex Sportiva* within states as was the case with the temporary expulsion of the Hellenic Football Federation from FIFA due to failure to comply with the provisions of the latter's Statutes on the independence of national federations. Many of these disputes are brought before the CAS while others are brought before national bodies and where there are major problems of conflict between the rules of *Lex Sportiva* and national rules in the EU before the European court.

The specific conclusions from the issues discussed at the Conference can be summarised as follows:

1. The *Lex Sportiva* is a legal order which incorporates law adopted by state and law adopted by national and international sporting bodies and is an issue of fundamental importance for the academic discipline of sports law.
2. The law contained in the *Lex Sportiva* rules (in other words the rules of sports organisations internationally) is at heart non-national, which claims direct, preferential application in national sporting legal orders as the primary law of sporting life.
3. The institutional autonomy of international sports federations and the problem of reviewing the legitimacy of the provisions of the *Lex Sportiva* in terms of the legal regime and the body exercising review are the key problems in the academic discipline of sports law.

4. Recording, studying, investigating and utilising the legislation and case law international on sporting and competitive activity is vital and the establishment of an International Institute of Sports Law under the aegis of IASL and the UN would make a special contribution in this regard.

5. It is vital that States adopt an international sports charter to establish a truly international Lex Sportiva, a framework supporting the institutional autonomy and operation of international sporting bodies which provides international judicial review.

6. The resolution of disputes which arise is still not governed by the principles of a fair trial, and the solution to this problem would appear to be the prospect of establishing an International Sports Court with special rules of procedure and various chambers.