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ABSTRACTS

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List of abstracts

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Safety in the sphere of sports: concept, kinds, the general tendencies of its maintenance

Now Russia is actively preparing for carrying out two very large international sports events: the World University Games in Kazan in 2013 and Olympic and Para-olympic Games in Sochi in 2014. Besides, Russia has entered the contest for the right to be a host of the Football World Cup 2018. Such level events are characterized by a mass congestion of people (spectators and participants of competitions), enhanced attention from world community. In this connection traditionally great demands on the safety of such events are presented.

As it is represented, safety in sports sphere can be subdivided into following types:

On the object of safety:

1) Safety of participants of sports actions (sportsmen, judges, trainers):

– Injuries and cases of deaths of sportsmen in various kinds of sports, caused by specific character of a sport and (or) by infringements of the established rules (for example, the use of a dope).

– Cases of attempts at sportsmen, trainers and judges of competitions motivated by revenge of the fanatically devoted fans.

2) Safety of spectators of sports events and support personnel (physicians, security guards, employees of law enforcement bodies, etc.):

– Public safety which is threatened by hooligan behaviour of spectators of sports events before, during and after its carrying out.

According to experts, for the last hundred years about 6 thousand people has died and over 7 thousand received wounds as a result of the various incidents connected with carrying out only football matches. Thus it is necessary to note that the significant part of incidents occurred at the end of the XX century. It would be desirable to note, that in spite of the fact that football remains a "leader" on the number of disorders, messages on hooligan behaviour of fans of other kinds of sports, for example, hockey, basketball, etc., continually appear in mass-media.

– **Terrorist safety**. Sports events are a kind of a "titbit" for terrorists of all colours, taking into account public and political resonance from carrying them out. It is enough to recollect Olympic Games in Munich in1972 where organizers of competitions and law enforcement bodies appeared to be completely powerless before the terrorist threat.

Besides in our opinion, there are spheres of safety indirectly connected with carrying out sports events, which at the same time are getting increasing and greater urgency. The following types should be referred to such kinds of safety: economic safety, information safety, ecological safety and others.

Economic safety. As well as in any other large business, in sports there are people who wish to earn at any cost, even with the infringement of the current legislation. Problems of corruption, payoff of the participants and organizers, tax evasion, swindle on a tote and others have become a burning issue in modern sports.

Information safety. So before preparation for carrying out Olympic and Para-olympic Games in Sochi in 2014, the Ministry of Internal Affairs of Russia predicts increase in a stream of products with illegally put Olympic Logo. In the first quarter of 2009 law-enforcement bodies of Krasnodar region have revealed 21 fact of illegal use of Olympic Logo, and in April–May—more

than 91. More than 2 million units of production with "Sochi-2014" logo were seized on customs posts in 2009.

Ecological safety. The IOC Session which took place in Seoul in 1999 accepted the Summons of 21 Olympic movements. The considered document for the first time introduced ecological criterion as a success estimation of Olympic Games. Nowadays plans of carrying out the Olympic Games, containing provisions on maintenance of ecological safety, really matter at a selection of a place of the forthcoming Olympic Games.

Summing up, it is possible to say, that as a whole safety in the sphere of sports in all considered directions now is subject to following tendencies:

1) Steady growth of the budget allocated for the safety of sports events;

2) Enforcement of the share of international cooperation in the sphere of organization of safety of participants and spectators;

3) Increase in share of participation of the state structures and the intergovernmental organizations in provision of sports events safety whereas initially safety was provided by the public sports organizations.

dr Wiktor Cajsel

Krajowe prawo sportowe vs. regulacje międzynarodowych federacji sportowych – na przykładzie polskiego prawa powszechnego i prawa wewnętrznego PZPN i FIFA

W pierwszej kolejności omówione zostaną ogólne zagadnienia hierarchii źródeł prawa – w ujęciu pozytywistycznym i socjologicznym. Problematyka ta stanowić będzie wprowadzenie do omówienia tematyki źródeł prawa sportowego – powszechnego, wewnętrznego związków sportowych oraz źródeł prawa powszechnego znajdujące zastosowanie w sporcie.

W następnej kolejności analizie poddane zostaną konkretne przepisy prawa sportowego wewnętrznego polskich związków sportowych, statuujące regulacje odmienne i specyficzne w stosunku do regulacji prawa powszechnego – sportowego i innych gałęzi prawa. Przykładem jest tu np. kształt regulaminowego prawa do urlopu wypoczynkowego sportowca profesjonalnego w relacji do analogicznego uprawnienia urlopowego ukształtowanego w przepisach prawa powszechnego (Kodeksu pracy).

Innym przykładem specyficznej regulacji „sportowej" jest uprawnienie menedżera piłkarskiego do otrzymania wynagrodzenia menedżerskiego od klubu sportowego zatrudniającego jego klienta (dopuszczalne przez przepisy FIFA oraz polskie prawo powszechne, lecz jednocześnie zakazane przez przepisy PZPN).

Całą gamę złożonych problemów prawnych, wartych omówienia, zawiera w sobie uprawnienie organu PZPN (Wydziału Gier PZPN) do rozwiązania kontraktów zawieranych przez zawodnika z klubem sportowym, oraz uprawnienie Piłkarskiego Sądu Polubownego PZPN do obniżenia stawki wynagrodzenia zawodnika profesjonalnego określonego w kontrakcie o profesjonalne uprawnianie piłki nożnej.

W ostatniej części referatu dokonana zostanie ocena istniejącego stanu rzeczy – głownie pod kątem jej skuteczności oraz zgodności z prawem (np. w sytuacji zaskarżenia do sądu powszechnego konkretnej decyzji organu jurysdykcyjnego polskiego związku sportowego).

Dr. José Luis Carretero Lestón

National Sports Law vs. International Federations Regulation
Propuesta de adaptación de la legislación deportiva española sobre disciplina deportiva

El artículo 87 de la Ley 10/1990, de 15 de octubre, del Deporte, prevé que las cuestiones litigiosas de naturaleza jurídico deportiva que puedan plantearse entre los deportistas y las federaciones deportivas espaZolas podrán ser resueltas mediante la fórmula de arbitraje. Ahora bien, esa posibilidad se entiende dentro de los términos y de las condiciones de la legislación estatal vigente sobre arbitraje, por lo que debemos remitirnos al artículo 2.1 de la Ley 60/2003, de 23 de diciembre, de Arbitraje, que dispone que sólo son susceptibles de arbitraje las materias de libre disposición de las partes.

El artículo 33.1.f) de la citada Ley 10/1990 establece como función pública delegada en las federaciones deportivas españolas el ejercicio de la potestad disciplinaria. En consecuencia, las sanciones disciplinarias no pueden ser sometidas a arbitraje. En este sentido, el artículo 84.5 de la citada Ley 10/1990 indica que las resoluciones del Comité Español de Disciplina Deportiva agotan la vía administrativa y podrán recurrirse en la vía contencioso-administrativa, es decir, en el ámbito jurisdiccional.

La legislación expuesta choca frontalmente con las disposiciones reglamentarias de las federaciones deportivas internacionales, a las que están afiliadas las federaciones españolas, que posibilitan el acceso al Tribunal Arbitral del Deporte (TAS), en apelación, de las sanciones disciplinarias, conforme al artículo S12 del Code de l´arbitrage en matiPre de sport.

Por lo anterior, se propone la modificación de la legislación deportiva española, en el sentido de "despublificar" el ámbito de la disciplina deportiva, al menos en lo que se refiere a las reglas del juego y de la competición. De este modo se lograría una homogeneidad entre la legislación espaZola y las reglamentaciones internacionales, habida cuenta de la idéntica naturaleza de las sanciones disciplinarias, independientemente del ámbito territorial en que se impongan.

Dr. José Luis Carretero Lestón

National Sports Law vs. International Federations Regulation
Proposition d´adaptation de la législation sportive espagñole au suject de discipline sportive

L'article 87 de la Loi 10/1990, du 15 octobre, du Sport, prevoit que les questions litigieuses de nature juridique sportive qui puissent se poser entre les sportifs et les fédérations sportives espagnoles pourront Ltre résolues au moyen de la formule d'arbitrage. Cela étant, cette possibilité se comprend dans les termes et les conditions de la législation étatique en vigueur sur arbitrage, c´est pourquoi nous devons en remettre a l'article 2.1 de la Loi 60/2003, du 23 décembre, d´Arbitrage, qui dispose que seulement sont susceptibles d´arbitrage les matiPres de libre disposition des parties.

L´article 33.1.f) de la Loi citée 10/1990 établit comme fonction publique déléguée dans les fédérations sportives espagnoles l'exercice du pouvoir disciplinaire. En consequence, les sanctions disciplinaires ne peuvent pas être soumises á arbitrage. Dans ce sens, l'article 84.5 de la Loi citée 10/1990 indique que les résolutions du Comité Español de Disciplina Deportiva puisent la voie administrative et on pourra les recourir dans la voie contentieuse-administrative, c'est-á-dire, dans le domaine juridictionnel.

La législation nationale exposée heurte avec les dispositions réglementaires des fédérations sportives internationales, auxquelles sont affiliées les fédérations espagnoles, qui facilitent l´accés au Tribunal Arbitral du Sport (TAS), en appel, des sanctions disciplinaires, conformément á l´article S12 du Code d´arbitrage en matiPre de sport.

Par l´antérieur, on propose la modification de la législation sportive espagnole, dans le sens de «despublificar» le domaine de la discipline sportive, au moins en ce qui concerne les rPgles de jeu et de la compétition. De cette façon, on obtendrait une homogénéité entre la législation espagnole et les réglementations internationales, tenons en compte la nature identique des sanctions disciplinaires indépendamment du domaine territorial dans lequel elles s'imposent.

Prof. Chul Choi

International Sports Leagues and Intellectual Property Rights: One-Source Multi-Use and Protection of IPRs

The globalization of sports industry offers vast opportunities for the organizer of international sports events and the companies who attempt to attract worldwide audiences and consumers through the events. International sports events and their marketing became one of the major industries in the international community in term of economic and social value. In particular, sports markets in emerging economies have been growing at a phenomenal rate for the last decade.

In addition to the geographical expansion of the sports industry, new information technology has changed the way how the people enjoy and participate in the sports events. The modern transmission of international sports events goes beyond the traditional broadcasting media, such as television or radio, and provides new on-line platforms for access to the sports events worldwide. The fans' participation in sports events extends to the virtual reality through on-line and off-line computer games, such as FIFA Soccer game. The innovation of technology has created another layers of 'interface' through which the fans can participate and enjoy the sports events.

As a consequence, the primary source of revenues from sports events has changed for most of the organizers of sports events and the professional sports leagues. Traditionally, ticket sales and broadcasting rights to live events were the primary source to generate revenues. Today, revenues for many sports are increasingly derived from sources that require organizers to sell certain intellectual property rights ('IPRs'), such as the right to use trade marks, logos, trade dress and the publicity rights, in connection with various forms of licensing arrangements. With the continuous evolution of information technology and growth of on-line world, this trend will continue and accelerate in the future. The sale of rights to show the events or to use IPRs over the Internet has the potential to become a major revenue source.

This paper will discuss the increased involvement of the intellectual property law in sports as a result of creation and growth of new platforms, and will examine the features and functions of IPRs in the context of international sports events, with specific concentration on the relevant issues regarding the traditional IPR protection approach as well as the neighbouring rights and the right of publicity. Certain cases on sports-related IPR disputes will be examined. Intellectual property law that furnishes protection for sports events organizers will eventually contributes to sustainable growth of international sports activities. However, it should be noted that intellectual property law also creates artificial monopoly over a wide range of subjects. This paper will also discuss the issue of striking balance between the protection of IPR owner's interest and preservation of the public domain for the interest of IPR users in the context of sports industry.

Prof. Avv. Lucio Colantuoni

Betting and Sports: A Comparative Legal Analysis

The connection between Sport and Betting is moving today big amounts of money and it is essential that more effective regulatory frameworks are developed in the sporting world to counter the impact of gambling on particular sports and players.

Gambling has been subject to considerable regulation by the States. In some countries around the world gambling is essentially prohibited. In others it is prohibited in some areas and regulated in others through strong and enforceable government legislation.

The European Commission made an important step in this direction recognizing the importance of a principle expressed in the French law: the existence of a "Right to Offer Bets".

In fact, the European Commission agrees with the principle that wants to create a 'Right to Offer Bets', where sporting Organizations will be able to sell to the Companies that offer those services.

Sports related gambling has exploited new technologies with internet betting exchanges having proliferated together with the opportunities provided by interactive services via digital television.

Another point of discussion in Europe, strictly connected to that relationship, is the legitimacy for the Member States to restrict the provision of gambling via the Internet (according to their national Legislations), preventing to bet in their territory through Internet sites (of gambling operators) that have registered office in other State Members.

An analysis of the above detailed legal aspects will be drawn, with specific reference to cases and comparison in some different legal systems-countries and jurisdictions.

Anna Di Giandomenico

The International Convention against Doping in Sport and its coming into force in Italian national legislation

The *International Convention against Doping in Sport* is an authentic turning point for those who's studying Sports Law from a General Theory of Law's point of view.

In fact, before its coming into force, all sporting legal system's rules, that regulate doping, may be inscribed within those soft law instruments, that today's globalized society uses as an effective alternative to States' regulations, unable to satisfy needs arising from society.

After its coming into force, soft-law rules change nature and become a hard-law command, making them binding rules, authentic *jus cogens* with legal effects *erga omnes*: a distinctive feature that until now doesn't belong to them.

Now, all regulations about doping, established within *lex sportiva* and settled into WADA Code, are introduced in States' legal systems by traditional legal instruments: soft-law becomes hard-law.

It's a change, whose intent is undoubtedly appreciable, also considering the role played by sport in the protection of health, in moral, cultural and physical education: but it's a problematic change considering, first, the different *Grundnorm*, upon which are based sport legal system and States' law, and, then, the intrinsic conventional nature of Sport's law, certainly not shared by States' legal systems.

This essential difference among Sports law and States' law points out further questions, especially when Convention comes into force in those nations where doping is a crime, as occurring in France or in Italy.

Focusing on Italian legal system, it's important to underline that the law, by which comes into force, was adopted without coordination with pre-existing rules about doping: this points out some interesting questions.

I'll consider especially questions deriving from the equivalence, established by art. 2.3 b) of Convention, among use or attempted use of prohibited substance or prohibited method: may we considering this rule contrasting with the general rule of Italian penal code (art. 56 c. p.), which states a decrease of punishment when it's carried out an attempted crime?

I'll also focus on questions deriving from the equivalence, established by art. 2.3 f) of Convention, between possession of prohibited substances or methods and use or presence of a prohibited substance or its metabolites or markers in an athlete's bodily specimen: what interest is injured, if occurred possession without doping committing? And when occurs this injury?

Jacek Foks

Polish sports law and international law

In view of the specific features of sporting activity, whose top levels often involve international rivalry, it is important that the relationships be identified between the norms of domestic laws regulating this sphere in a given territory and the provisions of international law applicable to sports competitions. Among the most important legal aspects of sports rivalry, pertaining to domestic-international interrelations, are the following: anti-doping regulations, the legal status of athletes and related personnel (coaches, agents, managers, etc.), the legal status of national sports associations and clubs, rules governing the organisation of international sporting events. An attempt to throw more light on these interrelations is motivated by several reasons, primarily the fast rising numbers of contentious issues and legal questions, whose appropriate settlement will only be possible once the position of Polish legal norms is defined in relation to the international regulations. This is, for example, about the status of Polish athletes disciplined by appropriate bodies of international sports organisations, sports-related civil litigation before the authorised panels, such as the Court of Arbitration for Sport (CAS) at the International Olympic Committee, or the legal status of Polish sports associations vis-à-vis state administrative bodies in charge of physical education and sport.

For the purpose of the present work, the Polish domestic law applicable to sports is understood primarily as the provisions of universally bindings legal acts: the Competition Sports Act of 29 July 2005 (*Dziennik Ustaw,* No. 155 of 2005, item 1298, as amended), the Physical Education Act of 18 January 1996 (updated text in: *Dziennik Ustaw,* No. 81 of 2001, item 889, as amended), and implementing regulations thereto, particularly regulations issued by the minister in charge of physical education and sport. Taken into account in this context should be the Polish Constitution of 2 April 1977 (*Dziennik Ustaw,* No. 78 of 1997, item 483), and also the bylaws of Polish sports associations which, although not universally applicable laws, can actually be regarded as quasi-implementing regulations to the Competition Sports Act, given the Act's numerous references and delegations thereto.

Due to the previously mentioned specific features of sporting activity, the point of reference for domestic law is provided not only by international public law *sensu stricto*, i.e. the set of norms governing mutual relations among states. As demonstrated by an analysis of the sources of international legal norms, questions related to sporting activity are only slightly regulated by treaty law. And, given Poland's membership of the European Union and a perceptibly growing interest in sports on the part of EU institutions, it is necessary to delineate the position taken by norms of domestic law in relation not only to Community primary legislation but, most importantly, in relation to Community secondary legislation, which regulates a number of sport-related issues. But what matters most from the standpoint of the practice and realities of contemporary sports is to identify the nature of domestic law's legal relationships with the regulations of international sports organisations which, although not among the sources of international public law within the meaning specified above, in practice emanate far beyond the strict organisational confines of these sports organisations.

Daniel Gandert

Puerta: Applying the Principles of Justice to the World Anti-Doping Code"

Under the World Anti-Doping Code (WADC), uniform penalties are prescribed for all doping offenses in the international sports world. While the WADC has traditionally been strictly applied, the Court of Arbitration of Sport (CAS) moved in a new direction with the case *Puerta v./ International Tennis Federation* by finding that the principle of justice applied toward the athlete to be more important than strictly following the rules. This case sets new precedent for future doping cases.

Under the WADC, athletes charged with doping are presumed guilty. They are responsible for monitoring everything that they eat and drink for potential banned substances. In the case *Puerta v./ ITF*, Puerta was found guilty after it was established that he had drank from his wife's water glass which included residue from her mediation. Instead of implementing the penalty prescribed by the WADC, the panel claimed that it found a hole in the code through which the principles of proportionality and justice should be applied.

Under CAS, past cases can be cited as precedents. Because of this, future athletes can cite *Puerta* as a means to get their doping suspension reduced. In a recent case, the tennis player Gasquet cited *Puerta* as precedent to get his suspension reduced after it was established that the most likely cause of his violation was ingesting a small quantity of cocaine by kissing a cocaine user. Although the panel did not find the same lacuna in the rules in *Gasquet* as in *Puerta*, the panel cited *Puerta* for being a case where strict rule application was overridden by justice for the individual athlete and applied this principle in reducing Gasquet's suspension. There will likely be future cases relying upon *Puerta* as precedent.

Katarzyna Grabska

„Rozwiązywanie sporów w sporcie – rola mediacji"

W świecie profesjonalnego sportu możliwość i umiejętność szybkiego, efektywnego, sprawiedliwego oraz satysfakcjonującego rozwiązywania powstałych konfliktów może mieć kluczowe znaczenie dla jego rozwoju. W przeciwnym razie źle zarządzane problemy i spory mogą spowodować paraliż funkcjonowania sportu. Niniejsza prezentacja wskaże znaczenie mediacji w rozwiązywaniu konfliktów powstałych na tle pracy klubów, związków i federacji sportowych, zawodników, trenerów i innych osób działających w sporcie. Na gruncie praktyki np. Trybunału Arbitrażowego ds. Sportu w Lozannie (Court of Arbitration for Sport [CAS]) czy doświadczeń w zakresie mediacji, które można obserwować w Australii – jednym z państw o najwyższym poziomie rozwoju sportu profesjonalnego na świecie – przedstawiona zostanie ogólna charakterystyka tej instytucji. Jako jedną z Alternatywnych Metod Rozwiązywania Sporów (Alternative Dispute Resolution [ADR]) mediacje są niezwykle konkurencyjną, w stosunku do postępowania przed sądami powszechnymi, strategią dążenia do zakończenia sporu. Często mają one również przewagę nad rozpoznawaniem sprawy przez trybunały sportowe. Szczególny nacisk uczyniony zostanie na przedstawienie potencjału jaki niosą mediacje zastosowane w sporach powstałych w związku z uprawianiem lub zarządzaniem sportem.

Analiza mediacji jako sposobu rozwiązywania konfliktów w sporcie dokonana zostanie m.in. w odniesieniu do:

– możliwości zastosowania mediacji w sporach o tak szczególnej specyfice ze wskazaniem przykładów spraw stanowiących pole dla mediacji;

– zagadnień proceduralnych,

– roli mediatora oraz wpływu jego profesjonalizmu na wynik postępowania,

– wyniku mediacji i trwałości wypracowanego przez strony konsensusu,

– korzyściach płynących z tego sposobu rozwiązywania konfliktów w sporcie.

W Polskiej tradycji rozwiązywania sporów sportowych mediacje nie zyskały jak dotąd popularności. Powyższe spowodowane jest prawdopodobnie faktem, że sama instytucja mediacji jako regulowanej przez polskie ustawodawstwo metody rozwiązywania konfliktów jest stosunkowo młodą inicjatywą i ma krótką historię oraz ubogą praktykę. Dla zobrazowania zasadności stosowania tej formy ADR oraz dla zachęcenia do rozpowszechniania i propagowania jej jako skutecznego sposobu rozwiązywania konfliktów zaprezentowane zostaną statystki sporządzone na podstawie działalności prowadzonej w tym zakresie przez podmioty działające w państwach innych niż Polska.

Z praktyki państw obcych wynika, że mediacje stanowią efektywny, szybki i satysfakcjonujący sposób zażegnywania konfliktów sportowych. Jako metoda WIN-WIN, tzn. nie przynosząca przegranej po stronie żadnego z uczestników sporu, pozwalają budować silne relacje pomiędzy partnerami nie wpływając negatywnie na atmosferę i jakość współpracy. Z powyższego względu zasługują na uwagę oraz wprowadzenie ich na stałe do praktyki rozwiązywania sporów powstałych w związku z organizowaniem i uprawianiem sportu w Polsce. W ramach zwieńczenia prezentacji przedstawione zostaną propozycje działań, które pozwolą na rozpowszechnianie i propagowanie mediacji jako skutecznego sposobu rozwiązywania trudnych sytuacji pojawiających się w polskim sporcie.

Huang Shixi

Doping Control and Legal Regulation in China Sports: What we learnt and what should we do?

Abstract As in other countries, doping abuse and its legal control is still an important problem that faced by both public and sport authorities in China. The doping abuse in China began in the middle of 1980s, and came to the top in the end of 1990s. Although some international doping accused athletes appealed to the International Federations and even to CAS, most of the doping cases were settled within China. However, judicial intervention in sports doping is still a controversial problem, and the lack of efficient laws and regulations makes some athletes treat doping less seriously. In a word, China government should take more strict measures to crack down on doping abusers and should harmonize its own doping rules and regulations with international standard.

Dr. Tone Jagodic

Legal Regulation of Sports Marketing

The importance of sport marketing is increasing rapidly and has become a mayor source of income for sport on international and national level. There are many marketing activities generating money for sport subjects offering different sports properties for commercial exploitation. The real value of property in sport is tightly connected with commercial status of particular sport activity which depends very much on media as the most important factor of positioning certain sport in this evaluation. There are different marketing instruments, tools and models how to generate money such as selling of TV (media) rights, sponsorship, merchandising, licensing, ticketing, charities, donations, patronages etc.

From the legal standpoint it is interesting to find out legal framework of different commercial communications known as marketing tools in sport. The paper examines situations on national and international level where legislation is already set on one side and other sectors where autonomous rules of sport are the only instruments of legal framework. EU Television without frontiers Broadcasting Directive (89/552/EEC) represents important legal act for regulation of relations of sports subjects and broadcasters when exploiting rights of sport competition. Sponsorship represents extremely important marketing tool of sport subjects but no legislation has been set yet to follow it. No wonder that the importance of ICC International Code of sponsorship is growing steadily as it represents a very useful legal document which can support sport subjects when regulating their sponsorship contracts with sponsors. The Code is designed primarily as an instrument for self – discipline. However, it is also intended for use as an interpretative aid for the parties in the clarification of uncertainties arising under the sponsorship, as well as a reference for courts or arbitrators in sponsorship disputes. Nairoby treaty of the protection of Olympic Symbol is also an excellent example of legal document forming groundwork for marketing of Olympic movement.

The paper also examines legal foundations of other marketing tools and methods. Formal legislation set by government is rarely recognized as appropriate framework for practical use in different forms of commercial communications of sport marketing. In conclusion it is proved that autonomy of sport is deeply reflected in autonomous legal infrastructure making the most important legal foundation for sport marketing.

Dr Magdalena Kędzior

Criminalization of Trade and Trafficking in Doping Substances in the EU

One of the reasons for the wide accessibility and consequently the increased use of performance enhancing substances in Europe is the insufficient and inconsistent legal basis regulating trade and trafficking in doping substances. This obviously does not make the combat of these illegal phenomena easier but also contravenes the principles of the common market. Facing this problem the EC started a new move towards the criminalization of trade and trafficking in doping substances.

In March 2007, sports ministers agreed to set up a network of national anti-doping organisations (NADOs) within the EU. The intention was not only to facilitate an exchange of information (on anti-doping campaigns, etc) but also to harmonise testing procedures, to determine criminal liability for the possession of doping substances, and to coordinate preventive measures.

The Commission's White Paper on Sport (July 2007) stressed the need to join forces in the fight against this problem, and recommended that the "trade in illicit doping substances be treated in the same manner as the trade in illicit drugs throughout the EU," thus criminalising doping across all 27 member states. Criminalization of trade in doping substances was also a subject of the first meeting of the EU Working Group of Anti-Doping in June 2008.

The outlined developments raise questions such as: how is the question of trade in doping substances regulated in respective member states of the EU? Are there any legal possibilities to harmonize the rules on trafficking on EU level? In what way can the Europol Police Agency get involved to combat doping, and how adequately, in the so-called 'third pillar' of the EU, would it be funded? And, on a european level, is there any common action towards criminalization of the liability in case of doping foreseeable?

Kim Eun-Kyung

Several legal issues of Korean professional Sports —Focusing on the draft system in Korean Football League

As the Korean economy advances and the desire for leasure activities, many people are concerned with how spend their leasure time. In this trend, Sports in modern csociety is not simply limited to the basic concept of exercising but play a much more significant role as a purpose of cultural life and utilization of leasure time by modern people. Specially, professional baseball and football league are the most popular sports in Korea.

In these days, the economic role of sports is also becoming pointed up in Korean society as the sports leagues. Many of the professional sports clubs in Korea adopt a draft system. A draft is a process to allocate certain players to sports teams. In a draft, teams take turns selecting from a pool of eligible players. When a team selects a player, the team receives exclusive rights to sign that player to a contract, and no other team in the league may sign the player.

Draft is permissible under anti-trust law because they are included in collective bargaining agreements between leagues and labour unions representing players.

These agreements generally stipulate that after a certain number of seasons, a player whose contract has expired becomes a free agent and can sign with any team. They also require minimum salaries for newly draft rookies.

As the other professional sports fields in Korea, the football league has several issues on the features of the draft system. In the case of the Korean football league, the draft system was basically abolished in 2002. Following the new rules, many football players who started their career from 1996 in the league became the free agent. Just before 2004 season, most players who get the job in the league during 1996-2001 with the draft system became the free agent player.

However, the players could not be the FA players if they have not play more than 50% of the league matches at 2004. Of course, there were several exceptions for the national team players. The team of an FA player can be the priority bidder to the player until the December of the season. The other teams can contact when they do not have the agreement for the contract.

The new draft system was introduced for the 2006 season. Because of the financial burden to the league clubs. The new system was invented to restrain team's payrolls and reduce the dominance of the league's perennial contenders. However, the system can pervert the market system and free competition. To a player, the system may take away the chance to play for his favourite club. Furthermore, some young and good players may miss the chance to go abroad.

Draft are virtually unknown to international football outside North America, where most professional clubs obtain young players through purchase or developing youth players through their own academies. Even in Korea, there have been many opinions which are not favour to the draft system for the football league, There have been also several legal cases regarding the system in the country.

Football is one of the popular professional sports in Korea. Especially, the sports has a kind of economic value after the World Cup 2002. Therefore, several legal issues on the draft system in Korea football league can be one of the interesting topic in the field of sports law and it is also required to discuss about the topic.

Georgios Kipreos

Administrational management of disciplinary problems in athletics in Greece: Kefalopoulos-Papagianni Case

This paper focuses on the need of the sport institutions to seek effective ways of sport administration and management, with a special reference to the example of athletics. More specifically, our issue is the more effective management of conflicts at a personal level and the proposition of a way of resolving disciplinary conflicts that is in our opinion the most recommended. To sum up, this paper intends to present the disciplinary system of the Greek Athletics Federation, as well as the one of IAAF. In order to come to certain conclusions, I will refer to a specific example from the current praxis of the Greek Athletics Federation that has to do with disciplinary sanctions taken against a trainer of the federation for fault committed as he was exercising his duties.

By the description of the procedure of the disciplinary measures before the disciplinary bodies of the federation, as well as before the sport judicial organs and the Greek courts, we conclude that there is a need to establish a new set of rules (regulating both substance and procedural matters) to ensure that the resolution of disputes takes place in a rational and objective way and is totally unbiased. Ultimate goal of this system will be to enhance the credibility of the sporting system, to protect the respective sport, but also to guarantee the protection of the personal and professional reputation of the individuals involved.

Renata Kopczyk

Sport After Implementatation Treaty of Lisbon

According to the European legislation sport does not belong to the competencies of the European Union and is not the area included in the integration process. The lack of regulations was going to be changed by treaty to be incorporated into the European Constitution but the treaty has never been ratified by all member states. The article presented competencies of the European Union concerning sport already included in the Lisbon Treaty. The Treaty was taking into consideration the specific character of sport which had been previously presented by EU resulting in some sports activities to be excluded from EU competition regulations. The article highlights the fact that The Treaty did not attempt to unify sports regulations in all member countries. The study also refers to the declaration attached to the Amsterdam Treaty signed in 1997 emphasizing social function and particular importance of amateur sport and the declaration accepted by European Council in Niece in 2000 stressing specific character of sport. The influence of the European Court of Justice on the matters related to sport was not ignored in the article either. The study attempted to discuss funding in sport included in Lisbon Treaty.

Jaekyoung Lee

Show Me 'My' Money !! —Copyright protection for sports movement

Sports related industries of the world have been booming in recent years without the availability of enhanced legal protection for sports related movements. A higher salary and a competitive edge are the only factors that most athletes require to create movements which give them a personal edge. Nevertheless, there may be appropriate niches in sports which should be offered protection under the intellectual property laws. The similarities between routine-oriented sports and ballet and modern dance suggest that the choreographic protection under copyright law of sports such as ice skating is befitting.

Copyright, like other areas of intellectual property law is based on a fundamental principle that limited protection of human expression is an incentive to creativity. The Copyright Act of 1976 in US, for example, extends copyright protection to original works of authorship fixed in any tangible medium of expression. This protection grants the owner of a valid copyright a cause of action not only against literal word for word copying, but also against substantial non-literal copying. Copyrights are arguably the narrowest area of intellectual property law, but it is possible that they may be used to protect various types of sports moves.

Copyright and right of publicity protection only offer moderate to minimal protection for sports related movements. Copyright could only be utilized to prevent possible appropriators from copying movements which can be analogized to choreography. Further, the fundamental requirement that material protected under the Copyright Act be fixed in a tangible medium requires at minimum that the athletic performance is taped or scored. The right of publicity will only prevent another from acting so as to severely reduce the economic value of an athlete's performance or from suggesting a false endorsement by an athlete.

Sergios Manarakis

Provisional Measures by CAS/TAS

According to article R37 of the "*Statutes of the Bodies Working for the Settlement of Sport-Related Disputes*" of TAS/CAS any party may apply for provisional or conservatory measures under TAC/CAS's Rules, provided that it meet the conditions set by those Rules.

The occasion of this paper was given by the Pechstein's Case in which TAS/CAS accepted, partially, her application for provisional measures allowing her to "*participate in all training sessions authorized or organized by the Deutsche Eisschnelllauf Gemeinschaft e.V. (DESG) or a club and to use for training purposes any available speed skating racing track, until the Panel's decision on the merits of the appeal*".

TAS/CAS did not allow her to participate to any other sport events (ex. Official games) but felt that the above ruling was necessary in order to "*protect*" Pechstein's "*chances to qualify for the Vancouver Winter Olympic Games of 2010*". TAS/CAS tried with this decision to balance the interests of both the athlete (who at that point was accused, but not finally condemed, for a doping violation) and the fight the authorities against doping.

Aim of this paper is to identify the criteria used by TAS/CAS when granting or denying to grant provisional or conservatory measures and the way it inteprets them.

For that purpose, we will examine the relevant case-law of TAS/CAS and we will compare it with chosen case-law of national Courts.

Ricardo Morte Ferrer

The fight against doping, are we fighting the right way? Some examples, specially about the activity of WADA and some data privacy problems

I am sure that almost all of us would agree that fighting against doping is a main issue in today's world of sport. But we should not stay at this agreement, the next question should be: which is the best way of fighting, and what are we trying to protect?

Maybe we should check first which are the main purposes of WADA , as the main international body for fight against doping:

To protect athletes' fundamental right to participate in doping-free sport and thus promote health, fairness and equality for athletes worldwide;

To ensure harmonized, coordinated and effective anti-doping programs at the international and national level with regard to detection, deterrence and prevention of doping.

From my point of view, there is a big mistake in these purposes: no mention of the main athletes' fundamental rights. I am not sure if we can really say that participating in doping-free sport is a fundamental right, but I am sure that, at least in Spain and some other countries (Germany, Constitutional Court Sentence about the population census 1983; Spain Constitutional Court Sentence 195/2000), data privacy is a fundamental right. Another fundamental right is the presumption of innocence, and I am not sure if WADA is really protecting it.

Although I will check some other aspects (social, educational and some Constitutional and Criminal Law) about what I think is going wrong in the fight against doping, my main topic will be the data privacy problems. I would like to remember that the Article 29 Data Protection Working Party has adopted some documents about this topic, and some other Scholars and legal experts are thinking and writing about this problem, doubting if the WADA code and the WADA way of working are the best weapons against doping.

Ioannis Mournianakis

Overriding Reasons of Public Interest in Sport

A critical overview of the justifications of restrictions of fundamental freedoms on the basis of reasons of public interest – also a review of the recent Opinion of AG Sharpston (case C-325/08, *Olympique Lyonnais*)

According to general theory of European Community Law, measures that hinder the exercise of fundamental freedoms may be justified if they pursue a legitimate aim compatible with the Treaty and they fulfill four additional conditions (applied in a non-discriminatory manner; justified by overriding reasons in the public interest; suitable for securing the attainment of the objective which they pursue; they must not go beyond what is necessary for that purpose, *see Cases C-19/92 Kraus [1993] ECR I-1663, paragraph 32; Case C-55/94 Gebhard [1995] ECR 1-4165, paragraph 37*).

The first (unsuccessful) attempt to invoke overriding reasons relating to the public interest in the sports related case-law of the ECJ was in the *Bosman* case. However, the Court has accepted such reasons in its case-law on sports betting declaring prohibitions by national legislation as compatible with the freedom to provide services. The same seems to happen in the Opinion of the AG Sharpston in her recently released Opinion on case C-325/08, *Olympique Lyonnais*.

In this paper I intend to discuss the following questions: Is the promotion of sport a legitimate aim compatible with the EC Treaty? What is the nature of overriding reasons of public interest? Does the encouragement of training and recruitment of young players constitute an "overriding reason of public interest" able to justify a restriction of the fundamental freedoms? Are the interests of sport federations nowadays related to the public interest or do they merely intend to promote the financial interest of the sporting actors?

For the purposes of this paper, special reference will also be made to the sports related documents of EU institutions, as well as to the possibility of a future EU competence on sport (Lisbon Treaty).

Dimitrios P. Panagiotopoulos

Lex Sportiva in the Context of National Law Some Examples From the Recent Greek Case-Law

The modern international regulatory framework in the field of sport includes a variety of regulations (Lex Sportiva) which should often function within the respective national legal order. In this case we often have conflicts between rules, principles or rights that are founded to either of these regulatory orders. This paper deals with the analysis of such phenomena viewed by the perspective of the Greek courts:

– the decision No 2119/2008 Athens Civil Court on the amendment of the Statutes of the Greek Football Federation and the issue of the respective provisions of the Statutes that prevent all parties from referring to the Greek Civil Courts establishing a compulsory jurisdiction of the judicial committees of the federation, whereas at the same time compulsory arbitration is forbidden by the Greek constitution.

– We also refer to decisions No 1276, 1277/2008 Council of State on the issue of the constitutional approval of a regulation defined in the art. 87 of the Greek Law 2725/99 (Regulation of relations between basketball players and basketball clubs or basketball corporations).

– Decision No 3099/2009 Athens Civil Court, as well as decisions 59 and 46/2008 High Council for Resolution of Sport Disputes concerning disciplinary measures taken by the Greek Athletics Federation against a coach.

Analysing these decisions in the context of the Lex Sportiva theory is extremely interesting. This analysis results in the need to form an international common body of sporting principles that will meet the approval of all international sport actors and contribute to the creation of a global legitimacy framework that is legally binding at state level. This system having certain bodies for the resolution of sporting disputes will be able to achieve the goal of fast, correct, objective and unbiased resolution of conflicts.

Marios Papaloukas

Betting on Sports Events

European Union case law affects many areas of the economic sector. One of them is betting on sports events. In recent years betting on sports events has increased significantly. Nowadays it constitutes what may be described as a considerable economic factor. First, it generates a very large income for the sports entities that participate and secondly, it provides a substantial number of jobs. However, betting on sports events is subject to restrictive regulation in most Member States of the European Union. It comes as no surprise that sports betting enterprises have challenged these restrictive laws before the European Court of Justice. The Court therefore is faced with a dilemma. On one hand it has the rights of businesses providing the service of betting on sports events and on the other the rights of Member States to protect their citizens from excessive gambling and perhaps even the whole sports sector from failing to perform its public service. The Court has to interpret the freedom to provide services so as to find a compromise between these rights of businessmen and the rights of Member States to protect consumers and maintain public order. It seems that the best way to do that is the application of the principle of proportionality or of the exception of article 86(2) EC and in the present paper we will examine them both as a means to the end of generating an exception to the rule of freedom to provide services.

Dimitri Papanikolau

Le droit du sportif à son image

Le droit à l'image est d'origine prétorienne. En effet, pour le créer et circonscrire son champ d'application, le juge français s'est fondé sur l'article 9 du code civil qui pose que « chacun a droit au respect de sa vie privée ». Selon la jurisprudence, de cet article découle d'une part, le droit extra patrimonial du respect de la sphère privée de l'individu et, d'autre part, le droit à l'image qui est de nature patrimoniale. Seul le deuxième fera l'objet de cette étude.

Depuis son instauration, le juge a posé les contours de son application dans le domaine du sport. Plus particulièrement, le juge a reconnu sa transmissibilité, sa cession au moyen de contrats soumis au régime général, et le droit du sportif de s'opposer à l'exploitation commerciale de son image. La jurisprudence existante et la pratique contractuelle ont ainsi instauré un régime commun du droit du sportif à la gestion de son image. On peut en tirer de conclusions au sujet des modes d'exploitation de son image et de son caractère exclusif. Pour ce qui est plus particulièrement l'exclusivité de la cession du droit à l'image, l'existence des droits concurrents, comme le droit des fédérations ou du Comité national olympique à l'image collective de certaines équipes, restreignent la possibilité du sportif de le céder de manière exclusive.

En outre, la jurisprudence a posé les critères selon lesquels le droit du sportif à son image est limité par d'autres droits concurrents comme le droit du public à l'information sportive ou męme la liberté d'expression des artistes à utiliser l'image de certains sportifs à de fins artistiques.

Enfin, l'introduction en 2004 du droit à l'image collective, permet désormais aux clubs à rétribuer à leurs joueurs une rémunération correspondant à l'exploitation commerciale de leur image exonérée des cotisations sociales.

Mikołaj Pedrycz

Arbitration In International Sport —Organised System Or Chaotic Structure?

In professional sport arbitration becomes the most popular method of disputes resolution. In sports law doctrine it has been said, that advantages of this method are: quickness (arbitral tribunal solves cases faster than a state court), flexibility (tribunal can apply specific rules, i.e. rules of sports federations) and confidentiality (some facts of the case before tribunal may stay confidential).

Because of that facts lot of international sport federations (IFs) established their own arbitral tribunals. But there is still a question – does something what could be called "system of sport disputes resolution" really exists? Or maybe there are not clear connections and division of competences between juridicial bodies in sport.

System of sport organisation is almost clear – national sport federations are organised in IFs and National Olympic Committees (NOCs). At the top of that structure stays International Olympic Committee.

In my opinion we cannot draw same structure for system of dispute's resolution in sport, however it could seem to be similar – there are arbitral tribunals of natonal federations at the bottom, then – tribunals of IFs and Court of Arbitration for Sport in Lausanne (CAS) as a highest instance (often called: "supreme court for sport")

But differences are important:

– not all national federations federations established juridicial bodies, and not all of that bodies are arbitral tribunals sensu stricto – most of them are only disciplinary bodies, without competences to judge civil law cases.

– activity of that bodies is different, according the fact that there are different state laws regarding arbitration – in some states arbitral tribunal can judge as a state court, whereas in the others it meets lot of obstacles, i.e. lack of power to judge labour law cases (which appear often in sport law).

– Activity of CAS, as a highest instance of sport arbitration, does not help to unite international sport jurisdiction – normally this tribunal may judge the case only when all other ways were exhausted, but there is also possibility to settle a dispute by CAS as a first instance.

Those and other arguments convince me, that system of international sport arbitration with clear structure of instances does not exist.

Rafał Piechota

Pluralism and the diverse character of anti-doping rules

The way in which anti-doping legislation came into being, with its *ratio legis* to prevent and fight against doping in sport, determined its character and most importantly its pluralism. The international community and national legislators have established and implemented the rules in an irregular and unsystematic way, usually in reaction to large-scale public doping scandals. That's why anti-doping rules in the legal system, in particular in the international legal system, are characterised by legislative chaos. From the 1960s increasingly effective legal mechanisms for fighting doping have been created, with the view of linking them closely to the already existing ones. Such efforts were sometimes successful. However, they more often led to a situation where the obligations of countries remained unspecified, the definition of doping lacked cohesion and the athletes' responsibility for doping depended on the organiser of the competition and the country where the competition took place.

An overview of international anti-doping legislation, and the diversified structure and nature of national laws, proves that there are numerous anti-doping rules functioning in legislative practice. This means it is possible to apply rules from more than one legal system, which can cause conflict and lead to situations which are detrimental from the legal point of view.

Moreover, the incredible diversity and scope of the regulations in national legal systems, which may operate well on the national level, can lead to international sport competitions being subject to extremely different and conflicting regulations. In addition, the anti-doping rules applied by sport organisations (and created mainly by the WADA) which are not binding law, are often in conflict with generally binding regulations, in particular the Community law. Nevertheless, they are usually enjoy primacy over Community law, for non-legal reasons. The addition of diverse standards within the anti-doping rules (penal, administrative, disciplinary standards) results in a complicated pluralism of those rules.

Andrzej J. Szwarc

Corruption in Sport. Criminal Law Aspects

The present paper concerns the selected criminal law aspects of fighting against corruption (bribery) in sport, that is giving or receiving a pecuniary or personal advantage as well as a promise of such an advantage in exchange for unfair behaviour which may influence the results of a given sport competition.

The need for paying close attention to the phenomenon of corruption in sport derives from several reasons.

First of all, the corruption, similarly to doping, hooliganism, cheating in sport or accidents resulting in sever bodily harm of sportsmen, has the negative impact on the image of the sport itself.

Secondly, even though the above-mentioned phenomenon as such was recognized in the past, the problem has became more visible nowadays. After several cases of sports bribes had been identified all over the world, the corruption was finally brought to the light also in Poland, particularly with regard to football matches.

Thirdly, the large scale of the phenomenon and the limited effectiveness of the other possible measures, such as the ones of internal and disciplinary character, aiming to eliminate instances of undue interference with sport rivalry, forces the relevant state authorities to introduce more severe measures of penal law character. Presently such tendencies can be observed also in Poland. During the nationwide fight against corruption in sport over 300 individuals have been charged with sport bribery, some of them have already been convicted. In other cases the proceedings are still pending. Moreover, the question of bringing to light more and more examples of the corruption in sport remains open.

As each state has its unique system of law, with national distinctions that are quite visible in the penal law sphere, it should not be surprise that the possible models of criminal responsibility for the corruption in sport also vary from country to country. The paper presents the Polish regulations concerning the above-mentioned issue under the Criminal Code of 6 June 1997. As the 1997 Criminal Code was subject to several amendments it is vital to emphasise that the present regulations are binding since 1 July 2003.

Özgerhan Tolunay

Evaluation on The Gambling and Betting Regulations in Turkish Sports & Expectations Of Clubs

Sports Betting in Turkey are conducted under State Control and Supervision. The Government has transferred its Sports Betting organisation to a Private Company by making a tender in August 2008.

In this conference, the Turkish Betting Regulations i.e. sports betting and the legislation on the allocation of the profit earned from them will be analyzed (İddaa, Spor Toto, etc.) because this legislation has quite a complex structure and includes important deficiencies and contradictions.

As sports activities have developed, important amendments on the legislation have been made in Turkey since 2006. This rather includes tax rates as well as the clubs' royalties.

While the İddaa was only organized for Football games in Turkey, it is now played for Football, Basketball, Motor Sports, Tennis, Volleyball, Handball, Water Polo and other individual and team sports.

In this conference, as well as explaining the penal sanctions foreseen in order to prevent illegal gambling (especially played on the Internet), the figures of the club rights (or shares) as to before 2007, in the 2007–2009 period and 2009 regulations will be stated.

This conference including the legal aspects and marketing point of view in Turkish Sports as a comparative study will be closed with suggestions on amendments that must be done regarding the legislation and the wishes of the Turkish clubs.

Romana Troicka-Sosińska

Project of the New Polish Sports Law Act

Polskie prawo sportowe; planowane zmiany – analiza złożonych w Sejmie trzech projektów ustawy prawo sportowe. Ustawowe reguły dotyczące rozwiązywania sporów dyscyplinarnych i regulaminowych w sporcie. Sportowe sądy polubowne w Polsce ze szczególnym uwzględnieniem pozycji Trybunału Arbitrażowego ds. Sportu przy PKOL. Istniejący i planowany w projektach ustawy prawo sportowe model kontroli administracyjnej polskich związków sportowych.

Polskie prawo sportowe ma dość krótką historię. Organizacja klubów sportowych i ich związków opiera się przede wszystkim na ustawie o stowarzyszeniach. Przed okresem transformacji w Polsce pierwszą próbą stworzenia ustawodawstwa sportowego była Ustawa o kulturze fizycznej, która wprowadzała szczególne normy specyficzne dla stowarzyszeń sportowych. Zmiany ustawodawstwa sportowego doprowadziły w 2005 r. do wydzielenia z ustawy o kulturze fizycznej sportu kwalifikowanego i utworzenia Ministerstwa Sportu.

Kluby sportowe mogą tworzyć związki sportowe w tym Polskie Związki Sportowe, które mają wyłączność w zakresie reprezentowania polskiego sportu – dyscyplin które reprezentują na arenie międzynarodowej. Polskie Związki sportowe mają wyłączne prawo uczestnictwa w międzynarodowych organizacjach sportowych - europejskich i światowych, które jako naczelną zasadę pielęgnują niezależność związków sportowych od władz administracyjnych. Każda próba ingerencji władzy w działalność najbardziej znanego polskiego związku sportowego spotyka się z groźbą wyłączenia polskich drużyn piłkarskich z rozgrywek międzynarodowych. Planowane zmiany polskiego ustawodawstwa sportowego zmierzają do wzmocnienia pozycji administracji w stosunkach z polskimi związkami sportowymi.

Ustalanie reguł i zasad obowiązujących w każdej dyscyplinie sportu należy do polskich związków sportowych. Także rozwiązywanie sporów dyscyplinarnych i regulaminowych polskie prawo sportowe pozostawia w gestii polskich związków sportowych. Wszystkim stronom sporów dyscyplinarnych i regulaminowym został zapewniony dostęp do sądu w postaci możliwości złożenia skargi do Trybunału Arbitrażowego ds. Sportu przy PKOL; rozstrzygnięcie Trybunału można z kolei zaskarżyć skargą kasacyjną. Natomiast spory majątkowe w sporcie mogą być rozpoznawane przez działające przy polskich związkach sportowych sądy polubowne (PZH, PZMot), – w niektórych związkach muszą być rozpoznawane przez te sądy – skierowanie sprawy majątkowej do sądu powszechnego stanowi w PZPN delikt dyscyplinarny.

Istniejący w polskim ustawodawstwie sportowym model kontroli administracyjnej polskich związków sportowych ma na celu wyłącznie badanie czy ich działalność jest zgodna z prawem powszechnym i prawem związkowym. Negatywny wynik kontroli może spowodować odwołanie władz polskiego związku sportowego, powołanie kuratora – którego zadaniem jest przeprowadzenie wyborów nowych władz związku.

Projekty nowelizacji prawa sportowego zmierzają do zaostrzenia kontroli administracyjnej polskich związków sportowych w tym także do zwiększenia wpływu administracji na skład i tryb działania Trybunału Arbitrażowego ds. Sportu, który jest uprawniony do rozpoznawania wniosków Ministra Sportu dotyczących odwołania władz polskich związków sportowych.

Alexandru Virgil Voicuu

Aspects concerning law enforcement in the case of violent behaviour in sports and physical education activities

The problem of violence prevention and management in sports requires an analysis regarding the application of law in this area. The following analysis has been prompted by the development of the science of sport and physical education, already regarded as a notable social phenomenon. After a few preliminary clarifications, including term-related ones, regarding the system of physical education and sports and the activities it comprises, we will proceed by enumerating the classes of participants in the specific sporting activities, liable to constitute themselves as parties in a law-constrained relation (as a result of unlawful activities). The paper will discuss aspects regarding civil delinquent liability and penal liability relevant to the proposed topic. The authors support the need for law constraint, including law enforcement, in the field of sports and physical education, and wish to draw the attention of lawyers to this field as potential object of their legal practice.

Dr. Adnan. A. Wali

The theory of sport law: Towards a specific legislation for sport transactions

It is well known that the great revolution in communication and transportation made the world just a global village. The interference of transactions between the people of different countries (including sports law), makes the necessity of legislating a model law for sport transactions is quite urgent in order to avoid legal conflicts problems and to find a uniformed language between nations.

Although we already have an international uniform sport law (international bylaws) concerning different games, we find that the time has come to have a model law for all sports transactions applied in sports in general. Such international model sport law should be considered as a basic law or as a constitution for all sports transaction and give a good assistance for all countries to have their own sport law according to the international sports law model.

We consider that going forward to an international sport law model should be a good occasion to re-examine the bylaws which are valid in many types of sports, especially football. Such goal can be achieved only if all legislators and experts in law, sport and business in all countries do as one team.

The non-amateur sport culture which has become an international phenomena press on all of us to face the necessity of international sport law model.

It is my honor to suggest some basis for a global sport law model. The present study will be divided in to two main topics:

– The General Rules

– The Specialized Rules

1. General rules

This part of the present study discusses the following ideas and concepts:

International sport law model requires an international authority and an international administration to lead a team to achieve this goal, same as it is in commercial law.

Soft law through (honor declaration) **still is needed**.

Right of sport should be a constitutional one.

A new system of penalties is required, no one should have both of the right to complain and accuse. The fine amount should be for all players benefit. We re-examined the valid penalties and we have suggested some new types of them, which will be more suitable with sport nature and missions.

The main resources of sport law should be clear and listed according to its obligatory.

The clashes problems between national laws and union sport bylaws should be resolved.

2. Special rules

This part of the present study will discuss the;

A. Definition of the concept of "sport" is required, that is to say the legal meaning of sport, and to decide the criteria and standards which can be applied to distinguish between sport and some other activities like exercising or walking for fitness. Many important results will be achieved when such distinction will be applied. Besides, National sport shouldn't be forgotten.

B. The standard applicable to distinguish between non- armature sport and armature sport.

C. The player agent and match agent activities should be well organized

D. The right of audience to be safe ,should be guaranteed. If any one of them was hurt, he will have the right of compensation and we will have to decide the party that should pay it.

E. The contractual right of players should be guaranteed, by typical contract set by sports administration.

F. Organizing the legal position of the coach and the doctors, and other staff for fitness and health care etc. should be a part of sport law model.

G. A substitute rules are suggested better than changing the clubs to a company.

H. Rules for the legal system of sponsored rights and duties should be drafted.

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Kee-Young YEUN

Necessities and Agenda for the Comparative Studies of Sports Law

As international cooperation in sports is up and coming, the different aspects of sports law are focusing. Many countries are giving more attention to this ever increasing phenomenon. As a result, these countries are recognizing, discussing and coping with the inevitably arising dissonances that are and will continue to occur as the field of sports law makes its way into the national scene.

The development of new legal system in Asia based on traditional Asian norms is necessary especially when the internationalization and globalization are accelerating. The Asian Sports Law should be studied by various groups cooperating in order to establish laws based on Asian identity that harmonizes with world's Sports Law.

The interchange of sports has been acknowledged as an effective means of exchange regardless the differences between politics, language, and religion among the world. The International Sports Games such as Olympic Game, World Cup Games influenced the national sports industry, laws and policies. The enormous cooperation and promotion of mutual understandings among nations during the International Games also demonstrate the influence of sports.

Now that there is a clear understanding of the importance of these events, it is essential that we begin to develop a more concrete legal framework for how they should be managed. To advance from this grassroots level of understanding in the area of sport law in each country, it is vital that we take a look at various legal systems that have more sports laws in place and analyze them to see what aspects of those systems might be suitable or adaptable to our own needs.

In this paper, I have tried to show you necessities and directions for the comparative studies of sports law. First, regarding the answer to the question, "Why do we need comparative studies of sports law?" I have demonstrated the reasons: interchange and international cooperation in sports; the study of the legal system; settlement of the Asian law and legal system and unification and harmony in national sports law. Second, I would like to explain the situation of the comparative studies for sports law in Korea. Third, I have examined, "What is the agenda for comparison of sports law?

I would expect a lot of achievement from activations of an International Association of Sports Law or Asian Sports Law Association formed at this time. Lastly, I suggest founding a research institute to study international sports law and to cultivate specialists and networks of it. I recommend establishing a college or research institute by national policy. But the first consideration is a support system for funding and human resources. In addition, an International sport law information center are required.

As we stand at the beginning of the 21st century, in the flow of globalization and internationalization, international law invades into national law. Every country needs in particular new national law based on traditiona religion, ethics and morals. But, the national sports law should be enacted in the direction of unification and harmonization all over the world based on national autonomy and by academic, regional and national links and cooperation.

Despite the pluralistic circumstances in the world, it seems to be easy to create comparatively consistent norms in sports field. It is because sports, the 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 countries in order to unify and harmonize the Sports Law.

Tomasz Zahorski

Legal framework for Important Sports Events on the example of Poland as co-host of UEFA EURO 2012TM

There is no better example of sports, or rather sports entities influencing public law than on the occasion of hosting Important Sports Events. Be it Portugal for UEFA EURO 2004, be it Italy for Torino 2006, England for London 2012, RSA for World Cup 2010, Brazil for World Cup 2014 and Summer Olympics in Rio de Janeiro 2014 - all those countries amended their laws or created new ones for the needs (requirements) of international sports federations.

With UEFA EURO 2012 on the horizon and number of guarantees being signed by government and authorities in the bid phase, Poland faces currently an interesting challenge of implementing similar special laws especially in the field of intellectual property and related like prevention of ambush marketing, regulation of public viewings and others. Should it a be a special law related to one event only or rather encompassing all future important sports events in Poland especially with the perspective of Poland hosting World Championships in Men's Volleyball in 2014 and Poznan having good chances of winning the bid for Youth Summer Olympic Games in 2014.

The presentation includes also examples of practical co-operation of public authorities and sports governing bodies in implementation of relevant guarantees.

Jolanta Zysko

Systems of Sport Governance in Europe

The objective of this paper is to compare the national sport policy and sport management systems in relation to the emerging of transnational policy in the European area. This paper has been divided into four parts. The introduction provides a discussion concerning the development of transnational governmental pressures which have tended to mediate the role of the nation- state, if in some places to displace it (Henry, 2003) and the emergence of global and European sport policy and European sport model, which clearly affects the policy related to sport in particular countries of contemporary Europe. One of the main principle in the European policy is the principle of subsidiarity with its horisontal and vertical dimension, which is very important and influential into the social policy in general and in sport policy in particular. One of the very important factor influential for the changes in sport sector is the structural readjustment to a post-Cold War reality with the demise of communism and the rise of neo-liberalism (Migdal, 2005).

The methodological part indicates that the critical realist approach was applied in the study, and information was provided about research methods and techniques used when carrying out this research. These included a systematic literature review, semi structured interviews and analyses of the contents of documents issued by governmental (or intergovernmental) European organisations and normative acts in sport legislation in selected European countries.

The results described the nature and directions recorded in the development of transnational policy in sport sector, as well as reactions to that policy of national models of sport governance in selected European countries. Furthermore, a classification was made of national sport management systems. Characteristic of three main models of sport management have been described. Differences and similarities between them were defined.

The paper ends with general conclusions related to models and changes in sport management systems. Those common changes which are taking place in all European countries covered professionalisation, commercialisation, emphasis on quality management and new managerialism in the public sector. Attention was also drawn to the fact that the course, dimension and nature of those changes tend to vary in particular national sport management systems and depend on varied national cultural, social, political and economic context of particular countries in contemporary Europe.