ICSSPE
International Council of Sport Science and Physical Education
Conseil International pour l'Education Physique et la Science du Sport
Weltrat für Sportwissenschaft und Leibes-/Körpererziehung
Consejo Internacional para la Ciencia del Deporte y la Educación Física

Bulletin 64, June 2013
Journal of Sport Science and Physical Education

Contents

Feature: Sports Law

Publisher`s Statement

ISSN 1728-5909
No. 64, June 2013

The Journal of the International Council of Sport Science and Physical Education (ICSSPE) is published twice a year. Its goal is to provide a forum for ICSSPE members and other contributors to share news and experiences, raise issues for discussion, develop international and external links and promote events. The featured articles and other contents are monitored by the ICSSPE Executive Office and the Editorial Board, with the aim of allowing for free and balanced dissemination of information consistent with ICSSPE's aims and objectives. The views expressed within this publication are not necessarily those held by ICSSPE unless otherwise stated.

The Journal is published by
International Council of Sport Science and Physical Education (ICSSPE)
Hanns-Braun-Straße
Friesenhaus II
14053 Berlin
Germany
Tel.: +49 30 311 0232 10
Fax: +49 30 311 0232 29
icsspe@icsspe.org
http://www.icsspe.org

Editor: Ben Weinberg
Text-Editor: Tamara Needham
Design: Astrid Lange & Joerg Pluschkat

The Executive Office is supported by the Senatsverwaltung für Inneres und Sport, Berlin and by the Bundesministerium des Innern, Germany, based on a decision of the Deutsche Bundestag.

Foreword

No.64
June 2013

Editorial

Ben Weinberg

President`s Message

Margaret Talbot

Welcome New Members

Editorial

Ben Weinberg

Welcome to issue No. 64 of ICSSPE's Bulletin, which provides a Special Feature on "Sports Law". The current discourse on doping, match fixing and corruption has drawn attention to legal and disciplinary aspects of the sport system. In fact, the globalisation of sport and its legal challenges have initiated debates on new forms of governance and the relation between the autonomy of sport and the state. Reviewed by Kari L. Keskinen (Finnish Society of Sport Sciences) and Lauri Tarasti, this issue's Special Feature refers to recent developments in national and international sports law, its limitations and perspectives.

The first article by Dimitrios P.Panaiotopoulos deals with "Sports Law & Lex Sportiva", followed by a contribution by J.Tyrone Marcus entitled "Sports Law: A New Family Member". The third article by Lauri Tarasti gives an insight into his "Personal Experiences in International Sports Law", while Mike Townley explores "The Role of Arbitration in Sport, the real Legacy of Lance Armstrong". Bárbara Schausteck de Almeida and Wanderley Marchi Júnior offer a perspective on "Olympic sport in Brazil: the Institutionalisation of Power through Law" and the section closes with an analysis of "Current Sport-related Legislation in the Slovak Republic" by Ján Junger and Marcel Nemec.

The Current Issues section includes an article by Margaret Talbot on "Physical Activity in Public Health Policy – Evidence of a Paradigm Shift?" as well as a review by Justin Peterson and Darlene A. Kluka on Jeff Ruffolo's book *Inside the Beijing Olympics*. Moreover, it contains a news overview of ICSSPE's recent activities, outputs and upcoming events.

Finally, I would like to remind you that contributions for the Bulletin are always welcome, whether you would like to submit an article, a review, or report on a meeting or conference, introduce a new research project or university programme. Feedback on the format, or any aspect of the Bulletin, is always appreciated. Please email me at bweinberg@icsspe.org.

Having joined the ICSSPE Office in February and now being responsible for editing the Bulletin, I look forward to collaborating with you and continuing the outstanding work of my colleague Katrin Koenen!

Ben Weinberg
Manager Services

President`s Message

Margaret Talbot

The main focus of this first ICSSPE Bulletin of 2013, Sports Law, is timely. Many national and international sport organisations are expressing concern about how they can manage the complex demands of good governance and protect the integrity of their sport, in a context of increasing challenges and pressures stemming from commercialism, intensification of competition at elite levels, athletes' rights and the betting industry, both regulated and unregulated.

Sport administrators, as ever, need to be clear about their core values and the ways these are expressed in organisations' constitutions, statutes and bye-laws, as well as in the cultures of their organisations. Sport no longer can claim that it is "value free"; or that its values are sacrosanct. Neither can its leaders afford to ignore the increasing use of the law in sport governance, whether driven by those responsible for the sport, or by participants and competitors, or by activists promoting the interests of particular groups. The costs of litigation, especially when organisations are ill-prepared, can be enormous, both financial, and in terms of the time of senior officers, whose attention may shift away from the core purposes of the sport's administration and governance, towards addressing and preparing for legal cases and challenges.

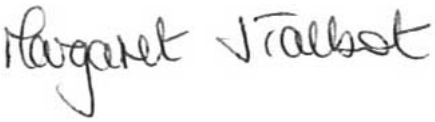
ICSSPE is grateful for the ongoing support of the editors of this Bulletin, both in collecting contributions, and in providing legal advice to the Council for its own affairs. There has been genuine synthesis of knowledge, theory and practice.

The dynamic development of the applications of law, in and by sport, has been well documented by Hazel Hartley, in the new edition of the ICSSPE Directory of Sport Science, which is available to ICSSPE members online through the membership section.

2013 has already been an eventful and demanding year for ICSSPE, with its partnership with Nike and the American College of Sports Medicine in the report "Designed To Move"; and with other partnerships and collaborations which represent a growing awareness of the role of physical activity in public health (outlined briefly in this Bulletin). Add to this, the challenges of ICSSPE's role in partnering with the German Federal Ministry and UNESCO to manage the Conference of Ministers and Senior Officials (MINEPS V), which took at the end of May in Berlin. It has been a real privilege to participate in the pre-MINEPS debates around the three themes, since ICSSPE members have provided an unprecedented amount and range of quality input to the Conference development and documents. It is hoped that this level of ICSSPE member participation will continue, as the implementation of MINEPS recommendations begins to be monitored.

It is appropriate at the end of this short message, to record ICSSPE's support and sympathy for the organisers, participants and their families of the Boston Marathon. While the shock of this tragedy was

intense, the courage and resilience of the injured and bereaved, as well as the world-wide solidarity of sportspeople across the world, have celebrated the human spirit through determination not to be deprived of the joys and triumphs of sport – as seen, only a week later, in the London Marathon. Such events, of course, demonstrate the vulnerable nature of major sporting festivals and contests – but the reactions to abuse also exemplify the global citizenship that is so valued by international sporting communities. Long may it thrive!



Professor Margaret Talbot, PhD OBE FRSA
President

http://www.icsspe.org/

Welcome New Members

Welcome New Members

Since July, ICSSPE has received the following new membership applications which will be ratified at the 74nd Executive Board Meeting:

A174-1

Karlsruher Institut für Technologie (KIT)

Germany

11 Dezember 2012

D090-10

Federal University of Juiz de Fora Minas Gerais
Faculty of Physical Education

Brazil

17 Dezember 2012

B121-3

World Silambam Federation

India

21 January 2013

B121-3

International Council of Sqay

India

21 January 2013

A174-1

Centro Sportivo Educativo Nazionale (CSEN)

Italy

22 February 2013

C090-2

Brazilian Physical Education Council

Brasil

22 February 2013

D090-11

University of Nine July

Brazil

22 February 2013

D142-1

Indonesia School Sport Society

Indonesia

7 March 2013

D043-1

Escola Superior de Ciêcias do Desporto / Universidade Eduardo Mondlane

Mozambique

15 April 2013

D057-32

Institute for Scholastic Sport Science & Medicine (ISSSM)

USA

15 April 2013

D174-6

University of Cassino and Southern Lazio, Department of Human Science Society and Health

Italy

25 April 2013

D121-13

Manghanmal Udharam College of Commerce, Department of Physical Education

India

6 June 2013

ICSSPE
International Council of Sport Science and Physical Education

Feature

No.64
June 2013

Introduction

Kari Keskinen

During recent years, sports law has come into focus due to various cases, especially in doping and manipulation of sport, which have attracted a lot of publicity and media attention. The newly published Directory of Sport Science states that Sports Law is a relatively young sub-discipline, even though it has a much longer and stronger history in the activities of academics and attorneys, especially in the United States of America. Indeed, Sports Law is young as a sub-discipline no matter if it is considered from domestic, national, regional or international perspective but Sports Law is also young as a science. However, its practical meaning has become and is becoming stronger and stronger as juridification of sport continues. The major determinant in most cases is economical, while financial benefits linked with elite and top sports have become enormous influences, world-wide.

The Special Feature of this ICSSPE Bulletin includes six articles which highlight Sports Law in both national and international perspectives. The paper from Dimitrios P. Panaiotopoulos deals with Aspects of Sports Law and Lex Sportiva, while J. Tyrone Marcus writes, respectively, about Sports Law as A New Family Member and Lauri Tarasti highlights his long Personal Experiences in International Sports Law. Mike Townley's discussion focuses on the role of Arbitration in Sport, describing it as the real legacy of Lance Armstrong. Bárbara Schausteck de Almeida and Wanderley Marchi Júnior describe Olympic sport in Brazil with a special reference to the institutionalisation of power through law. And finally, Ján Junger and Marcel Nemec share us with information on the organisation of sporting events in the context of current legislation in Slovakia.

Even though each paper is an individual presentation and should be read independently, there is a common message: the papers let us develop an understanding of legal principles, doctrines and statutes which have been applied to sport and sporting exceptions. It is hoped that we can all learn about the diversity of relevant cases in Sports Law in different contexts and about implications of the legal principles and cases in both organisational and professional contexts. Please, enjoy reading!

Editors
Kari L. Keskinen & Lauri Tarasti

Aspects of Sports Law and Lex Sportiva

Mr. Dimitrios P. Panagiotopoulos

Abstract

Sports Law, as a relatively new subject field of sports science and the law, appears to enjoy great scientific and academic interest both at national and international levels. Likewise, Sports Law is of particular interest in the field of sports practice. For this reason, the nature, the content as well as other aspects of this form of Law should be clearly defined by the legal science.

In this paper, the particular nature of Sports Law is thoroughly examined, giving emphasis to the specific aspect that distinguishes Sports Law from national or international Common Law. Sports Law is primarily associated with the federal systems of international sport as well as the Olympic Charter regulations which are related to Olympic Games stakeholders. In this system, the aspect of Sports Law as Lex Sportiva-Lex Olympica, an anethnic law, is being formed, which is governed by the principle of lex specialis derogate legi generali.

The methodology that is used for the investigation of this issue is mainly analytical and interpretative methods, in the horizon of lege lata and according to the international bibliography.

The conclusion from this study is that the regulations of Lex Sportiva-Lex Olympica are governed by specific characteristics and form a sui generis heteronomous legal order on global sports. This legal order is being imposed by international organisations in the field of sports, such as the International Olympic Committee (IOC) and International Sports Federations.

Introduction

The sports field is organised at the international level in a community, which, in the margin and regardless of any state supervision, has developed its own particular institutions and rules. International Sports Federations (ISF) constitute private entities governed by the laws of the country in which they hold their seat. The ISF regulate the sport which they have responsibility for, with the relationships between people and events evolving across state borders.
On top of this pyramid is the International Olympic Committee (IOC). The Olympic recognition of International Sports Federations and National Olympic Committees is the key, setting in motion the law set by the rules of the Olympic Charter. This recognition is given under certain conditions and has legitimising and transmissive results. The same applies to the International Sports Federations (ISF), who wish for their sports to be recognised as Olympic ones. International sport activity has been created alongside the state and has formed a sui generis international sports law, the so called Lex Sportiva, which is followed by the national sports federations Panagiotopoulos, 1999; 2002; 2003; 2004)[1]. These sports institutions shape and regulate the relationships being developed, strictly and exclusively, within the framework of Lex Sportiva (Panagiotopoulos, 2011).

These rules are not imposed directly on the national (domestic) law, but as an obligation to the competent bodies and federations in the country to harmonise their regulatory function under national law; according to the regulations of the International Federations. In this way, Lex Sportiva is being imposed within a country, often through its incorporation within national sports law, so that the provisions of this sui generis sport legal order are being applied without conditions and supersede any other national law.

I. Lex specialis derogate legi generali

As special rules of law, the Lex Sportiva rules prevail over contrary provisions in accordance with the legal principle "*lex specialis derogate legi generali*" (Panagiotopoulos, 2003).

This shaping of Lex Sportiva as a sports law system applies mutatis mutandis the theory of Lex Mercatoria (Pampoukis, 1996)[2], which was first analysed in 1999 in an attempt for the scientific position on Lex Sportiva to be shaped, which there is now extensive and important debate for.

Thus, Lex Sportiva represents a non-national legal system set by private entities; it is not substantially – even though such claims have been made - international sports law, since it has not been set by an international or supranational entity with corresponding legislative powers, so as to be considered as private or public international law.

In this framework, international sports law consists only of anti-doping rules set by the World Anti-Doping Agency (WADA) and of international acts and conventions in sports, as well as the rules of law of supranational entities associated with sports and athletic activities. Additionally, the rules of the WADA Code, which has been adopted by UNESCO and is binding on all states who have signed the agreement to make it a rule of their domestic law (following approval of their parliaments), are rules of international sports law (Bredimas, 2002; 2005; 2005a). Therefore, international sports law is completely different from the law of rules of Lex Sportiva-Lex Olympica.

The International Sports Federations by their statutes, in the context of contractual freedom, regulate their internal organisation and operation and have regulatory and disciplinary powers, beyond the arrangement of the technical requirements for the organisation of international competitions on their sport.

II. Lex Sportiva System

It is obvious that Lex Sportiva spreads across many areas of sport activity and regulates both aspects of a purely athletic nature, as well as issues relating to the economic and personal freedom of those involved in sports. This is demonstrated by judgements of the European Court of Justice in its decisions on the Bosman (case C 415/93) and Laurent Piau cases (case T-193/02). These must be issued by internationally legitimised bodies (Panagiotopoulos, 2012; Panagiotopoulos, Mournianakis, Alexandrakis and Manarakis, 2010; Panagiotopoulos and Paschou, 2006).

The sources and processes of that legal order do not coincide with the traditional sources and procedures of law, where the dominant element is the state. To circumvent the difficulties posed by the controversial nature and power of the law produced within the sports system, the Court of Arbitration for Sport (CAS or TAS) has been create as an institution for sports arbitration (Reeb, 2002; Dedes and Zagklis, 2006). Disciplinary power is being exercised by the circle of organs of Lex Sportiva over athletes, managers, coaches or any others related to its action. The National Federations, in order to apply the rules of Lex Sportiva, have to introduce a clause into their statutes whereby the associations and their members may not have the right to appeal to ordinary courts and should submit any dispute to the jurisdiction of the Federation or to the special - for that purpose - court of the Olympic construction: Court of Arbitration for Sport (CAS).

Arbitration at national and international levels is an integral part of the institutional mechanism that governs both national and international athletes. One of its advantages is that it reflects the only way to guarantee uniform interpretation and application of rules in international sport activities (Panagiotopoulos, 2006)[3] . In this framework, the Court of Arbitration for Sport shall be treated as a judicial body of the international sports community for the implementation of the rules of Lex Sportiva. Such a judicial institution must be based on the principles of: efficiency of the legal process; impartiality; and equal treatment of similar situations, so that the process of arbitration becomes valid. It is thus clear that Lex Sportiva also identifies the need for a tribunal that not only applies, but also edifies and completes Lex Sportiva rules in order to ensure and safeguard the Lex Sportiva system and the decisions of its stakeholders. The decisions of such a court should namely be constitutive of the Lex Sportiva law, even to impose the transformation of these rules or invalidate them when they conflict with the principles of law or when they are contrary to internationally acknowledged legal norms (Panagiotopoulos, 2004b; 2011). On the basis of the above, it can be argued that the Lex Sportiva system has formed CAS and not vice versa, as is erroneously being supported (Nafziger, 2004; Panagiotopoulos, 2002; 2003a; 2004; 2004a; 2005; 2011)[4]. On closer examination, the position that Lex Sportiva is merely a category or sub-species of international law does not appear to be true (Panagiotopoulos, 1999; 2002).

We are facing a system of law which undoubtedly possesses characteristics from the general principals of law and regulates relations in the international domain. The international sports system has succeeded in establishing an impressive system of coercion, through sanctions and binding jurisdiction of the judicial institution, comparable only with national domestic law and community law, in terms of efficiency and application.

Therefore, the application of sports law as Lex Sportiva, is not automatically guaranteed by the national

courts within state jurisdictions. In other words, International Federations and the IOC introduce provisions in their statutes which prohibit appealing to civil courts, and consolidate judicial power for the organs of Lex Sportiva, thereby ensuring the prospect of resolving sports disputes through arbitration by an institution established by the athletic community, the Court of Arbitration for Sport (CAS).

Thus, CAS has become responsible for resolving sports disputes between members of the international sports community and has been accessed by the national federations and their members. This ensures the implementation of Lex Sportiva regulations, as modified exclusively by the competent international sports organisations.

Consequently, in the international sports field, as well as developing nationally alongside constitutionally designated justice, we face the so-called organic "justice" (justice organique), which is awarded by the "organic courts" (tribunaux organiques), as a special judicial order of the sports judicial organs. In most statutes of almost all International Sports Federations (ISFs), there are provisions, namely exclusion clauses, which prohibit appealing to civil courts and which have already established a uniform practice in terms of the settlement of sports disputes at international and national levels. The rules of ISFs, whose members are National Federations, provide exclusive jurisdiction to organs of disputes resolution within themselves i.e. the International Sports Federations, while the potential that stakeholders appeal to the national sporting bodies or courts is being excluded. Lately, the courts themselves have claimed their competence to decide on the validity of the decisions of the Federations related to athletes, both on domestic and international issues.

We observe differences between Lex Sportiva and international law on fundamental issues related to the nature and quality of the law itself. This again disputes the position that Lex Sportiva is merely a category or subspecies of international law (Panagiotopoulos, 1999; 2002).

We are before another species of international legal system which cannot be a simple category or a diversification of international law. Between the system of Lex Sportiva and public international law there is no conflict because there is a law of private nature, internationally, which is the sports “anethnic”, that regulates a field of relations that could regulate the public order[5] to apply the provisions of this regulation. This is another kind of law on the international level, which is parallel to international law, shares common elements, such as the general principles of law, generally in a new composition (Wali, 2010). This is not an amalgam of law, but an independent system of anethnic sports law.

The rules of this new legal order are a new system of rules derived from the composition of rules in proportion to the Lex Mercatoria (Goldman, 1987)[6], international law and domestic legal systems. When a legal system has such a binding effect and effective enforcement of its rules, then we face the same ideological dilemmas that for centuries we have been trying to solve at a domestic jurisdictional level. The theoretical debate has remained for years and the results have crystallised into principles that are fair, clear and undeniable. In any organised structure when we have a concentration of power in a few hands the solution is given by the principle of legality and the separation of powers. Prerequisite is the complete separation of the institutions that exercise legislative, executive and judicial authority, with separation of instruments and separation of powers. The separation of powers and the implementation of democratic processes must ensure the provision of an independent judicial body and the existence of effective judicial protection[7]. This gives cause to establishment of an international Court for Sports with special procedural rules, of state standing, in a statutory framework of international legitimacy for sport and sports activity.

III. Lex Sportiva–Lex Olympica as an "anethnic" law

Sports law in the international sporting field, as Lex Sportiva-Lex Olympica, is actually private, and means that there is an “anethnic” law, which necessarily regulates an area with no geographic boundaries concerning the relationships of persons involved in international and Olympic sports and action from more countries that require coordination in their activity within their States. That is, the Lex Sportiva-Lex Olympica, a really "anethnic" law internationally, to which, however, the theory does not give special power (Panagiotopoulos, 2011). Nevertheless, it constitutes a “sui generis” sports law legal order imposed in the sports world heteronomously, through these international sports organisations (Panagiotopoulos, 1991; 1993).

This new kind of law, Lex Sportiva-Lex Olympica as "anethnic" law of international practice, sets necessarily old accepted practices and organisational structures, establishing another perspective that reveals the insufficiency of practices of international law, in a legal order which consists of a different kind of law internationally and has an impressive feature of coercion similar to the domestic jurisdictions. Many of us (perhaps based on thoughts of CAS) [8] claim that, through the jurisprudence of the abovementioned Court, there’s has been formed a not-called Lex Sportiva but a Lex Ludica (Foster, 2006; Nafziger, 1988; Reeb, 2000; McLaren, 2001; Panagiotopoulos, 2008; 2009). With this distinction their willingness is to give

-probably erroneously- a sporting dimension to this law, but they actually forget that if it is Lex Ludica it could not be Lex Sportiva and vice versa (Panagiotopoulos Dimitrios P., 2009). The Ludica concept comes from the theory of Homo Ludens of Hunginca, the game that finally has no need of rules of law (Silance, 1977; Panagiotopoulos, 2003a), and can not be regulated by the law, while in the sporting action we have absolutely regulating laws - the Lex Sportiva, including technical rules of the particular character of the sport that do not constitute area of law free of non law rules (Kummer, 1973; Karaquillo, 1989; 1995; Panagiotopoulos, 2009; 2011).
Therefore, the question of Lex Sportiva legitimising basis has been strongly posed internationally to researchers and scientists of sports law. The issue that arises is the creation of an international legal framework for the adoption of law rules relating to matters of personal and economic freedom of the parties, public order and safety and health issues of the athletes and people involved, in relation to which state and supranational entities have the authority to enact.

Conclusion

The rules of Lex Sportiva-Lex Olympica and the quality of the content of these norms with their particular characteristics in the international context of practice, demonstrate that sports law, is not a subcategory of international law.

Lex Sportiva-Lex Olympica, is another kind of law resulting from a synthesis of characteristics of international law (subject, object and content regulations) and internal characteristics of domestic legal orders (effective mechanism of coercion, automatic incorporation norms in national laws exclusive and binding jurisdiction of judicial bodies).

This new kind of international law posesses, necessarily, old accepted practices and established organisational structures to another perspective that exists in parallel with international law and constitutes a sui generis sports law international legal order; that is imposed in an heteronymous way on the sporting world from these international organisations (Panagiotopoulos, 2011; 1991; 1993).

International Sports Law consists of the rules of international acts and conventions of bodies that are governed by rules of international law such as international treaties and acts on Sport, the rules of the WADA Code and the International Charter for Sport but not of the rules by Lex Sportiva-Lex Olympica. The need for fundamental changes in the organisation of international sport practice under the principle of legality becomes imperative, via a constitutional charter for sport with international jurisdiction.

As a step in this direction, during the Sports Law conference in Moscow, 2011, the International Association of Sports Law (IASL) decided to adopt an international sports charter. A draft paper outlining this has been developed by a Committee under Professor Dimitri Rogachev. This Charter will be completed at the IASL Conference to be held in Bali in October, 2013, in order to constitute an international legal instrument for adoption by the international community, in the framework of the United Nations, to apply as the basis of international sports law.

Endnotes

1. For a more extensive bibliography on sports law, see: http://iasl.org/pages/en/sports_law_index/sports_law_bibliography.php
2. Typical example of that theory is the *lex mercatoria* as a foundation of international commercial practice. For the special nature of this autonomous legal order.
3. For the practice of CAS for applicable laws and the enforceability of its decisions, see ibid pp. 192-203.
4. Considering all of the above, the notion expressed by J. Nafziger that "lex sportiva is the product of only a few hundred arbitral decisions within a limited range of disputes (…) It is still more of a lex ferenda than a mature lex specialis" seems unjustified. As much as we disagree regarding this opinion; Lex Sportiva exists with the already established rules and is not created. These decisions only state in the present moment their devotion to the international sports system and less their interest to formulate case law, i.e. to subvert the rules of lex Sportiva, meaning to force the actors to change the rules in accordance with the operative part of the judgment. For the obvious existence of *lex sportiva* in the international sports domain, compare Dimitrios Panagiotopoulos as

above.

5. This ‘outside of nations’ sporting character of law is not identical with national law but has a substantial similarity in Community legal order, which is located midway between the legal systems of the Member States and the international legal order, borrowing elements from all, while remaining independent of them; described as "Supranationalität" and "supranationalité" in German and French literature, respectively. In this case, the term more appropriate is anethnic law, or Lex Sportiva-Lex Olympica.
6. *Lex Mercatoria:* A creation of a set of customary rules and general principles, which constitute an autonomous legal system capable of governing in a meaningful way the international trade, although not referring to a particular state legal system.
7. Under the conditions imposed by Article 6 of the ECHR.
8. See, CAS decision no. 98/200 according to "[...] Sports law has developed and established through the years, mostly through the arbitration dispute resolution, a set of unwritten legal principles - rather like lex mercatoria for sport, or else a lex ludica - in which national and international federations have to obey. [...] ".

References

1. Bredimas,Antony(2000). The International Constitution of Physical Education and Sports of UNESCO - Legal Political dimension and Prospect. *Sports Ethic*, [D. P. Panagiotopoulos Ed.], Ellin: Athens, pp. 87-97.
2. Bredimas, Antony (2005). Multilateral diplomacy for sport: the case of UNESCO. *Sports Law: Implementation and the Olympic Games*, [Dimitrios Panagiotopoulos Ed], Ant Sakkoulas: Athens, pp. 327-334.
3. Bredimas, Antony (2005a). "Legal Order of CIO and international Sports Federations and relation to International Legal Order [in Gr. Η νομική φύση της ΔΟΕ και των διεθνών αθλητικών ομοσπονδιών και η σχέση τους προς την διεθνή και κρατική έννομη τάξη"]: *Olympic Games and Law* (N. Klamaris et all Ed.), Ant Sakkoulas: Athens, pp. 80-84.
4. Dedes, Pantelis. and Zagklis, Andreas (2006). *CourtArbitrationforSport*, [in Gr. *ΤοΑθλητικόΔιαιτητικόΔικαστήριοτηςΛωζάνης]*, Nom. Bibliothiki: Athens, pp. 25-46.
5. Foster, K. (2006). “Lex Sportiva –Lex Ludica: The court of Arbitration for sport Jurisprudence”: *Entertainment and Sports Law Journal*, p.1-14.
6. Goldman (1987). *The applicable law: General Principles of law-lex mercatoria* in Contemporary problems: *international arbitration*, J.M Lew (ed), *Martinus Nijhof*, 116.
7. Karaquilo, Jean Pier (1989). Le Droit du Sport et la Droit selon. *18th Conference for the European Community*, Council of Europe, p.48.
8. Karaquilo, Jean Pier (ed, 1995). *L’ Activité Sportive Dans les Balances de la Justice*, Tom. II, Dalloz: Paris.
9. Kummer, Max (1973). *Spielregel und Rechtsregel*, Stampfli & Cie AG, Berne.
10. McLaren, H. Rich. (2001). Introducing the Court of Arbitration for Sport: The Ad Hoc Division at the Olympic Games. *Marquette Sports Law Review*, Vol. 12, 515-542.
11. Nafziger, James (1988). *International Sports Law*, Transnational Publishers Inc N. York, pp. 57-61.
12. Nafziger, James (2004). *International Sports Law*, 2nd edition, New York 2004, p. 49.
13. Pampoukis, C. (1996). L*ex mercatoria* (in Greek), Ant. N. Sakkoulas, p. 17 ff.
14. Panagiotopoulos, Dimitrios P. (1991). *OlympicLaw* [in Gr. *ΔίκαιοτωνΟλυμπιακώνΑγώνων],* Ant

Sakkoulas: Athens, *pp*. 249ff.

15. Panagiotopoulos, Dimitrios P. (1993). The Olympic Games-an institutional dimension-perspective. *Proceedings of International Congress, (The Institution of the Olympic Games),* Hellenic Centre of Research on Sports Law: Athens, pp. 527-528.
16. Panagiotopoulos, Dimitrios P. (1999) “Sports Law, a special branch of Sports Science” [in Gr."Αθλητικό Δίκαιο ειδικός κλάδος της επιστήμης»: Professional Sports Activities, 1st Sports Law Congress EKEAD Ellin: Athens, pp. 38-52.
17. Panagiotopoulos, Dimitrios P. (2002). "Sports Legal Order in National and International Sport Life", 8th IASL Congress Uruguay, Modevideo Nov. 28-30, 2001: Revista Brasileira De Direito Sportivo (Instituto Brasileiro De Direito Desportivo), no: 2, Pp. 7-17 and: *International Sports Law Review Pandektis* (ISLR/Pand), Vol. 4(3), pp. 227-242..
18. Panagiotopoulos, Dimitrios P. (2003). *Sports Law A European Dimension*, Ant. N. Sakkoulas: Athens, pp.16-27.
19. Panagiotopoulos, Dimitrios P. (2003a). Règlements Sportifs – Limites Juridiques et Lex Specialis Derogat Legi Generali. *Revue Juridique Et Economique Du Sport,* Dalloz: Paris, pp. 87-98.
20. Panagiotopoulos, Dimitrios P. (2004). *Sports Law (Lex Sportiva) in the world, Regulations and implementation*, Sakkoulas: Athens, pp. 22-32 & pp 63-65.
21. Panagiotopoulos Dimitrios P. (2004a). Lex Sportiva: Sport Institutions and Rules of Law. *International Sports law Review Pandektis* (ISLR/Pand), Vol. 5(3), p 40 f.
22. Panagiotopoulos, Dimitrios P. (2004b). International Sports Rules' Implementation – Decisions' Executability. *Marquette Sports Law Review*, Vol. 5:1, pp.1-12 and Comment: *International Sports Law Review Pandektis* (ISLR/Pand)., Vol. 5(4), pp.304-307.
23. Panagiotopoulos, Dimitrios P. [Ed] (2005). *Sports Law – Implementation and the Olympic Games,* Sakkoulas: Athens, pp. 40-44.
24. Panagiotopoulos ,Dimitrios P. (2006). *Sports Law II Sports Jurisdiction* [in Gr. *ΑθλητικόΔίκαιοII, ΑθλητικήΔικαιοδοσία],* Nom Bibliothiki, Athens. pp. 144-148.
25. Panagiotopoulos, Dimitrios P. (2008). Lex Sportiva and sporting jurisdictional order. *International Sports Law Review Pandektis* (ISLR/Pand), Vol. 8 (3-4), pp. 335-373.
26. Panagiotopoulos, Dimitrios P. (2009). Sports Law Foundation: Lex Sportiva, a Fundamental Institutional Approach. *Sports Law: an Emerging Legal Order - Human Rights of Athletes*, Nomiki Vivliothiki: Athens, pp. 20-22.
27. Panagiotopoulos, Dimitrios P. (2011). *Lex Sportiva and Lex Olympica, Theory and Praxis,* Ant Sakkoulas: Athens, pp. 102-151.
28. Panagiotopoulos, Dimitrios P. (2012). Sports Law, a Primitive Theory. *International Sports Law Review Pandektis* (ISLR/Pand), Vol. 9: 3-4, pp. 256-258.
29. Panagiotopoulos, Dimitrios P., Mournianakis, Ioannis, Alexandrakis, Vagelis, Manarakis, Sergios (2010). Prospects for EU Action in the Field of Sportafter the Lisbon Treaty. *International Sports Law Review Pandektis* (ISLR/Pand), Vol. 8(3-4), pp. 301-310.
30. Panagiotopoulos, Dimitrios P., and Paschou, Katerina (2006). Lex Sportiva and Community Law: The Piau Case. *International Sports Law Review Pandektis* (ISLR/Pand), Vol. 6(3-4), pp. 329-338.
31. Reeb, Matthew (2000). “Digest of CAS Awards II-1998-2000” Kluwer Law International, p. xxx.
32. Reeb, Matthew (2002). *The role and functions of the Court of Arbitration for Sport* (CAS), ISLI 2002(2), p.p. 21-25.
33. Silance, Luk (1977). Interaction des règles de droit du Sport et des lois et traités émanant des pouvoirs publics. *ReviewOlympique (120) ;* Lausanne, I.O.C., p. 622.
34. Wali Adnan, A. (2010). The theory of the Sports Law: Towards specific Legislation for sports

Transaction. *International Sports Events and Law* [Jacek Foks Ed.], Warsaw, pp.183-192.

Contact

Dimitrios P. Panagiotopoulos
Assoc. Professor at the University of Athens, Advocate, Attorney-at-law in Supreme Court and Council of State, Vice-Rector, University of Central Greek. President of Hellenic Center of Research on Sports Law (HCRSL) and President of International Association of Sports Law (IASL)

4 Veranzerou Str. 10677
Athens
Greece
E-mail: panagiod@otenet.gr
info@panagiotopouloslaw.gr

Sports Law: A New Family Member

J.Tyrone Marcus

Introduction

This paper will provide an overview of the rapidly evolving branch of the law called “sports law.” It begins by addressing matters of terminology including whether the very term “sports law” should be accepted within sporting and legal circles. Further, it will outline how the jurisprudence of the Court of Arbitration for Sport (CAS) has contributed to the growth of sports law.
The paper continues by identifying new jurisdictions that are developing this legal area, and also highlight the increase in sports-related legislation. The paper closes with a brief projection on the future of sports law.

A rapid evolution

The turn of the millennium brought with it myriad changes in many spheres of life. Such was the case in the fields of academics, sports, politics, culture and the economy. About 5 years ago, the world was caught somewhat off guard when the global financial crisis affected most economies, whether directly or indirectly. Interestingly, the sports business industry seemed to have soldiered on without much hiccup, a clear indication of its power.
It is the very commercialisation of sport that has led to an almost simultaneous juridification. This latter term has been defined by Mark James as "the process by which a privately regulated sphere of activity becomes colonised by law and lawyers".[1] Legal practitioners have infiltrated the sports world as a direct result of the professionalisation of the industry. Athletes, teams, clubs and sports governing bodies have become more and more aware of their legal rights and they often display great alacrity in enforcing them. Additionally, the prevalence of the scourge of doping has been accompanied by no small number of legal considerations including human rights, strict liability and the principle of proportionality.
And so the question arises: are these matters really "sports law" or is it more accurate to speak of "sport and the law"?

Sport and the Law or Sports Law?

"We have chosen the title for this book to give expression to our view that the time has come for the term " sports law" to become accepted as a valid description of a system of law governing the practice of sports. We are conscious that the term is not yet universally accepted among lawyers. Nor is it in common use among practitioners or administrators of sport."[2]

The above opinion was expressed by authors Michael Beloff Q.C., Tim Kerr and Marie Demetriou, as they penned the first edition of their legal text entitled "Sports Law" back in 1999. Over a decade ago, they held the view that sports law had evolved into a bona fide arm of the law, with specific legal regulations and rules being developed that are unique to sport. Holding the opposite view was well respected academic and author of "Sport and the Law," the late Edward Grayson, who spoke of ‘the arcane, arid and artificial argument about whether there is a law of sport or sports law.[3] There are supporters on both sides of the divide.

The issue of sport’s uniqueness has itself generated significant debate especially at the level of the European Union (EU). Prominent international sports federations like FIFA[4], UEFA[5] and the IOC[6] have been among the loudest advocates of the ‘specificity of sport’ concept, claiming that sport’s special nature should, to a large measure, make it exempt from the application of EU law.

Their efforts, evidently, have not gone in vain as Article 165(1) of the Treaty on the functioning of the European Union states that the ‘Union shall contribute to the promotion of European sporting issues, while taking account of the *special nature of sport*, its structures based on voluntary activity and its social and

educational function' [*Emphasis added].* While many will agree that there are limitations of this new EU competence on sport, it is still considered a partial victory in the fight to recognise sport as unique and special.

Notwithstanding the divergent opinions on the true status, scope and content of sports law, there is virtual unanimity in accepting that the marriage of sport and law has occurred and there are positive signs that this will be a long-lasting relationship.

Domestic, global, national and international sports law

Such has been the evolution of the law relating to sport that *sui generis* terminology continues to evolve. Again, James' definitions are instructive. He defines the term "domestic sports law" referring to it as "the body of internally applicable legal norms created and adhered to by national governing bodies of sport.[7]
Its counterpart at the international level is "global sports law" which is "the autonomous transnational legal order through which the body of law and jurisprudence applied by international sports federations is created; in particular it includes the jurisprudence of the Court of Arbitration for Sport and its creation and harmonisation of sporting-legal norms".[8]
These two concepts are then to be contrasted with "national sports law" and "international sports law." The former is described as "the law created by national parliaments, courts and enforcement agencies that directly affects the regulation and governance of sport or which has been developed to resolve sports disputes.[9] The latter addresses "the general or universal principles of law which are part of international customary law, or the *jus commune*, that are applied to sports disputes".[10]

The burgeoning terminology is somewhat eye-catching and captures the rapidity with which the law has infiltrated sport's domain. Domestic sports law has emerged and continues to emerge as national governing bodies, be it UK Athletics in Britain, the Board of Control for Cricket in India(BCCI) on the Asian subcontinent or the Trinidad and Tobago Paralympic Committee in the Caribbean, develop and apply rules and laws to effectively administer their respective sports. National sports law seems to have a more "credible" source as this law develops out of the courts and national parliaments. In fact, James believes that national sports law is 'the application of 'real law' to sport.'[11] More and more countries have enacted sports specific legislation, whether those Acts of Parliament were merely sunset legislation for the purpose, for instance, of combating ambush marketing at mega-events like the Olympics or the FIFA World Cup, or whether the statutes were intended for posterity like the UK's *Safety of Sports Grounds Act 1975* or the *Olympic Symbol etc.(Protection) Act* of 1995.

As far as global and international sports law are concerned, it is axiomatic that a starting point, especially for the former, is the analysis of the case law emanating from the 'supreme court of world sport', the Court of Arbitration for Sport (CAS), based in Lausanne, Switzerland.

CAS at the centre of global sports law

'By reinforcing and helping to elaborate established rules and principles of international sports law, the accretion of CAS awards is gradually forming a source of that body of law. This source is referred to as 'lex sportiva.[12]
The jurisprudence of the Court of Arbitration for Sport (CAS) is credited with giving global sports law its body and substance. International sports law, on the other hand, goes further and is succinctly defined by Ken Foster. He notes that: 'International law deals with relations between nation states. International sports law therefore can be defined as the principles of international law applicable to sport.[13]

Mitten and Opie (2011) observe that "CAS arbitration awards are globally respected adjudications, which generally are validated and enforced by national courts"[14]. The body of law that has developed through CAS rulings has become the core of *lex sportiva*. Even the Swiss Federal Tribunal, the court to which appeals from CAS are heard, albeit on very limited grounds, has recognised the validity of CAS. This pronouncement came in the *Elmar Gundel* decision[15] when the independence of CAS was brought in question. The Swiss Federal Tribunal found CAS to be a true court of arbitration.[16]

Of note is the fact that the majority of the arbitral decisions at CAS are anti-doping matters, while selection criteria disputes are also common. In the lead up to the 2012 London Olympics, the CAS ad hoc Division remained a hub of activity as it dealt, *inter alia*, with selection disputes involving Equestrian riders from South Africa and Ireland, an Olympic qualification boxing controversy, an impasse regarding the assignment of Olympic places in the sport of canoe kayak and doping cases from canoeing and athletics.
Not many intellectual property (IP) conflicts seem to reach CAS possibly due to the role of the World Intellectual Property Organization (WIPO) in dealing with IP disputes through its Arbitration and Mediation

Center. Mitten and Opie further observe that "the evolving body of *lex sportiva* established by CAS awards is an interesting and important example of global legal pluralism without states arising out of the resolution of Olympic and international sports disputes between private parties."[17]

It appears, then, that the resolution of sports-related disputes, especially through arbitration at CAS, has been the catalyst for the rapidly expanding body of case law that has shaped sports law and while the doctrine of *stare decisis* is not strictly adhered to by the CAS, such is the validity of its jurisprudence that subsequent panels still tend to follow previous precedents. Within sports law, a class of 'sports arbitration law' appears to be blossoming, founded on CAS decisions and supported by the rulings from other bodies like the American Arbitration Association (AAA) in the USA, the FIBA[18] Basketball Arbitral Tribunal (BAT)and the FIFA Dispute Resolution Chamber.

New jurisdictions embracing sports law

'It is beyond question that sports law is at its most advanced in Europe and America. Unfortunately, the same cannot be said for sports law in Asia, which lags way behind Europe and America at both the working and research levels. Thus, when we take into account the prominence of Asia on the world stage from the perspectives of economics and population, this undoubtedly illustrates the pressing need to improve and develop sports law through the region.[19]

This Asian lament is instructive as it probably mirrors a sentiment felt in other parts of the globe where sports law is still at its embryonic stages. Notwithstanding the passage in June 2011 of the *Basic Act on Sports* in Japan, Asia is still considered to be at an early juncture in the establishment of its legal framework to regulate sport.

Europe is considered to be the traditional home for sports law. In the text "The Future of Sports Law in the European Union" the authors note that the "relation between sport and law has always been very special" while asking the question "whether the EU legal order applies to sport activities"[20]. That question is answered with a resounding "yes" as has been confirmed in ECJ[21] case law as well as the various EU Treaties. Most notably, cases such as *Walrave and Koch v UCI*[22], *Donà v Mantero*[23] and the well known *Bosman*[24] decision have laid the foundation for the application of EU law to sport.

In like manner, North America has both embraced and developed sports law. In that geographical region, the American Arbitration Association has been responsible for churning out significant sports legal decisions, including the landmark La Shawn Merritt anti-doping arbitral decision which was a catalyst for the eventual outlawing of the IOC's Osaka Rule and the British Olympic Association by-law, both of which were deemed to contravene the *ne bis in idem* principle.

It is, nevertheless, an interesting undertaking to observe the birth and growth of sports law in places like India, as well as the Caribbean region. One of the factors contributing to this expansion was the hosting of major sports events in recent years which became an occasion for developing, teaching and introducing sports law concepts.

In 2007, the ICC Cricket World Cup was hosted in the West Indies and one of the salient features was the anti-infringement programme developed to combat ambush marketing and other potential infringements of intellectual property rights. Nine(9) host nations enacted the *ICC CWC West Indies 2007 Act, 2006* in that regard. Indeed, ambush marketing legislation has become a common feature of major event hosting in modern times.
In 2010, India hosted the Commonwealth Games and in the following year, the Cricket World Cup (CWC). The preparation and planning of these sporting spectacles provided an opportunity for citizens in the host nation to be educated on how the law applied to event hosting. Further, there has been useful sporting case law coming out of India over the last decade including the decision in *ICC v Britannia*[25]involving questions over the use of the CWC South Africa 2003 logo, as well as the more recent *NDTC v. ICC (Development) International Ltd*[26] decision, an October 2012 in which ICC International and ESPN sought an injunction to prohibit the infringement of copyright and reproduction rights in the broadcast of cricket matches.

The emergence of judicial and academic discourses on sports legal matters in these two regions augurs well for the spread of sports law.

Sporting Legislation on the rise

Perhaps one of the most conspicuous features of the acceptance of sports law in legal and academic circles is the plethora of sports-related statutes that can be found on the global stage. It is not surprising to find such legislation in the United Kingdom, whether it is transient law like the *London Olympic Games and Paralympic Games Act* 2006 which was passed in preparation for the 2012 Games, or more sustainable legislation like the *1989 Football Spectators Act* or the *Sporting Events (Control of Alcohol) Act 1985*.

Similarly, American legislation like the *Ted Stevens Olympic and Amateur Sports Act 1998*, the *Major Events Management Act 2007* of New Zealand or the *Australian Sports Anti-Doping Authority Act 2006*, are expected in these developed countries with a rich sporting tradition. In like manner, France passed its *Loi du Sport* in 1984 while Brazil enacted its *Pélé Law* in 1998.

Less expected perhaps are statutes like the *Sports Act* of Hungary, the *Namibia Sports Act* or the *Sports Act* of Belize since these countries have not had a history of international success and prominence as compared to other regions with sports legislation. The fact that such statutory enactments exist, though, does constitute cogent proof that more governments are adopting an interventionist approach to sports regulation and are willing to engage the attention of their respective Parliaments.

Legal regulation of ethics in sport

Sports observers are neither naive nor unrealistic when it comes to embracing the fact that ethical codes are often broken in the world of sport. The evidence is most visible in the areas of match-fixing, doping, illegal betting and child protection. The Jerry Sandusky child sexual abuse conviction in the USA, the Lance Armstrong cycling debacle and the spot-fixing fiasco among three Pakistani crickets are reminders of the battle that wages on for clean and fair sport.

The issue of child protection in sport is both sensitive and delicate and has received due attention even before the Sandusky revelations. The UK regulatory approach was a holistic one, which included the introduction into law of the *2006 Safeguarding Vulnerable Groups Act*. This area, admittedly, warrants the best possible legal regulation which includes a criminal law function and necessarily goes beyond the ambit of strict sports law as defined earlier.

The fight for drug-free sport has, at times, also demanded a rigid regulatory framework and the intervention of the criminal law. Many countries have enacted specific anti-doping laws including a few Caribbean territories like Jamaica, the Bahamas and Bermuda, all within the last 5 years. These laws imitate, in both content and intent, anti-doping rules and regulations existing in Australia, Canada, New Zealand and Spain. Mitten and Opie make reference to the development of international sports anti-doping law[27] citing the role of 2005 UNESCO International Convention against Doping in Sport as central to this process. They further highlight the function of the World Anti-Doping Code as having 'a significant capacity to foster appreciation of the need for a uniform international rule of law, particularly in parts of the world where international legal norms generally are not recognised, as well as a sense of global connectivity and legal harmony.[28]

The match-fixing threat, equally, has become increasingly pronounced in recent years, prompting many sports governing bodies to create and enforce anti-corruption codes. Spot-fixing in cricket, match-fixing in football and illegal betting in tennis are the oft-cited examples of this growing menace to sport's integrity. Sport's watchdogs indeed have their work cut out for them.

It was not that long ago that these matters were addressed by sports stakeholders who met in Doha, Qatar for the Securing Sport 2013 Conference. This seminar occurred mere days after England hosted the 2013 edition of Tackling Doping in Sport, another forum for assessing ethical issues in sport. The role of the law in such matters is incontrovertible and has led to significant law and policy development in the industry.

Conclusion: The Future of Sports Law

Sports law academics and practitioners will agree that the future of sports law is bright. Some advocates have already postulated theories for the development of Olympic Law[29] as well as Global Administrative Law[30] as core tenets of sports law in the future. As long as professionalisation and commercialisation are central to the industry, so will the law be. In the words of Simon Gardiner: '*Viva Sports Law*'[31]

Endnotes

1. James, Mark (2010) *Sports Law*, p 3
2. “Sports Law”(1999)-Beloff, Kerr and Demetriou at page 1
3. Sport and the Law Journal Volume 19, Issue 2 at page 64.
4. Fédération Internationale de Football Association, the world governing body for football.
5. Union of European Football Associations, the continental governing body for European football.
6. International Olympic Committee, guardians of the Olympic Movement
7. James, supra, p 3
8. *ibid*
9. *ibid*
10. *ibid*
11. James, supra, p 8
12. Siekmann, Robert (2011) What is Sports Law? Lex Sportiva and Lex Ludica, *International Sports Law Journal* 3-4, p4.
13. ‘Is There a Global Sports Law?’-Ken Foster, Entertainment Law, Vol.2 No.1, Spring 2003
14. Mitten, Matthew and Opie, Hayden (2011) "Sports Law": Implications for the Development of ^, Comparative, and National Law and Global Dispute Resolution, *Sport and the Law Journal*, Volume 19, Issue 1, p23.
15. Gundel v. FEI (1993), Swiss Federal Tribunal, 15 March.
16. ‘Sport, Mediation and Arbitration’-Ian Blackshaw, at page 152
17. Mitten and Opie, supra, p 23
18. FIBA (Fédération Internationale de Basketball Amateur) is the world governing body for basketball.
19. ‘The prospect of and need for sports arbitration in Asia-a Japanese lawyer’s perspective’ accessed February 11, 2013 www.lawinsport.com
20. Page 2.
21. The European Court of Justice.
22. [1974]ECR 1405
23. Re [1976] ECR 1333
24. Union Royal Belge des Societe de Football Association ASBL v Jean-Marc Bosman[1995]ECR I-4292
25. Quoted in ‘ICC plea for stay on use of World Cup logo rejected’-December 4, 2002
26. FAO(OS) 460/2012
27. Mitten and Opie, supra, p 19
28. *Ibid* p 21
29. Alexandre Miguel Mestre in ‘The Law of the Olympic Games’
30. Foster, Ken (2011) Global Administrative Law: The next step for Global Sports Law, *Sport and the Law Journal*, Volume 19, Issue 1, p 45.
31. ‘Sports Law’(3rd edn)-Simon Gardiner et al, p 88

References

Beloff, Kerr and Demetriou-“Sports Law”(1999)
Blackshaw, Ian-‘Sport, Mediation and Arbitration’ (2009)
Gardiner, Simon et al-‘Sports Law’(3rd edn)
James, Mark Sports Law (2010)
Mestre, Alexandre Miguel-‘The Law of the Olympic Games’(2009)
Entertainment Law, Vol.2 No.1, Spring 2003- *“Is There a Global Sports Law?*”-Ken Foster;
International Sports Law Journal 3-4, (2011) –“*What is Sports Law? Lex Sportiva and Lex Ludica*”-Robert Siekmann;
Sport and the Law Journal, Volume 19, Issue 1, (2011*)-“Global Administrative Law: The next step for Global Sports Law”*- Ken Foster;
Sport and the Law Journal, Volume 19, Issue 1- (2011) *"Sports Law": Implications for the Development of International, Comparative, and National Law and Global Dispute Resolution”*-Matthew Mitten and Hayden Opie;
Sport and the Law Journal, Volume 19, Issue 2- “*The Historical Development of Sport and Law”*-Edward Grayson
Case Law
Donà v Mantero Re [1976] ECR 1333
Elmar Gundel v FEI(1993)-Swiss Federal Tribunal, 15 March
ICC v Britannia-[case cited in ‘ICC plea for stay on use of World Cup logo rejected’-December 4, 2002]
NDTC v. ICC (Development) International Ltd- FAO(OS) 460/2012
Union Royal Belge des Societe de Football Association ASBL v Jean-Marc Bosman[1995]ECR I-4292
Walrave and Koch v UCI 1974]*ECR 1405*
Legislation
Australian Sports Anti-Doping Authority Act 2006,
Basic Act on Sports 2011 [Japan]
Football Spectators Act 1989[UK]
ICC CWC West Indies 2007 Act, 2006
Loi du Sport 1984[France]
London Olympic Games and Paralympic Games Act 2006

Major Events Management Act 2007 [New Zealand]

Namibia Sports Act

Olympic Symbol etc.(Protection) Act of 1995[UK]

Pélé Law 1998[Brazil]

Safeguarding Vulnerable Groups Act 2006[UK]

Safety of Sports Grounds Act 1975 [UK]

Sports Act(Belize)

Sports Act(Hungary)

Sporting Events (Control of Alcohol) Act 1985 [UK]

Ted Stevens Olympic and Amateur Sports Act 1998[USA]

Web Resources

'The prospect of and need for sports arbitration in Asia-a Japanese lawyer's perspective' accessed February 11, 2013 on www.lawinsport.com.

Contact

J.Tyrone Marcus
Attorney-at-Law

Law Chambers
31 Borde Street,
Port-of-Spain,
Trinidad, W.I.

Email:jtm.sportslegal@hotmail.com

Personal Experiences in International Sports Law

Lauri Tarasti

A.Introduction

My career in international sports law began at the first World Athletics Championships held in Helsinki in 1983. In my capacity as Secretary-General of the Organising Committee, I befriended Primo Nebiolo, the legendary Italian President of the International Amateur Athletic Federation (IAAF). I also came to know personally all members of the Board of the IAAF, including Carl-Olaf Homén, the President of the Organising Committee of the World Championships. As a result, I was invited to become the first chairman of the IAAF Arbitration Panel. The Panel was founded in 1984, based on a decision made two years earlier.

The IAAF Arbitration Panel was the first internal arbitration court in international sports; the CAS (Court of Arbitration for Sport) was founded two years later. IAAF was ahead of all other international sports federations in doping control in the 1980s and 1990s, and during its early years, CAS based many of its decisions and interpretations on those of the IAAF Arbitration Panel. It was not until 2001 that IAAF decided to abolish the Arbitration Panel due to insufficiencies relating to its independence and start to refer cases to CAS.

The Arbitration Panel consisted at first of six, later of nine members, who elected the chairperson from their midst for a two-year term. I was elected seven times and served as chairman from 1984 to 1997 and still as an ordinary member until 1999. My successor as chairman was Professor Christoph Vedder from Munich.

In the Arbitration Panel, as in CAS, each case was heard by three judges. The difference was that in the Arbitration Panel the chairman – myself from 1984 to 1997 – sat in on all of the cases. This principle was adopted in order to maintain consistency in the Panel's decisions, which has often been a problem in CAS with its rotating panels of judges. This was possible in IAAF because the number of cases was relatively small.

During my term in office, the Arbitration Panel heard a total of 15 cases: only three between 1985 and 1992 and subsequently two cases in a year by average. They were all high profile cases, though. The first one concerned amateur rights and all the other 14 were doping offenses.

Oral hearings took place at the IAAF office, which was located in London at the time and later transferred to Monaco. The athlete was usually present, accompanied by his or her attorney and witnesses. The IAAF was also represented by attorneys. One who particularly comes to mind is Mr Michael Beloff, the sharp-minded English lawyer who has become one of the foremost names in international sports law.

Sometimes oral hearings led to dramatic situations. In most cases the decision of the Panel was proclaimed on the day that followed the hearing in the presence of the concerned parties, i.e. IAAF, the athlete and the relevant national sport federation. Often the athlete burst to tears when the decision went against him or her. A tight schedule like this was possible because the Panel usually heard the case between 10 a.m. and 6 p.m. and then adjourned for dinner. The Panel members reached the decision in free discussion over dinner and then put it in writing during the night. This was hard work that usually lasted until long after midnight. In the last cases during my chairmanship, the procedure had to be changed: the decision of the Panel was henceforth delivered in written form two weeks after the oral hearing.

According to the rules of the Arbitration Panel, oral hearings could be dispensed with and the decision based solely on written procedure in a doping case if the athlete so wished. One of the 15 cases during my chairmanship was resolved in this manner. The Panel also had to dismiss one case because the claim arrived too late.

The IAAF used the best sports physicians of the time as its witnesses in doping cases. This way, I came to

know Arne Ljungqvist from Sweden, who at that time chaired the IAAF Medical Commission and who even today, aged well over 80, serves as Vice President of the World Anti-Doping Authority (WADA), as well as the late Manfred Donike from Germany, who developed the test methods for detection of anabolic steroids in the 1970s. I was one of the speakers at the seminar held in his memory in Cologne in 1995. I also met the heads of the laboratories that were most frequently used by the IAAF: Professors Ayatte (Montreal), Cowan (London) and Schäntzer (Cologne).

B. Cases

The first case in which I sat as chairman in 1985 concerned an appeal by the American 110-meter hurdlers Renaldo Nehemiah and Willie Gault to be reinstated as amateurs. Their amateur rights had been revoked when they had started to play American football as professionals. The Arbitration Panel's decision was in their favor, but it did not have much bearing because at about the same time, IAAF abolished all amateur restrictions from its rules and its Board accepted the athletes' appeal. I still remember the cultivated appearance of the champion runner and world record holder Renaldo Nehemiah at the Panel hearing.

In doping cases, the decisions of the IAAF Arbitration Panel were often used as precedents in later cases, also by the CAS. In the cases of Sandra Gasser (1988) and Butch Reynolds (1990) the Panel decided that the minor flaws that had occurred in doping control procedures did not render the test result null and void, as they had not caused serious doubt as to the reliability of the test. In other respects, the Reynolds Case was a normal doping case. I remember well that after Reynolds had left the hearing and the door was closed I asked the other Panel members: "Guilty or not guilty?" The East German lawyer, who was a former Olympic medallist in women's discus, immediately replied, "Guilty".

Reynolds later filed a suit against the IAAF in a court in his home state Ohio. The case was heard by an 81-year-old judge who had hardly any knowledge of doping affairs, but in the United States judges do not have a mandatory retirement age. The court annulled Reynolds's two-year suspension that had been confirmed by the Arbitration Panel and awarded him USD$27.3 million in damages! The IAAF challenged the verdict in the United States Court of Appeals for the Sixth Circuit. The federal court overturned the verdict on the ground that the Ohio court had had no jurisdiction in the case: the suit should have been filed in a court in the legal domicile of the IAAF, which was London at that time. Reynolds lost his case in entirety but he returned to the running tracks after serving his two-year ban.

The case of the Nigerian female hurdler Ime Akpan (1995) was the only one of the 14 doping cases heard during my chairmanship where the Panel decided that medical evidence was inconclusive: hormones contained in birth control pills could not be unequivocally distinguished from anabolic steroids. I made my opinion after studying Akpan's results statistics that had been provided to me by IAAF General-Secretary István Gyulay. The results showed that her improvement had been quite steady. Akpan was acquitted of charges.

In the case of the Italian high jumper Antonella Bevilacqua (1996), the Panel decided that her ban could not be repealed on the grounds that she had taken health pills without knowing that they contained banned substances. The athlete must check the contents of any pills he or she takes that are not part of everyday nourishment. This interpretation was later confirmed in the World Anti-Doping Code (WADC).

The Arbitration Panel did not believe the claim of the Australian sprinter Dean Capobianco (1997) that his positive doping test was caused by beef containing growth hormone in an aeroplane meal. Capobianco's witness was a Dutch doctor who explained that eating meat of hormone-grown cattle could result in a positive test result, but the IAAF called an expert from the Agricultural Department of the European Union, who testified that the odds for that were one in a million. In its decision, the Panel upheld the athlete's strict liability.

The case of the American sprinter Dennis Mitchell (1999) did not lack ironic features. He had been caught for excessive testosterone while serving as chairman of the association of American drug-free athletes. Mitchell claimed that his high testosterone level had been caused by nutritional supplements, drinking 6–8 beers and having sex in the previous night as well as not having urinated for 13 hours before the test! The Panel did not believe his explanations and suspended him for two years.

The most famous cases heard by the Arbitration Panel were probably the two that involved Katrin Krabbe and two other East German sprinters, in the first case (1992) Grit Breuer and Silke Möller, in the second (1993) Grit Breuer and Manuela Derr. Katrin Krabbe was the most famous female track and field athlete of the time and the poster girl of East German elite sport.

The first Krabbe case was quite special. The three sprinters had undergone a surprise doping test during their training camp in South Africa. The samples were analysed in a laboratory in Germany and found to

be negative. But they were also found to contain urine of one and the same woman: the test had obviously been manipulated. The Arbitration Panel heard several witnesses including the doctor under whose surveillance the tests had been conducted. The Panel could not find a guilty party or establish that any offense had been committed against the IAAF rules or doping control procedures. The athletes were thus acquitted.

Later, an almost similar case was brought to the CAS. In this Boevski case (CAS 2004/A/607) three Bulgarian weightlifters had delivered negative doping samples that contained urine of a single person. The CAS Panel could not find a guilty party or any direct evidence of sabotage. However, it declared having reached comfortable satisfaction that the athletes had indeed carried out or acquiesced to manipulation. Their suspensions were thus confirmed.

I still believe that in a strictly juridical sense – if not in a supervisory sense – our decision in the Krabbe case was better grounded than that of the CAS in the Boevski case. In doping codes, strict liability applies only to positive samples. In both of these cases, the samples were negative, which means that the athletes' guilt must be proven in a normal way, not by using the strict liability -principle. Also, convicting all three athletes without determining which of them are guilty amounts to collective punishment.

The first Krabbe case had an epilogue. Six months afterwards, an envelope was dropped into my mailbox. It contained the latest issue of Der Spiegel, carrying a three-page article on how doping control officials have been fooled, also in the Krabbe case. Doctors' testimonies and illustrative drawings were applied to show how a small plastic bag containing pure urine is inserted into a woman's vagina. A small scratch with a nail is enough to burst the bag and release the urine into the test tube. We may remember that nearly a same kind of urine bag was later used by the Hungarian male throwers Annus and Fazekas at the Athens Olympic Games in 2004.

The second Krabbe case concerned Clenbuterol, which at that time was not listed among banned doping substances but among comparable performance-enhancing substances. Consequently, Katrin Krabbe and Grit Breuer had been banned for one year and Manuela Derr for 8 months for unsportsmanlike behavior, not for direct doping offenses. The IAAF Board had prolonged their suspension to three years. The Arbitration Panel examined only whether this prolongation had been made according to the IAAF rules and found that it had indeed been so. Afterwards ,Krabbe filed a suit in Germany against the IAAF, claiming for revocation of her suspension and damages. The result of the long process that followed was that while the original one-year suspension was upheld, the IAAF's three-year prolongation was found to have infringed the athlete's right of practicing her profession. Quite exceptionally, the IAAF was ordered to pay damages to Krabbe. The exact amount was later settled by mutual agreement.

C. Writing down history

When I withdrew from the IAAF Arbitration Panel in 1999, I decided to write a book on the 15 cases that were heard during my chairmanship. I considered it necessary to explain the Panel's decisions and thus pave the way for future practice of sports law. The book was published by the Monaco-based International Athletics Foundation, which had been founded by Primo Nebiolo mainly with the proceedings of the World Athletics Championships. I wrote the book in English with the help of Robert Stinson, then the treasurer of the IAAF who is a lawyer himself. The book, titled *Legal Solutions in International Doping Cases,* was published in Milan in the year 2000.

The history of the IAAF Arbitration Panel has also been discussed by my successor as chairman, Professor Christoph Vedder in his article *The Heritage of Two Decades of Arbitration in Doping-Related Disputes* (The International Sports Law Journal 3–4/2005).

All in all, the IAAF Arbitration Panel was an important step in the development of international sports law.

2. WADA

The World Anti-Doping Agency (WADA) was founded in 1999 in Lausanne in a major international conference convened by the International Olympic Committee (IOC), of which I was a participant. In the following year, I was elected to the Juridical Committee of WADA. The committee usually convened twice a year in Lausanne, but meetings were also held in Colorado Springs, Singapore and Montreal, where our host was Harri Syväsalmi, the Finnish Secretary-General of WADA at the time. He had had a Finnish sauna built in the WADA headquarters in Montreal – something which all his colleagues did not fully appreciate.

I should perhaps mention that in 2001 I was invited to oversee the election of the host city of WADA

headquarters at the WADA Foundation Board meeting in Tallinn, Estonia. There were five candidate cities, one of which was eliminated after each round of voting. The two cities left in the final round were Lausanne and Montreal. To my great surprise Montreal won, possibly because many wanted to keep WADA separate from the IOC, which is based in Lausanne.

The Juridical Committee handled juridical questions that related to the founding of WADA. WADA is a foundation, a private legal entity registered in Switzerland, even if seats in its administrative organs and responsibility of funding are evenly shared between international sports organisations and governments. The most important task of the Juridical Committee was the preparation of the World Anti-Doping Code (WADC). Previous anti-doping regulations of the IOC and IAAF served as guidelines in this work, in which I was also able to contribute. Some of my suggestions were adopted into the WADC. I laid particular emphasis on the principle of strict liability. WADC was a major achievement in anti-doping work. It was adopted in 2002 and entered into force on 1 January 2003.

The Juridical Committee of WADA was chaired by the New Zealand lawyer David Howman. When in 2003 he was elected Secretary-General of WADA, in succession to Harri Syväsalmi, he unexpectedly abolished the Juridical Committee and began to use attorneys as legal experts. One of them was my good friend Richard Young from Colorado Springs. One of my most memorable associates in the WADA Juridical Committee was the Singaporean lawyer Loh Lin Kok, who had also been my colleague in the IAAF Arbitration Panel.

My work at WADA came thus to an end. However, I was able to present my comments on the second version of the WADC, which entered into force on 1 January 2009, through the statement given by the International Council of Sport Science and Physical Education (ICSSPE) (see below) and quite recently also on the third, 2013 version (effective from 1 January 2015) through the IOC Sport and Law Commission.

I was able to use my expertise on the first, 2003 version of the WADC into good use when I wrote single-handedly the anti-doping regulations of the World Squash Federation (WSF) in 2003. This task fell upon me naturally, as I was the only lawyer member of the Medical Commission of WSF at that time (2001–2008).

3. IAAF Juridical Commision

A. General

The IAAF founded its own Juridical Commission as late as 2001. This was quite surprising, given the fact that judicialisation of sport had already extensively developed by that time.

As I had given up my work at the IAAF Arbitration Panel a few years earlier but still represented the IAAF in the IOC Sport and Law Commission, I was invited to become the first chairman of the IAAF Juridical Commission. One day before its inaugural session, I sought an audience with the new IAAF President Lamine Diack of Senegal, who had just been elected to succeed the deceased Primo Nebiolo. I had met him for the first time at the IAAF congress in Rome in 1981 but I doubted that he would recognize me any more. When the door of the conference room opened and Lamine Diack walked out, he saw me and said: “Dear Lauri, welcome to the IAAF.” After that I was welcomed to Monaco more than 20 times.

The Juridical Commission turned out to be very useful and the IAAF Secretary-General (at first the Hungarian István Gyulai, later the Frenchman Pierre Weiss) usually attended its sessions himself. The IAAF’s skillful attorney, Englishman Huw Roberts, served as the ex-officio secretary of the Commission. Further proof of the Commission’s importance was that Bob Hersh (from the USA) wanted to continue as a member when he was elected IAAF Vice-President.

The Commission usually held two sessions per year. As its chairman I also attended IAAF Board meetings when legal matters were discussed. Each year I also received an invitation to the IAAF Gala, which is held in Monaco every November with 700–800 athletics personalities in attendance.

In the beginning, the Juridical Commission consisted of a chairman and five members. The number later rose to seven when it was decreed that every IAAF Commission must have at least two female members (in like manner the Women’s Committee would include at least two men). Our female members (Maria Clark from New Zealand and Anne Jakob-Milicia from Germany) turned out to be efficient lawyers and eager debaters – and consequently our sessions tended to become even longer than before.

B. Jurisprudence in the Commission

While serving in the IAAF Juridical Commission I learned to fully appreciate how wide a difference still exists in the legal systems of common law and civil law countries. The Commission was entrusted with the task of preparing a general reform of IAAF rules concerning athletes' representatives (agents). The responsibility was given to Jack Agrios of Canada, who had been a distinguished member of the Commission since the beginning and who in 2011 followed me as its chairman, and to Habib Cissé of Senegal, who has also served as adviser to President Diack. They took the rules of the National Hockey League (NHL) of North America as their model. What followed was a 20-page template of a contract between athlete and his agent and a 20-page application form for agents' licensing examination. In a civil law legal system, five pages would have been a lot.

Another thing that I found myself wondering was not much weight being given to privacy: prospective agents had to disclose their social problems, possible crimes and misdemeanors, as well as their bank account and property information in the application form.

In the United States, contracts have to be written in extreme detail, because violations can lead to punitive damages that may exceed the suffered loss tenfold. A good example is the above-mentioned ruling of the Ohio judge, ordering the IAAF to pay USD$27.3 million to Butch Reynolds. As we have seen, that sum was pulled out of a hat.

According to the IAAF regulations, all athletes who placed among the top 30 in their respective events in the previous season must employ a licensed representative. The combined number of men's and women's events in track and field athletics is over 40, which means that the total number of athletes represented by agents is about 1,000.

The Juridical Commission concentrated almost exclusively on rules questions: the IAAF Charter, competition rules, anti-doping rules, ethical rules, advertising rules, rules concerning agents etc – a good example of judification of sports, a trend which I vainly have tried to resist.

Athletes' representation rules were discussed extensively during many years and underwent several changes. Sports nationality does not necessarily concur with citizenship. Some Arab countries in particular have started to "purchase" athletes from Africa, mainly from Kenya, even if the Kenyan Athletic Association has tried to stem the tide. Athletes can be given a new citizenship in a few weeks, sometimes even a new name, which makes their identification difficult.

Athletes who have taken part in international competitions for one country may represent another country only after serving a three-year quarantine. This may be shortened to one year by mutual agreement of the two national associations. These agreements usually involve money, even if athletics does not have a formal system of transfer fees like soccer does. The IAAF Board also has a right to lift the quarantine entirely when necessary.

Young athletes who have not yet taken part in international competitions fall outside the quarantine system and have indeed been subjected to recruitment in African countries. No good solution to this question seems to be available.

The Congress and Board of the IAAF often demanded stricter sanctions against doping offenders. The Juridical Commission could not comply, because the World Anti-Doping Code (WADC) gives hardly any leeway to individual sports federations. Even the IOC was taught a lesson, when CAS gave its decision on the rule in the Olympic Charter that banned athletes who had received a doping-related suspension of at least six months from competing at the next Olympic Games. The ban was declared inconsistent with the WADC and also in contradiction with the *ne bis in idem* principle, i.e. no two punishments for the same offense.

The Commission also discussed the possibility of sentencing doping offenders to pay corollary monetary fines, allowed by the WADC for international sport federations under exceptional circumstances. I was not very excited about that, especially for athletes in whose countries doping offenses were punishable in criminal courts. Criminal sanctions and sport-internal disciplinary sanctions are different kinds of sanctions, but from the athlete's point of view they amount to two punishments resulting from one and the same offense.

It is however possible to include penalty clauses for doping offenses into contracts between athletes and national associations or between athletes and sponsors, as has indeed quite often happened. In these cases, doping offenses can lead to three different sanctions: 1. criminal court punishment – usually a fine, sometimes even prison sentence; 2. suspension and loss of prize money by sports-internal arbitration panel; 3. contractual penalty fine, which may amount to a considerable sum. That would indeed be punishment enough.

The Commission handled ethical questions all through my term. The IAAF adopted a Code of Ethics in

2002 but it remained largely a dead letter, as no ethical commission was appointed to supervise its implementation. If such a commission had been given punitive powers as required by the Code of Ethics, it would have necessitated quite an amount of legal work on rules of procedure, rights of appeal etc., not to mention additional administrative costs.

Sports betting was a new ethical area that came under discussion. A general provision was added into the IAAF rules prohibiting athletes, officials and all accredited persons involved in a competition from betting on the results of that particular competition. However, the provision does not elaborate on how and by what rights betting is to be investigated and what sanctions will ensue. Ethical rules of the IAAF still need to undergo a general reform in this regard.

The International Olympic Committee is putting pressure on sports federations to adopt more stringent methods against sports betting. The IOC has demanded that all international federations in Olympic sports adopt rules that prohibit and sanction against sports betting. Illegal betting has indeed become a second major problem in world sport, alongside doping. This concerns soccer in particular, where the amount of money involved is by far the largest. The United Nations Education, Scientific and Cultural Organisation (UNESCO) has also voiced its concern over sports betting. I participated in the preparations of the 5th International Conference of Ministers and Senior Officials Responsible for Physical Education and Sport (MINEPS V), held in May 2013, in the sub-commission “Preserving the Integrity of Sport.”

The transfer of prerogatives that generally belong to public authorities to private law entities, such as sports associations, in questions of sports betting control, remains a thorny juridical problem.

4. IOC Sport and Law Commission

In 1996, while I was still serving as chairman of the IAAF Arbitration Panel, the IAAF Secretary-General István Gyulay asked for permission to put my name forward for the new Sport and Law Commission of the International Olympic Committee. As the Commission would only hold one session in a year, I was glad to accept. So far there have been 16 such sessions: I am currently the only member of the Commission to have served since the beginning.

The members of the IOC Sport and Law Commission are appointed by the IOC President for one year at a time. At first the Commission was chaired by Kéba Mbaye of Senegal, who also served as the first President of CAS, later by Thomas Bach of Germany, who is currently IOC Vice-President and at the time of writing a leading candidate for the presidency when Jacques Rogge retires later this year.

The current situation in the IOC is a bit strange, as there are actually two juridical commissions: the Juridical Commission and the Sport and Law Commission. Both have Thomas Bach as chairman and the Englishman Howard Stupp, Director of Legal Affairs at the IOC, as secretary. The members come from different continents and represent different sports.

The Juridical Commission handles practical juridical questions such as contracts, the Sport and Law Commission, where I serve, principal questions of sport law. I have suggested to Thomas Bach that the two commissions be united. This has not happened so far, but this year our session was held jointly with the Juridical Commission for the first time.

The sessions of the Sport and Law Commission in Lausanne have usually been preceded by a joint dinner in the previous evening. IOC President Jacques Rogge has attended our dinner twice. The session itself has usually lasted from 9 am until 3 pm, and has sometimes called for special arrangements. Our American member Anita L. DeFrantz has often attended by telephone and has thus been awake at home from 2am until 8 am. A Spanish-language interpreter had to be provided for our previous Argentine member, who did not understand English.

The Commission has discussed many subjects over the years, such as the status of National Olympic Committees, the concept of Olympic athletes, Youth Olympic Games, Olympic Congresses, sports betting, internet page names, citizenship rights, independence of the Olympic Movement etc. Doping cases detected at the Olympic Games have been discussed at every session, as have the IOC’s own anti-doping rules for every particular Olympic Games.

The 2013 session of the Sport and Law Commission prepared a statement on the third version of the World Anti-Doping Code (WADC). I found myself wondering that I was the only member who noticed the second most important point in the WADC reform. Without doubt, the most important point is the projected raising of the general two-year doping suspension to four years. The second most important point, which was mentioned only twice in the draft text, is that the comments of the code are also to be considered mandatory and binding, ergo norms. This would double the number of doping norms and would lead to total confusion of juridical terms.

Immaterial rights of the IOC have also been under discussion in the Sport and Law Commission. The Olympic rings and the world “Olympic” are protected by law in some countries, but mostly as trademarks. Olympic mascots and name-and-year combinations of Olympic host cities have also enjoyed protection. The IOC has been most vigilant in guarding these rights, as we have latest seen in connection with the London Games. The purpose is to protect the rights bought by the sponsors of the Olympic Games. Legal protection of the word “Olympic” has proven a difficult task, however.

In order to sell its most valuable asset, television rights, the IOC needs to protect its audio-visual monopoly of the Olympic Games. Control is difficult these days, when it is easy for everyone for example to film a 100-metre final with a cell phone or video camera and to put the clip on a blog. The IOC has issued strict blogging limitations for all persons accredited at the Olympic Games. The IOC has also purchased a computer program that surveys the internet and automatically detects all use of Olympic symbols and videos and images from Olympic Games. For instance at the Beijing Games of 2008, a total of 165,916 cases pertaining to immaterial rights of the Olympic movement were detected on the internet. 8,085 persons or entities were subjected to closer scrutiny, and some of them were contacted and urged to delete the material that offended immaterial rights of the Olympic movement or face a lawsuit.

5. ICSSPE

International Council of Sport Science and Physical Education (ICSSPE) is a wide-ranging international organisation, which covers all of the various fields of sport sciences, including sports law. Its membership of about 300 organisations includes government and municipal organs, international federations, universities and research centers, national sport associations, private sport facilities etc.

The *Directory of Sport Science* is a reference work published by ICSSPE at regular intervals in print and on the internet. It contains a section on international sports law.

I served on the Executive Board of ICSSPE for the maximum two terms, until 2008. As the only lawyer on the Board, I was mainly involved in questions concerning rules and their interpretations, contracts and administration, but naturally also took part in decisions on other issues of international sport science. Since my term in office I have assisted ICSSPE in formulating statements on the World Anti-Doping Code, the UNESCO doping agreement, sports betting and other related issues.

During my term in office, the President of ICSSPE was Professor Gudrun Doll-Tepper from Germany. She is one of the best association officials I have ever known. She sought to bring sports law into the fold of ICSSPE and invited me to a meeting in Munich in 2009, where the relations of international sports law associations and ICSSPE were discussed. The result was that the Germany-based International Sport Lawyers Association (ISLA) became a member of ICSSPE.

The flagship event of ICSSPE is ICSEMIS (International Convention on Science, Education and Medicine in Sport). Its original name was the Pre-Olympic Congress, but after the IOC became one of its organisers, the name was changed into ICSEMIS in order to avoid collusion with trademarks of the Olympic movement.

ICSEMIS has traditionally taken place every four years just before the Olympic Summer Games in the same country as the Games but in a different city. In 2000 it was held in Brisbane, in 2004 in Thessaloniki, in 2008 in Guangzhou and in 2012 in Glasgow. In Thessaloniki I gave a speech under the title “The Athlete’s Liability for Doping”.

Participation figures at ICSEMIS conventions have usually been high. More than 2,000 people, most of whom were Chinese, participated in the Guangzhou edition in 2008. In Glasgow 2012 the attendance fell to about 1,800, many of whom spent most of their time sightseeing in the city.

ICSSPE asked me to organise the section on sports law at the 2012 ICSEMIS in Glasgow. Given my previous involvement at ICSSPE I had to accept even if I knew that trouble was ahead. I was not wrong on that account.

I invited experts of international sports law I had come to know over the years as lecturers. I had collected contact information on 29 sports law associations in different countries and sent them all material on ICSEMIS and its sports law section. I also sent the same material to about 20 university faculties and research centers that studied or taught sports law. English sports lawyers were approached by an article I published in Sweet & Maxwell’s *International Sports Law Review*, a journal edited by my good friend Michael Beloff.

Still, participation was low when the event took place on Sunday, 21 July 2012. Only about 70 persons came to listen to the keynote speaker, the Canadian professor Richard McLaren. Other lecturers drew attendance figures of 25–30. Sports lawyers have obviously not perceived sports law as an area of sport

science but only as an area of law. This conception needs perhaps to be changed.

6. Conclusion

Anti-doping work is not only a question of rules, medicine and sports law, but also of ethical attitude internal to the sport world. In 2010, I published an article titled “Juridical and ethical peculiarities in doping policy” in *Journal of Medical Ethics* together with Professor Mike McNamee of the University of Swansea, former President of the International Association for the Philosophy of Sport. In the article, we discussed the concepts of guilt and strict liability, the principle of *ne bis in idem* and whereabouts regulations from both ethical and juridical points of view.

Attitude towards athletes who use doping in relation to athletes who do not is the central ethical question in sports today and will continue to be in the foreseeable future. WADA has been successful in its controlling efforts to such a degree that no one can buy banned substances at a pharmacist and use them without being caught sooner or later. However, today’s doping control methods cannot detect: 1) so-called design hormones that have been purposefully created in private laboratories, if their chemical composition is not known beforehand; and 2) gene drugs, which are probably making their way into elite sport.

Doping will thus remain an ethical, medical and juridical problem in the foreseeable future. Concurrently, doping law will continue to be the most specific area of international sports law and the one farthest away from normal practice of law.

Contact

Lauri Tarasti
Justice Member of the IOC Sport and Law Commission

Vanhaväylä 33 C
00830 Helsinki
Finland
Email:lauri.tarasti@kolumbus.fi

The Role of Arbitration in Sport; the real Legacy of Lance Armstrong?

Mike Townley

The Role of Arbitration in Sport; the real Legacy of Lance Armstrong?

Few things rankle the professional sports administrator more than the notion of the *'ordinary courts'* interfering with sport decisions. It's a deep-seated and prevalent fear that is also held by most sports fans and journalists. The prevailing view is that *'the law'* gets in the way of real sports issues, corrupting what would otherwise have been a sound and reasonable solution.

When it comes to football, justification for this position is readily found in 'the Bosman Ruling'. As most people know, this was a 1995 decision of the European Court of Justice (ECJ) [Union Royale Belge des Societes de Football Association ASBL v. Jean-Marc Bosman]. The ECJ ruled that it was illegal for a football club to demand a transfer fee for a player at the end of his contract. The effect has been that top players, for whom a club had to pay a huge transfer fee, now hold their employing club under constant pressure to renegotiate their wages upwards during the term of their contract. It is a curious process that forces an employer to approach its employee mid way through his contract of service to ask 'in return for a wage hike would you agree to extend your contract, please?' Bosman has created an environment of contract uncertainty and wage inflation.

The solution to the perceived problem of *'the law'* interfering with sport (as it has been generally characterised) has been to seek refuge in arbitration. The world of sport is now replete with arbitral bodies dedicated to solving sports disputes, and arbitration agreements of all types abound. Athletes, coaches, 'athlete support personnel', national and international federations and most of the other actors in the world of sport are party to one or more forms of arbitration agreement. If you try to submit a sport dispute to a court now, it is more than likely that the first response of the Defendant will be to apply for a stay of proceedings in favour of arbitration.

In the beginning

The trend towards arbitration started in the 1980s, but it only really took hold in the 1990s. The big-bang moment for sports arbitration happened on 30th June, 1984 with the formation of the independent Court of Arbitration for Sport (CAS), which opened its doors in Lausanne, Switzerland housed in a lovely villa on the shores of Lake Geneva right next door to the International Olympic Committee's (IOC) Olympic Museum. Since then, many national sport specific arbitral bodes have sprung up.

The introduction to the CAS on its own web site summarises the rationale for its instigation in this way:

"At the beginning of the 1980s, the regular increase in the number of international sports-related disputes and the absence of any independent authority specialising in sports-related problems and authorised to pronounce binding decisions led the top sports organisations to reflect on the question of sports dispute resolution."

The most obvious reason why arbitration gained favour was that Governing Bodies became fed up with losing court cases, the impact of which needs to be viewed in the context of what was happening to the development of sport at the time. The 80s and 90s were a period of tremendous consolidation of power in the hands of the major sport governing bodies. Many of them became rich for the first time as they learnt how to exploit their commercial rights, packaging them up and selling them to the highest bidder. With this newfound wealth came a desire to control their sport as they had not done before. Commercial partners expected that the party they were paying so much money to was in fact in charge of the show. How inconvenient then when athletes took their disputes to court and won!

Doping played a huge role in shaping the Olympic sports' attitude towards the courts. Indeed doping cases formed the majority of arbitrations heard before the CAS in its early years. By the 1980s, a belief

had developed that the Judges did not understand 'the specificity of sport', which is a phrase whose preponderance is alarmingly inverse to its elegance. Nothing exemplifies the increasing frustration of the major governing bodies with the court system better than a triumvirate of doping cases involving track athletes Sandra Gasser, Katrin Krabbe and Harry Reynolds. The then named International Amateur Athletics Federation (IAAF) was the Defendant in these cases and it seems inevitable that the hostility of this particularly powerful governing body towards the civil courts had a huge influence on how the sports arbitration system came to be developed.

The founding cases?

Sandra Gasser's case [Gasser v. Stinson 1988, unreported High Court of England and Wales] is the least obviously dramatic of the three, but it hit at the heart of something particularly precious to the world of athletics at the time. The court dealt a fatal blow to the, by then, creaky notion of 'amateur' athletics. Gasser was a Swiss 800 meter runner who was banned for a fixed term of 2 years under the 'strict liability' anti-doping rules of the IAAF. Then, as now, an athlete was responsible for what was found in their body regardless of how it got there, including if there had been an entirely innocent ingestion of a very small amount of a prohibited substance, with absolutely no intention to gain an advantage and no advantage in fact gained. Gasser's lawyers argued that the anti-doping rules were an unreasonable restraint of trade in that while a ban for cheating was understandable, there was no provision for any sort of mitigation for athletes who could show that they were innocent of any intention to dope. In this sense, the rules lacked proportionality. The response of the IAAF was to retort that as an 'amateur' athlete she had no trade to protect!

This was a dangerous argument from the outset because by this time, the development of 'shamateurism' in athletics was a well recognized phenomenon.

The court had no difficulty in dismissing the amateurism argument, but it did uphold the rules on the ground that they were reasonable given the threat to the sport posed by doping and that in these circumstances a strict liability approach could be justified. Nevertheless, a civil court had pointed out that 'amateurism' was, by the late 1980s, an unsustainable sham (ie 'shamateurism').

The case of Harry 'Butch' Reynolds was altogether more colourful. What a great runner he was; Olympic Silver medalist and world record holder, and a great character. Butch was 'box office'.[1]

The degree of outrage that spilled within the corridors of power at the
IAAF would be hard to exaggerate. What this case illustrates is that by the early 1990s, the IAAF had ceased to have any real regard for the civil courts (certainly in the field of doping), considering themselves and their rules to be superior to the law within the domain of track and field. The quote from the case that best sums up this attitude was provided by the senior IAAF anti-doping official at the time, Arne Ljundquist, who said that *'..the Courts create a lot of problems for our anti-doping work, but we don't care in the least what they say. We have our rules and they are supreme'*.

In his excellent article (see footnote), and having surveyed the entire tortuous procedure, Mr McArdle sums up the impact of this case in the following way:

"the real interest of the Harry Reynolds saga, 20 years after the event, rests in what it reveals about governing bodies' beliefs in the sanctity of their own decision-making processes and their powers to run their fiefdoms in whatever way they saw fit, regardless of the broader legal principles with which their activities appeared to be in conflict."

Reynolds had failed a random drugs test at an athletics meeting held in Monte Carlo in 1990 and was initially suspended from all competition by the IAAF pending an internal disciplinary hearing to be conducted by his own national governing body, The Athletics Congress (TAC) (then named). Under the IAAF rules, Reynolds had the right to request a review of the findings even before the full disciplinary hearing had taken place and under these rules, his suspension should have been stayed pending the determination of the review. Reynolds duly requested a review and the IAAF duly ignored its obligation to stay the suspension. Reynolds brought proceedings in the Sothern District Court of Ohio in March, 1991 (Reynolds lived in Ohio).

Reynolds claimed in court that the tests had been negligently carried out and that the results were erroneous. He claimed that the IAAF had failed to disclose to him information that was vital to his defence and that the forthcoming TAC disciplinary hearing should be regarded as a sham with the outcome already decided. He also claimed that the IAAF had been wrong to suspend him pending the disciplinary hearing and in so doing they had unlawfully interfered with his contractual right to compete in athletics competition, and they had conspired with the IOC to commit the tort of interference with his legitimate business. In other words, he threw the book at the IAAF!

The IAAF filed a motion in court to have the action dismissed for lack of jurisdiction and they were successful on the ground that Reynolds had not exhausted all of his 'internal remedies' prior to commencing the civil litigation.

Reynolds was therefore obliged to participate in the TAC's 'internal disciplinary hearing'. This hearing was conducted as an arbitration under the auspices of the American Arbitration Association. The result of this binding arbitration procedure was that Reynolds was completely exonerated of any wrongdoing. The evidence showed that the A and B samples came from different people and neither sample was that of Reynolds'. The TAC accepted the arbitration award; the IAAF did not. There then followed a series of stand offs between the TAC who were prepared to allow Reynolds to resume his career and the IAAF who not only refused to recognise the arbitration award, they even threatened to discipline any athlete that competed against him (the so called 'contamination' rule). The IAAF also threatened to suspend the TAC from IAAF membership, thereby prohibiting all USA participation in international competition.

Reynolds returned to the Ohio District Court and obtained an injunction prohibiting the TAC and the IAAF from continuing any form of suspension; he was finally free to run. He competed in the US trials for the 1992 Barcelona Olympic Games. Unsurprisingly, given the inevitable distraction of the dispute, he performed poorly and failed to make the team. He retired from athletics having endured a torrid and premature end to what should have been a stellar career.

In what became a mere postscript (but offered so much more) Reynolds returned to Court in 1993, this time claiming damages for defamation, breach of contract and restraint of trade. He was granted pecuniary damages of $7 million and punitive damages of $20m against the IAAF. The Ohio Court citing the *'ill will and spirit of revenge'* manifested in the conduct of the IAAF. The IAAF ignored these latest proceedings when they were issued and ignored the judgment when it was made. They sat bolt upright however once Reynolds had obtained his garnishee orders against the US based sponsors of the IAAF, including Coca Cola. They launched an appeal and the damages award was overturned on the basis of lack of jurisdiction.

The case of Katrin Krabbe should be made into a film, and might have been but for the confidentiality agreement she entered into when she finally settled all of her litigation against the IAAF in 2002. What a story; beautiful girl from East Germany emerges as the first truly global sports star of the newly united country. Germany had finally rid itself of the scar left over from the Second World War and Krabbe was there to make the nation whole again. It all ended in tears in 1992 when she tested positive for the banned substance 'clenbuterol'. The German Federation ran into difficulties with their own rules and were unable to impose a doping ban and were instead forced to bring the lesser charge of 'unsporting conduct' which carried a 'mere' 1 year suspension. Concerned by the lack of a proper 2 year doping ban, the IAAF set to work. They conducted their own disciplinary hearing into the positive finding and they imposed an additional 2 year ban to run consecutively with the 1 year imposed by her national federation. Krabbe took the case to the German civil courts and won a ruling that a ban in excess of two years was unlawful under the rules of the IAAF.

Mimicking the Reynolds proceedings, Krabbe commenced a separate action for damages for loss of earnings against the IAAF. Those proceedings took a full 8 years to resolve. Finally, in April, 2002, the IAAF reached a confidential settlement with Krabbe. We can safely assume that no settlement would have been reached (or even contemplated) unless the IAAF had absolutely no other avenue to pursue.

Soca Warriors v. Trinidad and Tobago Football Federation (TTFF) – the life story of a sport arbitration case.

In October, 2006, two angry, confused and disappointed football players came to see me. The story they outlined over the course of the next 2 hours made me cross. How can you treat your national football team this way?! The Soca Warriors, as they had become known in their own country, had brought great credit to their small Island state of Trinidad and Tobago by managing to qualify as one of the best 32 nations in the world to participate in the World Cup finals to be held in Germany. Qualification was the start of 7 years of legal dispute and wrangling.

In January, 2006, the players had met their Federation in a London Hotel. At that meeting, Mr Jack Warner reached an agreement with the players that the Federation would share certain World Cup related revenues with them on a 70/30 split. Mr Warner adjusted this percentage during the competition itself so that the split of revenues was to be 50/50.

Jack Austin Warner was then one of the 24 members of Fédération Internationale de Football Association's (FIFA) Executive Committee and therefore one of the most powerful characters in world football. He is of course a man intimately related to FIFA scandal and resigned all of his football positions in the wake of a bribery scandal (see CAS Arbitration 2011/A/2625 Mohamed Bin Hammam for more

details).

In the run up to the World Cup, it was possible for the players to keep their own tally of the sort of money that was being made through sponsorships etc, and therefore estimate the amount of their share. It was running into a pretty hefty sum, certainly well over £100,000 per man.

It is easy to imagine their surprise, disappointment and anger therefore when they turned up to their meeting with Mr Warner in October following the tournament and were shown an entirely unintelligible accounting spreadsheet, and told that they were entitled to about €300 per man.

I wrote my initial letter to the TTFF on the 26th October, 2006 in which I set out the claim on the contract and importantly, directly raised the issue of dispute resolution forum in the following terms:

"To be clear, unless we can reach agreement on the points set out in this letter, the matter will have to be resolved either in the civil courts or through arbitration. Please provide us with a copy of the applicable statutes or governing regulations of the Federation, which provide for the dispute resolution process for such matters. Please also confirm how you propose this matter be dealt with in accordance within such framework."

I was unable to identify an applicable arbitration agreement. Without an arbitration agreement, there was no possibility of submitting a dispute to arbitration. Therefore, in July, 2007, we commenced proceedings in the High Court in Port of Spain, Trinidad.

This was met with an immediate application by the TTFF for a stay of the High Court proceedings in favour of arbitration! We then concluded a written arbitration agreement whereby the parties agreed to submit the dispute to arbitration in London under the rules of the Sports Resolution Dispute Panel (now called Sport Resolutions UK).

The matter came before Ian Mill, QC sitting as the sole arbitrator in April, 2008 for a 3-day hearing. Despite the case involving an alleged oral contract, the existence of which was being denied, three lawyers but no witnesses turned up for the TTFF. Mill was critical of this lack of evidence and in his written decision, had this to say:

"*In the light of these matters I have no doubt that Mr. Warner, had he made himself available to be cross-examined, would have been subjected to some quite close questioning as to his motives on 12 June, 2006 . . . However Mr Warner did not make himself available for cross-examination and Mr McCormick (the Defendant's lead Counsel) expressly stated to me that he did not have an explanation for his non-attendance that the TTFA wished me to take into account . . .*"

On 19th May, Mill's award was circulated to the parties. The Award deals with the issue of liability and it leaves open the vexed question of quantum, with the arbitrator saying this, at paragraph 58 of the decision:

- *'It appears to be the case that the TTFA has yet to provide an account to the Applicants which complies with its contractual obligations under the commercial revenues sharing agreement as I have found them to be. Obviously, I hope that the effect of this Decision will be that a proper account will be expeditiously rendered, together with the payments shown as due by that account and sufficient inspection of the TTFA's records to enable the Applicants reasonably to be satisfied that they have received that to which they are entitled. In that context, I should observe that any agreement entered into prior to qualification for the World Cup finals but which resulted in revenues accruing to the TTFA in consequence of qualifying should be disclosed by the TTFA to the Applicants (even if the TTFA would wish to argue before me on another occasion that the agreement is not one in whose revenues the Applicants are entitled to share). Furthermore, in case there be any debate hereafter as to whether any revenues fall within the ambit of* "commercial revenues", *I require the TTFA to disclose any agreement which might arguably provide for the payment of such revenues, even if the TTFA would wish to argue before me on another occasion that the revenues are not caught by the commercial revenues sharing agreement. As it seems to me currently on the evidence that I have read and heard, the parties intended a very broad range of revenues to be caught."*

I received the Award fairly late in the day just before I left the office. No one from the Claimants' side had the award except for counsel and me; none of the players had it. The next morning I woke up to find numerous messages on my phone, all wanting to know about the front page article that had appeared in the Trinidad Guardian newspaper under the banner headline 'Soca Warriors win big bucks'. Within the article, written by Francis Joseph, were passages lifted directly from the award and in essence the whole decision was set out. This was a total surprise to me.

A couple of days later came the letter from TTFF's lawyers expressing their outrage at the leak of the award and stating that their client no longer considered itself bound by the arbitration process. An

application was made by the TTFF to the High Court in Trinidad for a declaration that the Arbitration Agreement should be set aside as a consequence of the Claimants' conduct in leaking the Decision, which they said (and say) was a serious breach of confidentiality and therefore the arbitration process.

The basic law of course is that, save for limited and well defined circumstances, an arbitration award is final and binding. This is set out in the international treaty governing arbitrations, the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("the New York Convention"), and in the United Kingdom Arbitration Act 1996, which governed the arbitration process in this case, and under the Trinidad and Tobago Arbitration Act 1950.

In reaching his decision, the judge relied to a large degree on clause 10 of the arbitration agreement that said:

"10. The Arbitration award shall be final and binding on the Parties and shall be registered as a Judgment of the High Court of Trinidad and Tobago in these proceedings and enforceable accordingly, provided however that either party shall have a right of appeal to the Court of Arbitration on Sport but only with the leave of the Arbitrator."

To the judges mind, the fact that the award was going to become public upon registration with the Court rendered 'otios' the basic argument of the Defendants that the arbitration award was to remain confidential.

The matter is still before the Trinidad courts, no longer on the issue of the enforceability of the Award but on the still opaque subject of quantum.

Lance Armstrong's attempts to avoid the consequences of Arbitration

More recently, and more famously, Lance Armstrong tried to play 'fast and loose' with the sport arbitration landscape and he also came up short. His lawyers were not able to halt the United States Anti-Doping Agency process or impugn the legally binding nature of its consequences.

It took just a matter of hours for the Judge to dismiss Armstrong's application, saying:

"the Court concludes Armstrong agreed to arbitrate with USADA, and its arbitration rules are sufficient, if applied reasonably, to satisfy due process."

Taken together, Messers Warner and Armstrong are, or were, two of the most powerfully savvy, determined, unprincipled and self interested operators in the world of sport. Both tried to exile truth by destroying sport arbitration as a binding and effective process; and both failed. We've come a long way in the journey to make arbitration the near universal sport dispute resolution method; and in some respects the journey feels complete.

Contact

Mr. Mike Townley
IPC Legal Counsel
Email: mike.townley@paralympic.org

ICSSPE
International Council of Sport Science and Physical Education

Feature

No.64
June 2013

Olympic Sport in Brazil: the Institutionalisation of Power through Law

Bárbara Schausteck de Almeida & Wanderley Marchi Júnior

Abstract

In this paper, we review the articles from Brazilian law 9,615 of 1998, known as Pelé Law, where there is mention of the Brazilian Olympic Committee (BOC) related to sport management in the country. Data collection was based on pieces of this law, in which BOC was cited, to make a qualitative analysis. Through this process, we noted that this Brazilian law institutionalises the dominant position of BOC in the Brazilian sportive field, when it puts BOC as the first entity of management and with priority to receive public funds. This result evidences the long-term power of this institution in Brazil, which helps to understand the public support for the successful bid for the 2016 Olympic and Paralympic Games.

Key words: Olympic, Sport, Law, Brazil.

Introduction

The creation of sport governing bodies in the mid- to late years of the nineteenth century covered a very specific necessity of that time: to somehow organise an activity of social interest and benefit (Anderson, 2012). Their roles intended to be specialised into specific sports to act in coordination, dispute resolution and policy formulation (Hargreaves, 1986). The bureaucratic organisation, specialisation and rationalisation in which these governing bodies were born are distinctive characters of modern sport (Guttmann, 2004). Not occasionally, modern sport and its institutions were created under the influence of other major processes (Horne, Tomlinson & Whannel, 1999) with a similar aspect to some of the logics applied by the capitalist industry, as described by Weber (1978).

Although some aspects are still similar after more than a century of development, the social and economic relevance of sport grew and its management was no longer as autonomous as many institutions would like to be (Anderson, 2012). Modern forms of States, governments and policies more or less interfere with how sport is organised and managed. This interference is relatively bigger when we consider sport mega-events, as their current proportions affect many other social areas and cannot be conceived without the support of public funding and governance (Roche 2000; Horne & Manzenreiter, 2006). This became a forward issue in Brazil, as the country will host two mega-events in a short period of time: the 2014 FIFA World Cup and the 2016 Olympic and Paralympic Games.

For the present text, we focus on the Olympic debate to discuss the power of the Brazilian Olympic Committee (BOC) as a governing body that manages Olympic sport in Brazil. Our goal is to understand how Brazilian law considers this entity and its role in the national sporting field. Through this analysis, we show how the BOC power is institutionalised, which is a form of turning power from symbolic into material or substantive by a recognised certification (Bourdieu, 2007), or how it is legitimised in a national territory by law. But more than just an exigency of the IOC, the Brazilian case has been legitimating a broader power to its Olympic Committee for a long time and for this reason, diminishes the power of other forms of sport.

Sports in Brazil and the Pelé Law

Sport became part of the Brazilian Constitution in 1988, after members of the sporting sectors had political entrance to include and contribute to the Constitutional text in one of its articles (Veronez, 2005). This first initiative, still in force, has a broad regulation establishing that it is the duty of the State to promote sport as a right of each Brazilian. This article also sets that: sport institutions have autonomy in their organisation and management; educational sport has priority to receive public funding and elite sport should only in

“specific cases”; professional and amateur sport should receive different treatment; sports of national creation should be protected and supported; and the sport justice is the main organ responsible for managing issues related to discipline and sports competition (Brasil, 1988).

After this constitutional insertion, several other more specific laws were approved to regulate certain subfields sports. Among these laws, a regulatory mark in force was the Law No. 9,615 of March 24, 1998. Because this law was approved during the period when the former football player Edson Arantes do Nascimento (Pelé) was the Extraordinary Minister of Sport, it is called “Pelé law”. Aiming to “establish general rules about sports and make other arrangements”, this law came to replace the Law No. 8,672/1993, known as “Zico Law”, when another former football player, in this case Arthur Antunes Coimbra, was Secretary in charge of sport. Although the Pelé Law proposes to replace the Zico Law, Veronez (2005, p. 305) calls our attention to a few changes arising:

‘If you observe carefully the two laws that propose to modernise the sport in Brazil, we see that 30 items are exactly alike or with minor differences, 13 are similar, but their transcription is different; 12 are substantially different; 18 received modifications by Federal Chamber in relation to the original design.’

Thus, the more recent text is divided into 11 chapters and standardises sports practice in its principles, nature, purpose, organisation, jurisdiction, funding, operation of bingo, among other general provisions. In this sense, the Pele Law regulates the 1988 Federal Constitution when it comes to sport.

The first relevant mention of the BOC is given in Chapter 4 “The Brazilian system of sport”, section 4 “The National Sport System”. When article 13 appoints and orders which governing bodies are responsible for the administration of sport in the country, it puts the BOC first on the list, followed respectively by the Brazilian Paralympic Committee, national and regional administration of the sport, national and regional leagues and other sports entities, affiliated or not to those aforementioned.

In the following Articles 14 and 15 of this section, the text continues to place a high degree of importance to the entity within the national sports system and also ensures the right to defense and the use of “Olympic properties”:

> ‘Article 14. The Brazilian Olympic Committee and the CPOB-Brazilian Paralympic Committee, and the national administration of the sport which are their affiliated or linked, constitute specific subsystem of the National Sport, to which it will apply the priority under section II of the Federal Constitution’s article 217. This appliance is only possible if their statutes comply fully with the Federal Constitution and other country’s laws in force.
> Article 15. The Brazilian Olympic Committee, BOC, legal entity of private law, has the responsibility to represent the country in the Olympic events, Pan American and others of similar nature, in the International Olympic Committee and in the International Olympic movement. It also has the responsibility to promote the Olympic movement in the country, in accordance with the provisions of the Federal Constitution, as well as with the statutes and regulations of the International Olympic Committee and the Olympic Charter.
> § 1 The Brazilian Olympic Committee-BOC represents Brazilian Olympism in the Brazilian government.
> § 2 It is privative to the Brazilian Olympic Committee - BOC and the Brazilian Paralympic Committee - CPOB the use of Olympic and Paralympic flags, slogans, symbols and hymns, as well as the names “Olympic Games”, “Olympics”, “Paralympic Games” and “Paralympics”, allowed the use of the latter in the case of events linked to sport education and participation. (Amended by Law No. 9,981 of 2000)
> § 3 To the Brazilian Olympic Committee (BOC) the rights and benefits conferred by law to the national administration of the sport are granted.
> § 4 The use and register, for any purpose, of signals that integrates or contain the Olympic symbol, the anthem and the Olympic motto are forbidden, except with the authorisation of the Brazilian Olympic Committee-BOC.
> § 5 It applies to the Brazilian Paralympic Committee, as applicable, the provisions of this article.’ (BRAZIL, 1998)

In Article 14, with the reference to paragraph II of Article 217 of the Federal Constitution, we must remember that this item describes the issue of how funding of sport is treated (Brasil, 1988). Being the BOC an entity comprising the “specific subsystem of the National Sport”, placed first in the list as seen in Article 13, that we can interpret this law, and specifically this article as putting the BOC as priority in the receipt of public funds.

Article 15 delegates responsibility to the BOC in relation to the Olympic movement in the country. The prerogatives of this article are consistent with the Olympic Charter, ensuring state protection for the use of Olympic symbols. This preserves the authority and right to use the valuable Olympic brand to the BOC, and consequently the IOC.

Still dealing with the great power that the BOC has, Article 18 states the following:

> 'Only will benefit from tax exemptions and transfer of resources from the federal government under item II of article 217 of the Federal Constitution directly and indirectly, those entities of the National Sports that:
>
> I - have autonomy and financial viability;
> II - present favorable opinion of the Brazilian Olympic Committee-BOC or Brazilian Paralympic Committee-CPOB, when their affiliates or related;
> III - meet other requirements established by law;
> IV - are in good standing with their tax obligations and labor.'(Brasil, 1998)

Regarding this item, it is important to consider that the power delegated to the BOC allows control over the other confederations, since they are linked and affiliated entities, about whether or not to show positive benefits of tax exemption and the receiving of public funds.

Accordingly, we reflect, for example, on maintaining leadership positions in the BOC. Even if elections take place with the participation of the Presidents of sport confederations, Article 18 of this law strengthens the dependence of affiliated entities and the power of the BOC, which is represented by its President who has remained in office since 1995, and will continue to do so until 2016. Thus, the opportunity of perpetuation in office and maintenance of positions in the dominant and dominated the subfield of the Brazilian Olympic sports are reinforced by the legislation itself.

Final Considerations

Due to the fact that the entity represents an institution like the IOC in Brazil, the BOC has some safeguards and protections by the Constitution of 1988, mainly under Item I which guarantees the autonomy of sports bodies, and several articles of the Pelé (Law No. 9.615/1998), which often assist in the maintenance of dominated and dominant positions in the Brazilian sports field.

When reviewing these points, we see that the BOC is guaranteed a position in the administration of sports in the country, ahead of the CPOB, and other entities at the national or regional level. This prominence is given with respect to the "National Sports System", which is assumed "to promote and enhance sports activities income" (Brasil, 1998). Not any other public entity, institution or office was placed in such a privileged position in national sports administration. This situation helps to the exclusivity of promoting sports that are present in the Olympic Games, maintaining and even enhancing the power of the BOC. Interestingly, in the context of adoption of this law, the Ministry of Sport did not exist in the format that it has since 2003. Even after its creation, other articles of law were changed, yet there was no inclusion of any federal entity to administer the sports income.

In this article, we see that BOC and CPOB are placed as priority entities for receiving public funds in cases prescribed by paragraph II of Article 217 of the 1988 Federal Constitution. Indeed, Article 18 also guarantees that tax exemption and the transfer of funds will be given to institutions that comprise the National Sports System (ie, entities of elite sport) and, among other criteria, only after receiving the favorable manifestation of BOC/ CPOB, when affiliated. Again, we reinforce that this item can aid in the perpetuation in power of the heads of these two institutions, which are elected by affiliated entities. Signs of resistance to this maintenance may suffer financial penalties, allowed by law itself. The other permissions to promote and use the Olympic properties comprise the State "counterpart" to have a National Olympic Committee according to the IOC regulations. Then, it ensures protection for the use of Olympic symbols, the valuable brands that should be under the control of the BOC, and consequently, the IOC.

The support of BOC's projects, such as the 2007 Pan American Games in Rio de Janeiro and the successful bid for the 2016 Olympic Games were supported by the Brazilian government and compromised the majority of sport federal funds (Almeida et al, 2012). Considering the importance of the Olympic Games in national policies (Green, 2007, Grix & Carmichael, 2012), Brazilian scholars raised their worries on how hosting the 2014 FIFA World Cup and 2016 Olympic and Paralympic Games can affect not only sport public funding, but also Physical Education practices and the variety of sporting opportunities for youth (Betti, 2009; Mascarenhas, 2012; Mattos, 2009; Ouriques, 2009). From these aspects, we can see that not only is the BOC symbolic dominant position in the Brazilian sports field to be maintained, but it will also be improved for the coming years with questionable profits for the non-Olympic and elite sports.

References

1. .Almeida, B.S., Coakley, J., Marchi Júnior, W. & Starepravo, F. (2012). Federal government funding and sport: the case of Brazil, 2004–2009. *International Journal of Sport Policy and Politics*, 4 (3): 411-426.
2. Anderson, J. (2012). Sports Law in an Olympic Year: Citius, Altius, Fortius? *Legal Information Management* 12 (2): 72–80.
3. Betti, M. (2009). Copa do mundo e jogos olímpicos: inversionalidade e transversalidades na cultura esportiva e na Educação Física escolar. *Motrivivência, 21* (32-33): 16-27.
4. Brasil (1988). Constituição da República Federativa do Brasil. Brasília: Senado Federal.
5. Bourdieu, P. (2007). Os três estados do capital cultural. In: M.A .Nogueira & A. Catani. *Escritos de Educação*. Petrópolis, RJ: Vozes.
   Filho, A and Berzoini, R. (1998). Lei nº 9.615 de 24 de março de 1998. Institui normas gerais sobre desporto e dá outras providências. Brasília: Diário Oficial da República Federativa do Brasil.
6. Filho, A and Berzoini, R. (1998). Lei nº 9.615 de 24 de março de 1998. Institui normas gerais sobre desporto e dá outras providências. Brasília: Diário Oficial da República Federativa do Brasil.
7. Green, M. (2007). Olympic glory or grassroots development? Sport policy priorities in Australia, Canada and the United Kingdom, 1960–2006. *The international journal of the history of sport*, 24 (7): 921–953.
8. Grix, J. & Carmichael, F. (2012). Why do governments invest in elite sport? A polemic. *International journal of sport policy and politics*, 4 (1): 73–90.
9. Hargreaves, J. (1986). *Sport, Power and Culture*: a social and historical analysis of popular sports in Britain. Cambridge: Polity Press.
10. Horne, J. & Manzenreiter, W. (2006). *Sports mega-events*: social scientific analyses of a global phenomenon. Oxford: Blackwell.
11. Horne, J., Tomlinson, A. & Whannel, G. (1999) *Understanding Sport*: an introduction to the Sociological and Cultural analysis of sport. London: E&FN SPON.
12. Mascarenhas, F. (2012). Megaeventos esportivos e Educação Física: alerta de tsunami. *Movimento*, 18 (1): 39-67.
13. Mattos, R. S. (2009). Conteúdos da Educação Física no Período Pré-Olimpíada de 2016: avanço? *Motrivivência*, 20 (31), 301-318.
14. Ouriques, N. (2009). Olimpíada 2016 - o desenvolvimento do subdesenvolvimento *Motrivivência*, 21 (32-33), 126-155.
15. Roche, M. (2000). *Mega-events and modernity:* Olympics and expos in the growth of global culture. London: Routledge.
16. Veronez, L.F.C. (2005). Quando o Estado joga a favor do privado: As políticas de esporte após a Constituição Federal de 1988. PhD Dissertation in Physical Education. Campinas: Universidade Estadual de Campinas.
17. Weber, M. (1978) The Origins of Industrial Capitalism in Europe. In: W Grunciman. *Max Weber: selections in translation*. Cambridge: University Press, pp. 331-340.

Acknowledgements:

This research was developed while the two authors were receiving scholarship from the CAPES Foundation, Ministry of Education of Brazil -- Processes n. 9443/12-6 and n. 1105/11-6, respectively.

Contact

Bárbara Schausteck de Almeida
PhD Student
Universidade Federal do Paraná
Brazil
Email: barbara.edf@ufpr.br

Dr. Wanderley March Júnior
Lecturer
Universidade Federal do Paraná
Brazil
Email: wmarchijr@gmail.com

http://www.icsspe.org/

Current Sport-Related Legislation in the Slovak Republic

Prof. Paed Dr. Ján Junger, PhD. & Ph Dr. Marcel Nemec, PhD.

Abstract

The physical education and sports movements in the Slovak Republic (SR) are some of the largest and most active civil movements. The popularity of sporting activities amongst the population and the specific organisation of sports and sports-related activities deserve special attention with regard to the legal aspects governing physical education and sport in the Slovak Republic. Given the wording of the country's constitution, as well as its membership of the European Union since 2004, it is necessary to understand and accept legislation set by the state, but also international law and legal norms of the European Union (EU).

According to data of the National Program for the Development of Sport for the years 2001-2010, there are 7000 active and properly registered sports clubs, physical education unions and elementary organisational departments in the Slovak Republic. These are all established pursuant to Act No. 83/1990 Coll. on the Association of Citizens, as amended by later legislation (this lays out the conditions for establishment and legal status of civil associations). The most recent estimate of the Ministry of Education, Science, Research and Sport says there are approximately 200 000 active competitive athletes. This represents 4 per cent of the entire population of the Slovak Republic. More than 1 400 registered institutions for talented young people provide sport participation for approximately 46 000 athletes, which is 6 percent of the population attending primary and high schools.

The popularity of sporting activities amongst the Slovak population, as well as specific organisation of sports and activities related to sport, deserve special attention from the legal perspective. The Constitution of the Slovak Republic (hereinafter referred to as "the Constitution") stipulates under Article 13, Section 1a that duties shall be placed in accordance with specific legislation or pursuant to and within the law while preserving elementary rights and freedom. From such a perspective, law is understood as a system of legal norms in a state-regulated or state-approved form as a generally binding rule of conduct, which establishes rights for the participants acting in a specific social relationship, imposes legal duties enforceable by the state power or by public authority. They are social norms requiring certain behaviour by addressees. As the Slovak Republic is a member of the EU, we cannot just take into account the norms established by the state power of Slovakia. We must also consider the international law and legislation of the European Union. In such cases, we refer to legal norms not established by the state, however, acknowledged by the state. Pursuant to Article 7, Section 5 of the Constitution, Slovakia admits that International Agreements on Human Rights and Basic Liberties and international agreements, the conclusion of which do not require legislation, and international contracts that directly establish rights or duties of natural persons, or legal entities and which have not been ratified and declared in a way established by law, shall be preferred to acts. The law of the European Union that is preferred to the law of the Slovak Republic is referred to as law, or legal norms beyond the legal power.

The legal aspects of sport in the SR are regulated by norms of legal and sub-legal power. Aside from the Acts passed by the National Council of SR representing the norms of legal nature, the sub-legal norms include government decrees, generally binding regulations of ministries and other regional authorities of state administration, the generally binding regulation of the higher self-governing territorial units and municipalities, and internal norms, the adoption of which is determined by law (e.g. in the case of professional chambers with obligatory membership). From the aspect of the scope of application, Gábriš (2011) classifies the sources of application into the following categories:

1. sport-related legal regulations dealing with sport and physical culture;
2. general legal regulations containing the matter of sport and physical culture as a complementary element;
3. other general legal regulations, the purpose of which is not to specifically deal with the issues related to sport and physical culture.

Among the acts regulating the organisation and governance of sport in the Slovak Republic (i.e. sport-related legal regulations) are:
Act No. 288/1997 Coll. on Physical Culture as amended and amending the Act No. 455/1991 on Commercial Activity as amended. The exact wording of the Act may be found in the Collection of Laws as No. 28/2009. This act regulates the administration of physical culture and scope of the state administrative authorities, higher self-governing territorial units, municipalities, civil associations active in the field of physical culture and other legal entities and natural persons in charge of its application.

Despite the fact that experts consider the term physical culture to be archaic, the term denotes the most general term to include organised and non-organised individual or group-based activity connected with physical education, hiking, sports and/or recreational activity. Physical culture also includes the preparation of experts working in the field of physical culture, research and scientific activity, securing health-care, material and technical conditions needed for its development. The tasks in the field of physical culture are fulfilled by the authorities of state administration, higher self-governing territorial units, municipalities, civil associations and other legal entities.

What is important is the status and role of the higher self-governing territorial unit and municipalities. Besides the duty to prepare the concept and programme for development of physical culture, their duties are to:

- support the organisation of sporting events of regional importance;
- promote sport participation by physically handicapped citizens;
- secure and operate state-owned physical education, hiking and sporting facilities;
- create conditions for the development of sport for all.

Act No. 300/2008 Coll. on the Organisation and Support of Sport as amended draws on and further complements the provisions of the Act No. 288/1997 on Physical Culture in the following areas:

- state support of competitive and elite sport, support of sport talents and sport participation of children, pupils and students;
- preparation of athletes on the national teams of Slovaki;
- anti-doping measures and the status of the Anti-doping agency of the Slovak Republic;
- settlement of disputes in the area of sport;
- establishment and administration of the public administration system on sport.

Pursuant to this law, the state acts through the:

1. Government of the Slovak Republic
2. Ministry of Education of the Slovak Republic
3. Ministry of Defense of the Slovak Republic
4. Ministry of Internal Affairs of the Slovak Republic.

The Slovak government creates national teams, prepares sporting talent, supports sport participation by pupils and students and delivers construction of sports infrastructure of special importance. The Ministry of Education of SR as the central governing body of the state administration for sport organises and controls the implementation of national policy and coordinates the activity of other authorities of public administration and other legal entities in charge of its implementation. The Ministry also: administers the information system; provides sport funding from the state budget and controls the effectiveness of funding use for sports; coordinates and oversees the implementation of the National Program for the Development of Spor;, creates conditions for sport development and for the selection of sports talents and future members of national teams; is held responsible, in cooperation with national sports federations, for the operation and funding of the Sports Center for Sports Talents and athletes on national teams; approves the Unitary Educational System for experts in the Slovak Republic; supports the organisation of sporting events; cooperates in terms of the construction of sports infrastructure; designs the anti-doping program; publishes the list of doping substances and those with therapeutic exemption; establishes and co-establishes organisations responsible for fulfilling roles in the area of sport, especially in the operation of the information system, education of sports experts and development of science and research in sport.

The role in the area of sport is fulfilled by the following legal entities:

1. Slovak Olympic Committee;
2. Slovak Paralympic Committee;
3. National sports federations;

4. Sports clubs.

The Act specifies the roles of The National Sports Associations, their competences relative to national team members, support of sporting talent, organisation of national sporting events, adherence to the rules and discipline in the sports competitions. The Act also specifies the education of experts, anti-doping policy, funding and administration of its own property.

Pursuant to this Act, a sports club is a legal entity established with the aim of pursuing sport and participation in sports events organised by the National Sports Association or the international sports association. A sports club may be established as a civil association or as a business company for a purpose different from the business objective. The Act regulates the sources of funding and the options for its provision. The funding may be provided for:

1. national teams;
2. support of sporting talent;
3. organisation of sports competitions and sporting events;
4. sport participation by children, pupils and students;
5. construction, reconstruction and modernisation of sporting infrastructure of special importance;
6. education in the field of sport;
7. doping prevention and doping control;
8. financial rewards for athletes and coaches;
9. support of editorial, museum-related and educational activity in sport.

Pursuant to the law, sports infrastructure refers to stadiums, sports halls, gymnasiums, shooting galleries and other indoor or outdoor sporting venues designated for athletic preparation and organisation of sports competitions and sporting events in the particular sports. Sports infrastructure is governed by the state authorities, higher self-governing territorial units and municipalities, national sports federations and sports clubs as well as other persons. The sources of funding are the budget of public administration, financial resources of national sports federations and sports clubs and resources of other persons. The sports infrastructure of special importance refers to sports infrastructure necessary for international sporting events. Such sports infrastructure is administered by particular ministries, national sports federations and sports clubs. The Act also regulates the status of an athlete as a national team member; his or her preparation and participation in an international sporting event is considered as an act in the public interest pursuant to the Section 136 of the Labor Code.

This Act was followed by the Act No. 528/2010 Coll. that regulates the sources of sport funding, grants and calls for the provision of funding.

The above-mentioned acts are legal regulations, which may be characterised as general framework organisational acts primarily targeted at the area of sport and physical culture.

The second category of legal documents consists of specialised regulations, among which are:
Act No. 479/2008 Coll. on the Organisation of Public Sporting and Hiking Events as amended. The Act regulates the duties of organisers of a sporting, or physical education event, his or her personal competences, duties and restrictions for the event participants, the persons eligible for organising an event, the role of the municipality and the Police Department, and special provisions on the security and administrative offences violating the duties pursuant to this law.

Pursuant to this Act, a public sporting or hiking event (hereinafter referred to as an “event”) refers to a physical education related, sport-based or hiking-based competition, meeting, tournament or race or other event associated with physical and recreational activity of natural persons in the field of physical culture accessible to the public.

Under this Act, a hiking event refers to an event with more than 500 participants, if organised at hiking trails and other for hiking designated and publicly accessible spaces and if it denotes a day-long or several days long trekking across the municipal area or across the area of several municipalities.

An event shall be considered accessible to the public if held for non-designated participants or for participants according to the registration at the particular legal entity established pursuant to specific regulations.

The provisions of this Act do not concern events not held at the facilities of the Armed Forces of SR, schools and school facilities, facilities of social services, and facilities of sports clubs and physical

education unions, in case their athletes, employees or family members are the organisers and participants in the event.

The following sections of the Act define the duties of the organiser in relation to the municipality, the organising service, the competences of the organiser and the Police Department, prohibitions for event participants, the roles of the municipality and specific provisions on the security of event participants:

- Act No. 355/2007 Coll. on Protection, Support and Promotion of Public Health as amended regulates the duties for the operations managers of either outdoor or indoor sporting facilities designated for sporting events within physical culture, with regard to the conditions of the indoor environment, the spatial arrangement and functional division, equipment and operation of the sporting facility. The operations managers are obliged to provide equipment that would in no way harm the health of the users in accordance with the instructions of the manufacturer. The managers are also obliged to establish working regulations and submit the regulations to the regional office of public health services for approval or change.

- Act No. 377/2004 Coll. on Protection of Non-smokers as amended. Pursuant to section 7f, the act prohibits smoking in enclosed sporting facilities and requires the facility operation manager to notify the general public about the ban on smoking using an appropriate health sign posted in a visible place.

- The Regulation of the Ministry of Health Care No. 525/2007 Coll. on details related to sporting facilities. The regulation refers to microclimatic conditions, heating and ventilation, functional division, equipment of sporting facilities and the terms of operational regulations.

- The Regulation of the Ministry of Education No. 542/2008 Coll. on Doping Control Procedures and the Treatment of Athlete's Biological Samples.

- The Regulation of the Ministry of Internal Affairs No. 332/2009 Coll. on details pertaining to Video Camera Security Systems.

The general legal regulations dealing with sport-related issues represent regulations, in the provisions of which the status of sports organisations is considered secondary to the scope of application. For instance, Act No. 278/1993 Coll. on the Administration of the National Property as amended, Act No. 138/1991 Coll. on the Municipal Property as amended, Act No. 543/2002 Coll. on the Protection of Nature and Country as amended, or Act No. 372/1990 Coll. on Offences as amended.

The last category of legal regulations related to sport consists of other general legal regulations that may not include the term physical education in their provisions. Despite this fact, they refer to regulations that address also the subjects of sports movement. They are not addressees due to their own sporting activity, but due to the fact that they are regulated by generally defined personal effect of the aforementioned acts. As reported by Gábriš (2011), such regulations include the Constitution of the Slovak Republic, the Civil Code, the Penal Code, and so forth.

Adequate knowledge and information about the legal regulations not only facilitates work with subjects in question, but also positively affects personal relationships by minimising misunderstandings that arise due to the absence of knowledge about the legal regulations in force.

References

Gábriš, T. (2011). *Športové právo*. Bratislava: Eurokódex s.r.o.

White Book on Sports. Retrieved May 22, 2012 from http://ec.europa.eu/sport/documents/white-paper/whitepaper-short_sk.pdf.

European Sports Charter. Retrieved May 22, 2012 from http://www.minedu.sk/ index.php?lang=sk&rootId=4843

National Program for Sport Development in SR. Retrieved May 22, 2012 from http://www.minedu.sk/index.php?lang=sk&rootId=599

The Constitution of Slovak Republic. Retrieved May 22, 2012 from http://www.ucps.sk/ blog-147-1-default/24_Ustava_SR__CR-cclanky.html&page_limit=15

Contact

Prof. Paed Dr. Ján Junger, PhD.
University of Presov in Presov
Faculty of Sports
Ul. 17. Novembra č. 13
081 16 Prešov
Slovakia

Ph Dr. Marcel Nemec, PhD.
University of Presov in Presov
Faculty of Sports
Ul. 17. Novembra č. 13
081 16 Prešov
Slovakia

Email: marcel.nemec@unipo.sk

ICSSPE
International Council of Sport Science and Physical Education

Current Issues

No.64
June 2013

Contents

Physical Activity in Public Health Policy – Evidence of a Paradigm Shift?

Margaret Talbot

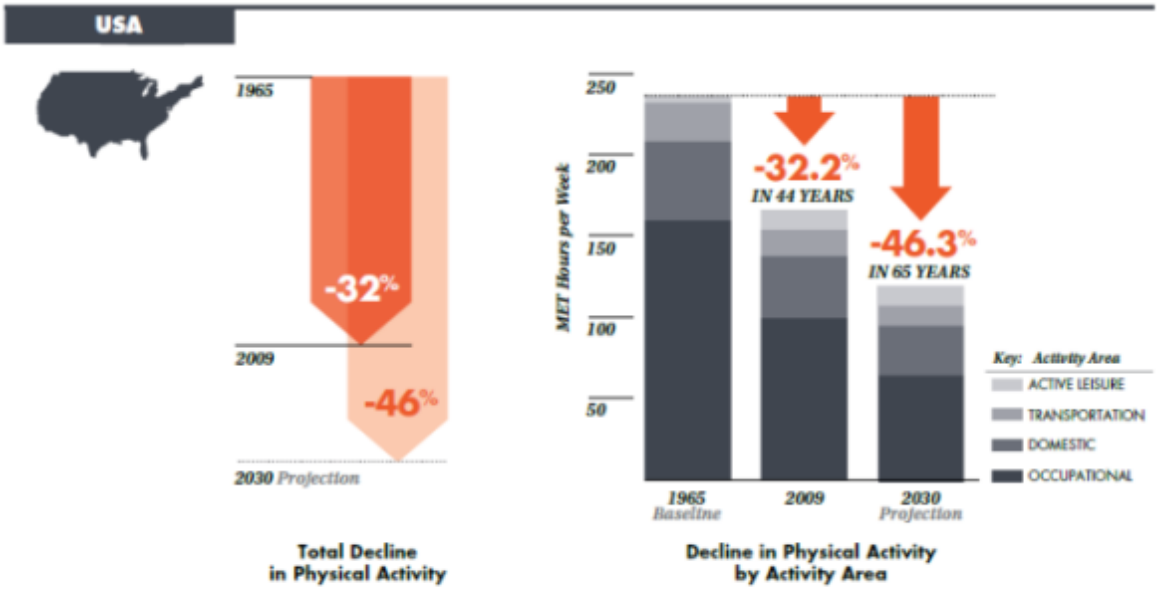
During the last two decades or more, successive advocates for the benefits of physical activity, including former Presidents of ICSSPE, national and international researchers and leaders in the emerging science of relationships between health and physical activity, have attempted to secure the attention of policy makers. One of ICSSPE's strategic priorities is "healthy living across the life span". The intention has been to shift the major focus of public health policy, away from clinical treatment targets and the threats of communicable diseases, towards the evidence supporting the positive benefits for health of physical activity, especially for children and young people. The evidence base is substantial and there are clear recommendations on the amount, intensity and range of physical activity which will bring health benefits for people of different age ranges (WHO, 2010).

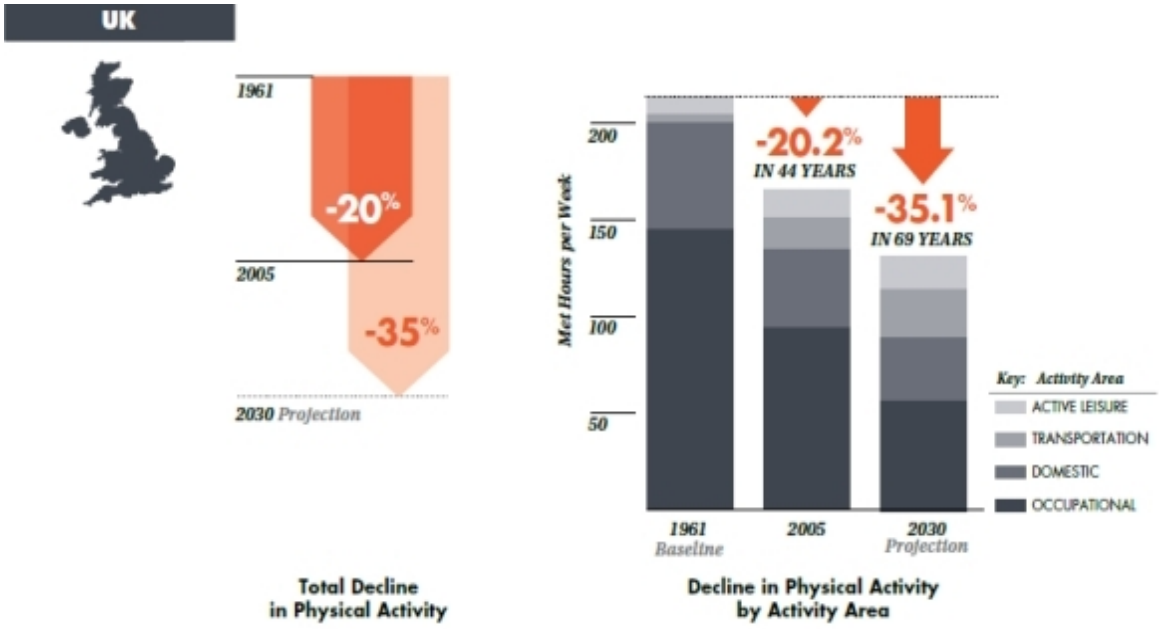
Despite the convincing evidence base, and the fact that many countries are struggling to cope with the health and other impacts of inactivity among their populations, it seems that the dominant paradigms of public health policy remain grounded in treatment of symptoms, rather than prevention of conditions which lead to those symptoms. This short paper outlines the challenges for scientists and policy communities, in attempting to change this situation.

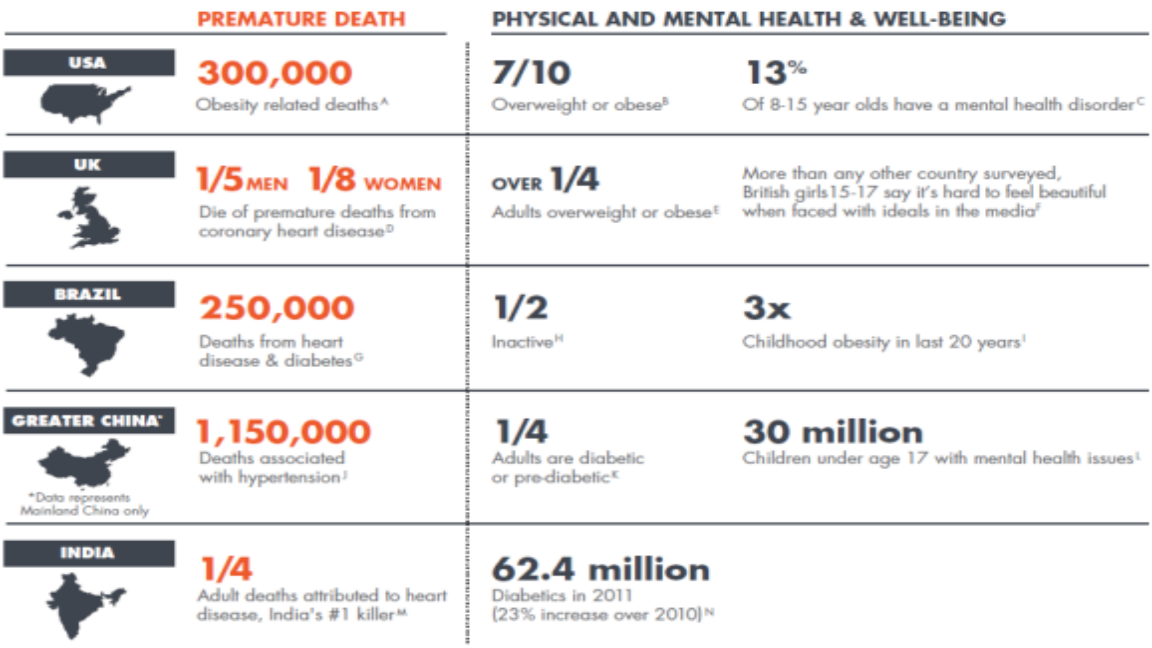
According to Kuhn (1962), a "dominant paradigm" refers to the values, or system of thought, in a society that are most standard and widely held at a given time – a construct which is readily applicable to scientific approaches and applications. ICSSPE, as an umbrella organisation for scientific, professional and practitioner organisations and institutes, with a focus on sport and exercise science, has long produced resources, organised events and publicised research which highlight the positive benefits of physical activity for health. In the past, ICSSPE has sent representatives to conferences and events which have addressed the apparently chronic threats posed by non-communicable diseases (NCDs); these representatives have reported, many times, that organisers and participants from the public health and medical professions have queried the presence and participation of delegates wishing to discuss the role of physical activity. The dominant paradigm appeared to be grounded in medical treatment for conditions, with some acceptance that dietary control was necessary. Calorie input appeared to be accepted as a factor – but rarely, calorie output!

This lack of acceptance of the values of physical activity for public health seems to have been reflected in almost all decision-making and policy arenas, whether at international, national or local levels. However, recent developments seem to be indicating that this situation is changing; and that the case for physical activity and exercise is becoming much more recognised among a wider range of policy communities and professional/scientific organisations.

In July 2012, ICSSPE was invited to join Nike and the American College of Sport Medicine as a co-author of "Designed To Move" (DTM), a Report which provides a systematic review of the evidence for physical activity's health benefits – and of the threat of escalating **in**activity among populations across the world. The DTM Report includes compelling economic modelling and projections of the impact on selected countries' economies and health systems, of failure to get populations more active:







Dominant paradigms are shaped both by cultural background and by the context of the historical moment; and since those in public health and over-arching policy had been so resistant to change and presentation of evidence, it seems timely that “Designed To Move” offers the opportunity to create more effective policy communities, possibly even a social movement, which can create more relevant policy solutions and concerted action. Various professional, sectoral and scientific organisations have committed to champion the twin messages of “Designed To Move” (DTM), ie:

ONE VISION, TWO ASKS

> Without a doubt, many actions need to be taken to change deeply embedded norms. Identifying the strategies and approaches is an important challenge to those seeking to change the world. The urgency of the situation, however, requires a focus on the "asks" that offer the greatest return and that unify and accelerate immediate action.

The DTM partnership is currently developing strategies for work with policy- and decision-makers. In the meantime, since it is known that the following are conditions that perpetuate accepted dominant paradigms:

- Dynamic leaders introduce and promote the paradigm ("policy entrepreneurs");
- Government agencies give credence to the paradigm;
- Educators propagate the paradigm's ideas by teaching it to students;
- Conferences are devoted to discussing ideas central to the paradigm,

the challenge is for members of the DTM partnership to use their specific expertise, networks and skills to ensure paradigm change – that is, towards recognition of the need for coordinated policies which recognise the role of physical activity in health promotion, and which invest in effective, multi-agency action to engineer behaviour change.

There are other signs of proponents of the values of physical activity being welcomed into and included in policy-related discussions and strategies whose leadership has formerly been dominated by medical or public health professionals. "Excellence in Paediatrics" is to hold a Summit at its Conference in Qatar at the end of the year, on "PEARL" – Promote Energy Balance, Active and Real Living – and has invited ICSSPE and some of its members to participate and to produce learning resources for parents and paediatricians, on the values of physical activity.

In 2011-12, the European Food Framework, whose development was led by Nutritionists, was drafted with help and support from ICSSPE members, so that the Framework embraced both dietary input and energy output.

The work of Malcolm Gladwell has influenced thinkers in educational and sport strategy, for example, in the recognition of the power of date of birth in educational achievement and progress, and to success in competitive sport (Gladwell, 2001). His argument is that timing and context are all, when aiming to make a difference – the object of all policy work. He argues that what he calls a "tipping point" – "that one dramatic moment when everything can change all at once" (Gladwell, 2001, p9) is dependent upon the same three principles which underlie epidemics – contagion; little events and causes having big effects; and that important, even radical, changes happen suddenly, triggered sometimes by unknown events or conditions, usually in context.

Gladwell's argument, along with the case for physical activity, seems very obvious. Yet advocates for physical activity to be included in health policy have not yet been able to put this across to politicians or civil servants in a way which is compelling and contagious. Gladwell would argue that it is in our power to manipulate the context – that is, to engineer suitable opportunities to demonstrate physical activity's efficacy; and also, to fashion the message in a more compelling way.

Heinemann (2005) argues that the "four pillars" of the welfare state - organisational, state and market forces, as well as informal settings – need continuous and ever-shifting interaction. Physical activity's historical alignment with exercise and sport, ironically might be one of the major reasons why it has not figured as it should in public health agendas and policies. Similarly, the health case for physical education (ICSSPE 1999, 2005, 2010) might be more compelling, were it to be framed as an integral elements in the development of physical literacy – what Margaret Whitehead (2007) calls "embodied health" – rather than as the servant of sport alone.

To achieve a "tipping point" for physical activity in policy terms, it is perhaps worth radical review of its traditional alignments and contexts – and this may have far-reaching implications for the development, too, of sport science and physical education.

References

Gladwell, Malcolm (2001) *The Tipping Point – how little things can make a difference,* Abacus.

Heinemann, Klaus (2005) Sport in the Welfare State – Situation and Challenges, in Ksiewicz, Jerzy (ed) *Sport, Culture and Society* Warsaw, Josef Pilsudski Academy of Physical Education, pp 335-344.

International Council of Sport Science and Physical Education (1999) *Berlin Agenda for Physical Education*, Berlin www.icsspe.org.

International Council of Sport Science and Physical Education (2005) *Magglingen Commitment to Physical Education,* Berlin www.icsspe.org.

International Council of Sport Science and Physical Education (2010) *International Position Statement on Physical Education,* Berlin.

Kuhn, Thomas (1962) *The Structure of Scientific Revolution* Chicago, University of Chicago Press.

Tremblay, Mark (2008) *Automation, Mechnization, Digitization: How Our Changing World is Changing Us* , Keynote presentation, Pace Yourself, Annual Conference of the Australian Council for Health, Physical Education and Recreation, Fremantle, Australia.

Whitehead, Margaret (2007) Physical Literacy: Philosophical Considerations in Relation to Developing a Sense of Self, Universality and Propositional Knowledge, *Sport, Ethics and Philosophy*, 1751-133X, Volume 1, Issue 3, 01 December 2007, Pages 281 – 298.

World Health Organisation (2010) *Global Recommendations on Physical Activity for Health* Geneva, WHO.

Contact

Prof. Margaret Talbot, PhD OBE FRSA
President ICSSPE
89 Leeds Road, Rawdon
Leeds LS 19 6NT
United Kingdom
Email: margaret.talbot@btconnect.com

http://www.icsspe.org/

Inside the Beijing Olympics ; Ruffolo, J. (2012)

Review by Darlene A. Kluka & Justin Peterson

Biennially, the world focuses for a period of a little more than two weeks to recognise the world's most celebrated sports competition - the Olympic Games. Not only do the participants get to showcase their athletic ability to the world, but the Games also provide the host city with a unique opportunity to take the world stage. The 2008 Summer Olympic Games, officially known as the Games of the XXIX Olympiad, took place in Beijing, China. For the first time, the world had unprecedented access to the most inhabited nation on Earth. Ruffolo uses an in-depth personal experience as the only American to serve on the Beijing Organizing Committee for the Games of the XXIX Olympiad and suggests that these Olympic Games were the greatest ever.

*He uses a strong and detailed first-person narrative account to give the reader "*an adventure without road map or compass… deep into the Olympic world previously shrouded by mystery and magic" (p. 17). He makes a case that the Chinese nation is the greatest in the world and that the Olympic Games they hosted were equally as great. In his very informal and almost friendly conversational storytelling, Ruffolo expresses his first-hand, detailed and emotionally-charged account. He admits his once-stereotypical Western Hemisphere perspective of China was transformed into an unbiased opinion that China is the greatest nation on Earth. This transformation was fueled by uncensored personal experiences and stories that exhibit Chinese control over the Olympic Games.

The first part of this book is intensely focused on Ruffolo's chronological account before his employment with the Beijing Organising Committee of the Olympic Games (BOCOG). He provides insight by implementing numerous analogies, moviej scenarios and anecdotes to give the reader an understanding where he once was and where he ultimately wants to go. Despite his informal sarcasm, and sometimes childish attitude, Ruffolo effectively incorporates his pre-Beijing Olympics life to a relatable, hard-working and underappreciated member of the working class and follows the story of hard work and persistence to achieve a dream as a member of the Beijing Olympics management team.

The second part of the book describes his story after earning the job with the BOCOG up to the Olympic Games. Ruffolo's description of interweaving Chinese and American cultures to create a better understanding is told through real-life experiences of highs and lows during his employment. Repeated failed attempts and reality checks kept the lone American struggling to fit in with the Chinese. "You are not in China to be one of us" (p. 139) is one of the constant reminders that in the eyes' of the Chinese, he is only an acquaintance, not an accepted friend. With his battle to gain acceptance, Ruffolo explains the specific framework of how China spared no expense of wealth and personnel to help create an Olympic Games that will be long-remembered.

The author proficiently constructs a picture of the day in the life of a lone American working with the BOCOG. This picture depicts China's greatness, power and strength that were witnessed first-hand by Ruffolo. The once naïve American transforms his western perspective to a vision of being an accepted friend of the Chinese. The book, once read, offers a never-before seen point of view of the inner workings of the Beijing Olympics along with a great depiction of the Chinese culture as a whole.

This book was published in eBook format by eBookIt.com and is available in electronic form by various online book retailers. The book's layout is quite standard and consists of the usual foreword and 17 chapters. The final pages of the book provide specific tips that became apparent to Ruffolo and can be followed when searching for Chinese acceptance.

Jeff Ruffolo has remarkable credentials in the sports world. His previous employment ventures have included: Senior Media Expert for the Beijing Organizing Committee for the 2008 Olympic Games; Chief Communications Officer for the 2010 Guangzhou Asian Games; and the 2011 AFC Asian Cup. He is a three-time Summer Olympic Sportscaster for Westwood One at the 1996, 2000 and 2004 Olympic Games. This is the only book available that gives a first-hand look at the inner workings of a communist

country through sport and should be read by anyone who is interested in Chinese culture and the Olympic Games.

Ruffolo, J. (2012). *Inside the Beijing Olympics*.
265 Pages
ISBN-13: 978-1-4566-0942-9
$9.99 USD

Reviewers:
Justin Peterson, B. S.
Barry University, Sport Management Master's Student, Miami Shores, FL USA

Darlene A. Kluka, Ph. D., D Phil
Barry University, Department of Sport and Exercise Sciences, Miami Shores, FL USA

Contact

Justin Peterson B.S.
Barry University
School of Human Performance and Leisure Science
11300 NE 2nd Avenue
Miami Shores, FL 33161-6695
USA

Prof. Dr. Darlene Kluka
Barry University
School of Human Performance and Leisure Science
11300 NE 2nd Avenue
Miami Shores, FL 33161-6695
USA
Email:dkluka@mail.barry.edu

ICSSPE News

Ben Weinberg

MINEPS V: Promoting Good Governance in Sport

More than 500 delegates, including 50 leading politicians, sport officials and community representatives convened in Berlin from 28 to 30 May 2013 to promote integrity, equality and sustainability in international sport. Opened by the Federal Chancellor of Germany, Angela Merkel, and the Director General of UNESCO, Irina Bokova, the conference addressed three important aspects:

- Access to sport as a fundamental right for all
- Promoting investment in sport and physical education programmes
- Preserving the integrity of sport.

In the preceding months, over 90 international experts from the sport world, governmental representatives, researchers and practitioners had contributed to the production of the event's content. Coordinated by ICSSPE, three international working groups were established prior to the conference in order to collect and synthesise existing information and to develop recommendations based on current global trends.

The key messages of MINEPS V included calls for implementation of inclusive policies, quality physical education and equality in sport governance. Furthermore, the development of national visions for sport and physical education policies under consideration of the socio-economic benefits were put on the agenda. Ensuring critical examination of major sporting events and the bidding processes, as well as preserving the integrity of sport through adequate prevention measures, international coordination and appropriate policies added to the range of MINEPS' objectives. The conference resulted in the Berlin Declaration.

ICSSPE's Executive Director, Detlef Dumon, emphasised the tremendous efforts the experts put into working towards the declaration. Impressed by the commitment of all those involved, he pointed to the achievement of establishing communication across various regions, disciplines and areas of society, and concluded that "it is therefore all the more delightful to see how ICSSPE's network has taken a strong role in facilitating exchange between politics, sport, science and society."

International Conference on Securing Sport

ICSSPE supported UNESCO in their call to governments to take an active role in the fight against manipulation of sport competitions and to promote prevention measures for youth athletes to eliminate doping and match fixing. At the third edition of the International Conference on Securing Sport in Doha, which brought together 400 of the world's leading sport security and integrity experts from 18-19 March, 2013, UNESCO took the opportunity to emphasise the key role that MINEPS V would play in strengthening international and multisectoral cooperation to the attending stakeholders. Amongst the panelists were Wilfried Lemke, Senior Adviser to the Secretary General on Sport for Development and Peace, Khoo Boon Hui, former President of Interpol, and Stanislas Frossard, Council of Europe. ICSSPE manager Jennifer Wong, who was responsible for content development matters of MINEPS V, stressed that "it was reassuring to listen to the presentations and panel discussion as they affirmed that the contents of the draft declaration, particularly the section on sport integrity, have been developed in line with the most current views and international developments."

The conference was organised by the International Centre for Sport Security (ICSS), a Doha based non-profit organisation committed to security, integrity and safety in sports. It was established three years ago

and is funded by Mohammed Hanzab, ICSS President. It aims to become a global hub of expertise bringing together researchers and practitioners to develop and support event organisers, governments, bidding nations, infrastructure owners and sport associations, leagues and club.

Now Available: 6th Edition of the Directory of Sport Science

The 6th edition of the Directory of Sport Science is now available through the ICSSPE Website, both as electronic and print versions. While ICSSPE members receive a free copy and enjoy free access to the e-book, non-members can purchase the book online. The Directory of Sport Science is a unique reference tool for gaining insight into various sport science disciplines including Sport Biomechanics, Sport and Exercise Medicine, Sport History, Adapted Physical Activity, Physical Education, Sport Management and Sports Law. It is designed to be a resource for policy makers, administrators, professionals in sport and health sectors and is essential for every teaching library of sport science. Divided into fundamental academic disciplines of sport science and academic disciplines with professional orientation as well as multi-disciplinary thematic areas, it includes descriptions of the key functions, methodology, history, organisations, and resources of each discipline and thematic area.

Kari Keskinen, Chair of the ICSSPE Editorial Board, comments on the new edition, saying "The Directory of Sport Science is an exposition of the field of Sport Science, its structures and its academic disciplines and their sub-disciplines. The newly published 6th Edition updates general information and definitions of terms and practices, from the five previous editions that have been produced since 1998. The purpose is to disseminate up-to-date information about Sport Science. On one hand, the Directory is a general introduction to a single scientific domain which is a constantly developing and diversifying group of academic disciplines and multidisciplinary thematic areas of interest. On the other, the Directory encourages international cooperation between various fields of scientific activity throughout the world. ICSSPE is confident that the Directory of Sport Science will help to develop disciplinary and inter-disciplinary work in sport science, worldwide."

The 6th edition of the Directory of Sport Science has been edited by Margaret Talbot, Herbert Haag and Kari Keskinen together with a team of distinguished international scholars, and it has been produced under the management of Katrin Koenen. The book has been published by Human Kinetics.

Development through Sport: Seminar to take place from 18-23 October, 2013

Following in the footsteps of ICSSPE's previous events, this year's seminar on Inclusive Development through Sport in Communities and Crisis Situations is set to take place from 18 to 23 October, 2013 in Rheinsberg, Germany. Building on the recognition that in recent years the role of sport has been increasingly promoted and drawn upon with regard to social development, crisis management and community building, the seminar aims at providing theoretical knowledge and practical skills required for delivering psycho-social and physical activity programmes in social problem and crisis areas.

Further information regarding the programme, registration procedures and contact details can be obtained from our website.

Executive Board Elections

Elections to the ICSSPE Executive Board were held in July, 2012 during the General Assembly in Glasgow, Scotland. The elected members are:

Margaret Talbot, re-elected President
Uri Schaefer, elected Vice-President Science
Wolfgang Baumann, elected Vice-President Programmes and Services
Susi-Käthi Jost, re-elected Treasurer
Walter Ho, re-elected Vice-President
Anneliese Goslin, elected Executive Board member
Jiang Zhixue, re-elected Executive Board member
Darlene Kluka, elected Executive Board member
Rosa López de D'Amico, elected Executive Board member
Claude Scheuer, elected Executive Board member

Each member holds a term from 1 January, 2013 – 31 December, 2016.

Retiring members are Herbert Haag, Speaker Associations' Board, Walter Mengisen, Vice-President and Victor Matsudo, Vice-President.
For more information and the complete list of Executive Board Members, please see the 'About ICSSPE' section of our website: http://icsspe.org/about/structure

Development through Social Media

The ICSSPE team believes that the positive use of Social Media can bring together individuals and organisations from the world of sport, science and education. This developing form of communication not only helps to spread stories of inspiring athletes and share new sport initiatives but also facilitates better communication and coordination between sport organisations and their sponsors.

"We see this as a challenge and as a chance to improve our visibility," explains ICSSPE Executive Director Detlef Dumon. "Although this very fast method of communication requires a permanent output of relevant information, in exchange, it offers followers a dynamic exchange of events and activities as well as the opportunity to get in touch with the very diverse global community of sport and physical education."

Through this new initiative, ICSSPE hopes to reach a wider audience while continuing to share new and exciting programmes, events and scientific articles in the field of physical education and sport. ICSSPE can now be followed on Twitter and Facebook.

Editorial Board

Prof. Dr. Kari L. Keskinen
Chair Editorial Board
Finnish Society for Research in Sport and Physical Education
Olympic Stadion, Eteläkaarre
00250 Helsinki
Finland
tel.: +358 10 778 660 0
fax: +358 10 778 661 9
kari.keskinen@lts.fi

Prof. Dr. Pedro Ferreira Guedes de Carvalho
Editorial Board Member
University of Beira Interior
Rue Marques D'Ávila e Bolama
6201-001 Covilha
Portugal
tel.: +351 275 329 153
fax: +351 275 320 690
pguedes@ubi.pt

Prof. Dr. Carl R. Cramer
Editorial Board Member
Barry University
School of Human Performance and Leisure
11300 NE Second Avenue
FL 33161-6695 Miami Shores, Florida
USA
tel.: +1 305 899 349 7
fax: +1 305 899 355 6
ccramer@mail.barry.edu

Prof. Dr. Rosa López de D'Amico
Editorial Board Member
Centro de Investigación "Estudios en Educación Fisica, Salud, Deporte, Recreación y Danza"
Av Las Delicias
2101 Maracay
Venezuela
tel.: +58 243 2421983
fax: +58 243 2474607
rlopezdedamico@yahoo.com

Prof. Dr. Richard Bailey
Editorial Board Member
Liverpool John Moores University
L17 6BD
Liverpool, Merseyside
United Kingdom
tel: +44 1795 873186
baileyrichard1@me.com

Prof. Dr. Keith Gilbert
Editorial Board Member
University of East London
School of Health and Biosciences
Stratford Campus
Romford Road
London E15 4LZ
United Kingdom
tel.: +44 208 223 42 43
k.gilbert@uel.ac.uk

Prof. Dr. Karin A. E. Volkwein
Editorial Board Member
International Association for the Philosophy of Sport
Department of Kinesiology
West Chester, PA 19383
USA
tel.: +27 1 242 060 43
fax: +27 1 242 060 99
kvolkwein@wcupa.edu

Prof. Dr. Alexander Woll
Editorial Board Member
Karlsruher Institut für Technologie (KIT)
Institut für Sport und Sportwissenschaft
Geb. 40.40, Raum 108
76131 Karlsruhe
Germany
tel.: +49 721 608 426 11
fax: +49 721 608 448 41
alexander.woll@kit.edu

Mr. Detlef Dumon
Executive Director
ICSSPE/CIEPSS
Hanns-Braun-Straße/ Friesenhaus II
14053 Berlin
Germany
tel.: +49 30 311 0232 15
fax: +49 30 311 0232 29
ddumon@icsspe.org

Ms. Katrin Koenen
Director Scientific Affairs
ICSSPE/CIEPSS
Hanns-Braun-Straße/ Friesenhaus II
14053 Berlin
Germany
tel.: +49 30 311 0232 16
fax: +49 30 311 0232 29
kkoenen@icsspe.org

Mr. Ben Weinberg
Manager Services
ICSSPE/CIEPSS
Hanns-Braun-Straße/ Friesenhaus II
14053 Berlin
Germany
tel.: +49 30 311 0232 18
fax: +49 30 311 0232 29
bweinberg@icsspe.org

Executive Board

Mr. Claude Scheuer
Executive Board Member
European Physical Education Association (EUPEA)
Université du Luxembourg
B.P. 2 Route de Diekirch
7220 Walferdange
Luxemburg
claude.scheuer@uni.lu

Prof. Dr. Miklós Tóth
Executive Board Member
Hungarian Society of Sport Science
Istv nmezei út 1-3
1146 Budapest
Hungary
tel.: +36 1 460 69 80
fax: +36 1 460 69 80
tothmik1@hotmail.com

Mr. Jian Zhixue
Executive Board Member
All-China Sports Federation (ACSF)
9 Tiyuguan Road
100763 Beijing
China
tel.: +86 10 87 18 24 18
fax: +86 10 67 11 58 58
jz@sport.gov.cn

President's Committee

Prof. Margaret Talbot, PhD OBE FRSA
President
89 Leeds Road, Rawdon
Leeds LS 19 6NT
United Kingdom
tel.:+44 113 2509 722
fax:+44 113 283 743
margaret.talbot@btconnect.com

Wolfgang Baumann
Vice-President
The Association for International Sports for All (TAFISA)
Mainzer LAndstraße 153
60261 Frankfurt
Germany
tel.: +49 69 97 39 35 99 20
fax: +49 69 97 39 35 99 25
baumann@tafisa.net

Dr. Walter Ho
Vice-President
University of Macao
Faculty of Education
Av. Padre Pereira
Taipa, Macao S.A.R. China
tel.: +853 83 97 87 34
fax: +853 28 83 16 95
walterho@umac.mo

Dr. Uri Schaefer
Vice-President
Ministry of Culture and Sport
Hamsger 14 Street
61575 Tel Aviv
Israel
tel.: +972 3 636 72 03
fax: +972 3 687 04 71
uris@most.gov.il

Dr. Maria Dinold
Speaker Associations` Board
University of Vienna
Auf der Schmelz 6a
1150 Vienna
Austria
tel.: 43 1 42 77 48 814
fax: 43 1 42 77 48 819
maria.dinold@univie.ac.at

Prof. Dr. Kari L. Keskinen
Chair Editorial Board
Finnish Society of Sport Sciences
Paavo Nurmentie 1B, Olympic Stadion
00250 Helsinki
Finland
tel.: +358 10 778 66 03
fax: +358 10 778 66 19
kari.keskinen@lts.fi

Ms. Susi-Käthi Jost
Treasurer
International Association of Physical Education & Sport for Girls & Woman (IAPESGW)
Ob. Aareggweg 114
3004 Bern
Switzerland
tel.: +41 31 3024 189
fax: +41 31 3024 189
susi-kathi.jost@bluewin.ch

Mr. Detlef Dumon
Executive Director
ICSSPE/CIEPSS
Hanns-Braun-Straße/ Friesenhaus II
14053 Berlin
Germany
tel.: +49 30 311 0232 15
fax: +49 30 311 0232 29
ddumon@icsspe.org