



**Dr. Jack Anderson**

Senior Lecturer in Law

School of Law

Queen's University Belfast

Belfast, BT7 INN

Co. Antrim

Tel: (+44) 028 9097 3470

Fax: (+44) 028 9097 3376

[www.law.qub.ac.uk/schools/SchoolofLaw/Staff/DrJackAnderson](http://www.law.qub.ac.uk/schools/SchoolofLaw/Staff/DrJackAnderson)

[jack.anderson@qub.ac.uk](mailto:jack.anderson@qub.ac.uk)

**THE END OF STRICT LIABILITY? LEGAL PERSPECTIVES ON CURRENT ANTI-DOPING POLICIES IN SPORT**

This paper focuses on three overlapping aspects of the current 'fight' against drugs in sport: the evolution of the policy of strict liability; areas of future legal challenge; and the consideration of a radical amendment to the current approach i.e., permitting the controlled use of performance enhancing drugs or methods.

On the first point, this paper reiterates that in the mid-1990s the application of strict liability was overly rigid and absolutist in nature and, although WADA has subsequently modified it, one still has to question whether the contemporary policy is on any objective assessment, and when placed against the norms of article 6ECHR, a fair, reasonable and legally robust policy?

Second, and more broadly, there is little doubt that the 'benevolent paternalism' underpinning WADA's approach will face difficult challenges in the years ahead in the shape of gene manipulation technology, micro-boosting techniques and designer or third generation versions of existing performance enhancing drugs. Already this has seen a ratcheting up of WADA's monitoring and detection mechanisms and the implementation of schemes surrounding the enforcement of the whereabouts rule; the introduction of biological passports for athletes and the retrospective testing of athletes' samples. All of these schemes are likely to encounter further legal challenge.

Finally, and in light of the above legal and administrative difficulties associated with the current approach, this paper will conclude by considering the very sustainability and durability of that approach and whether some controlled use of performance enhancing methods should now be considered.



MOROĞLU ARSEVEN

SOUTHERN ILLINOIS UNIVERSITY  
EDWARDSVILLE

NOMOS

INTERNATIONAL  
ASSOCIATION of  
SPORTS LAW



**Stephen Argeris**  
JD/MBA Class of 2010  
New York University  
2711 Ordway Street NW, No. 205  
Washington, D.C. 20008  
1-202-253-7063  
steveargeris@gmail.com

**BONUS BABIES AND DRAFT DODGING: RETHINKING BASEBALL'S ANTITRUST EXEMPTION THROUGH THE RULE 4 DRAFT**

Major League Baseball, and most North American leagues, have implemented amateur drafts to allocate entering players during the 20<sup>th</sup> century. Unlike their peer leagues, MLB has a separate, free-market system of entry for amateur players from Latin America and Japan. North American amateur players are perhaps the only class of players in any sport who are systemically disadvantaged relative to foreign competition.<sup>1</sup>

I look at the scope of the draft in light of U.S. federal court decisions' rule of reason analysis, the history of baseball regulation, and whether drafts are, in fact, anti-competitive. I compare the MLB draft to drafts in other North American leagues, Japanese baseball and Australian Rules football, particularly the different role the MLB Players' Association plays in baseball relative to other professional sports unions in North America.<sup>2</sup>

My analysis shows the strength of the indications that the draft does increase competitive balance, suppress prices for the top end of the amateur talent pool, and is the subject of a conflict of interest for the MLBPA and its role negotiating on behalf of amateur players, its purported future membership. I also look at as a case study the plight of Puerto Rico, whose players were not included in the draft until 1989. I find that the number and quality of Puerto Rican-born Major League players has fallen precipitously over the past two decades.<sup>3</sup>

Finally, I offer suggestions for reform that offer pro-competitive as well as pro-free market changes in the current corruptive incentives of the current system.<sup>4</sup>

---

<sup>1</sup> The contrast is appropriate in two main ways. First, MLB is the only one of the big four leagues that does not have a uniform system of entry for international and domestic players. Second, MLB has around 28% of its players from outside the 50 states; the NHL is around 25% (it's been as high as 30%) from outside North America, and the NBA is currently around 18%, so there are somewhat similar profiles for those leagues in how they assimilate foreign talent.

<sup>2</sup> The MLBPA is different from the other unions in the sense that the vast majority of players who sign professional contracts will never join the union. NBA, NHL and NFL players are immediately members upon signing their professional contract after they are drafted. The vast majority of MLB draft picks never reach the majors, and thus never receive the benefit of collective bargaining for basic things like travel and drug testing, let alone salary and freedom of movement.

This makes the conflict of interest far stronger as the link to traditional union-shop style apprenticeships is far more attenuated in the baseball framework. This makes examining the viability of the non-statutory exemption (at least applied to the MLBPA) more relevant than in other leagues. No one in the process has any interest in helping the drafted players.

<sup>3</sup> I support the above theory with econometric and market-concentration analysis techniques. Puerto Rico is a terrific flashpoint.

<sup>4</sup> My solutions basically build upon a hybrid of the old bonus baby rule (replacing the 25-man roster spot with a 40-man roster spot) and current best practices (top players get major league contracts anyway) in an approach that I have not seen others use.

Short version: by keeping a draft (with hard slot bonuses) for the top 100 amateur players, but allowing teams to sign the remaining amateur American players for whatever amount (up to the lowest slotted bonus) they want, this ensures that the top-tier talent remains distributed properly among the teams without concerns for "signability." By forcing the drafted picks to be included on the 40-man roster (and thus use their option years, though younger picks would have more option years) and also by forcing high-bonus international amateurs to be included on the 40-man roster, we allow the amateur player free agency at an early age, thus trading his loss of initial freedom of movement with greater agency earlier in his career, similar to his peers in other sports.

**Dr. Justyna Balcarczyk, LL.M. (CUA, Washington)**

Associate Professor, University of Wrocław, Poland

Attorney-at-law with SPCG Sp.k., Wrocław

SPCG, ul. Więzienna 21/31, PL- 50-118 Wrocław

fax: +48 71 722 42 11

balcarczyk@prawo.uni.wroc.pl

## **SPORTS IMAGE RIGHTS – FROM THE EUROPEAN CIVIL LAW PERSPECTIVE GERMANY, POLAND AND ITALY**

The legal significance of sports image rights has been increasing as athletes' likenesses, identities, indicia etc. are often used to promote individual athletes, sports teams, clubs and even major sporting events themselves. As it has evolved to become a significant player in the multi-billion dollar sports industry around the world, the importance of sports image rights as a marketing tool promoting the value of image rights was first discovered by the marketers who used it in the course of the market battle for consumers' attention. This phenomenon was also noticed by the theory of law and therefore the protection against unauthorized commercial use of the persona in sport has thus become one of the frequently discussed in scholarship and litigated matters in the contemporary sport industry. The legal right to control the value of the identity is referred to as the right of publicity.

The aim of this paper is to present the way this concept, originally rooted in the American doctrine<sup>1</sup> and distinguished from the right to privacy<sup>2</sup> is approached in the civil law countries. The protection of the certain identifiable indicia, within the appropriation of personality theory, derives from the statutes there. The features of a human being are considered as strictly linked to the individual and therefore constituting the personality rights. Because of their character and the fact of being attributed to the certain person, the personality rights are per definition nonassignable and non-descendible and of non property character. However, as this approach does not correspond with the realities of the free market economy where image, and sports image in particular, is equated with asset, the civil law systems must have modified the above interpretation and find a way to protect strictly commercial interests in the personality rights.

This paper provides a current and practical overview of recent developments, regulation and cases in Germany (delivered on art. 22, 23 of Law of artistic Creations<sup>3</sup> and art. 12, 823 of the Civil Code<sup>4</sup>), Poland (delivered on art. 23 of the Civil Code<sup>5</sup> and art. 81 of the Copyright Act<sup>6</sup>) and Italy (delivered on art. 10 of the Civil Code<sup>7</sup> and art. 96, 97 of the Copyright Act<sup>8</sup>). Special focus will be given to the question of post-mortem protection and in this respect the entitlement of the heirs to make a claim against an intruder who invades the rights of the deceased, as well as a revolutionary judgment of Bundesgerichtshof in Marlene Dietrich's case<sup>9</sup>. In addition, practical matters such as content of the contract for use of the sports image rights, collective exploitation of such rights, and conflict of law questions will be also examined.

<sup>1</sup> See *Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc.*, 202 F.2d 866 (2d Cir.); J. Thomas McCarthy, *The Rights of Publicity And Privacy*, 2<sup>nd</sup>, Thomson West.

<sup>2</sup> Louis D. Brandeis, Samuel Warren, *The Right to Privacy*, Harvard Law Review 1890, vol. 4, no. 5; *Pavesich v. New England Life Insurance Co. et al.* 122 Ga. 190; 50 S.E. 68; 1905. As the cornerstone of recognition of a right of publicity W. Prosser's doctrine may be considered. See W. Prosser, *Privacy*, 48 Cal. L. Rev. 383 (1960).

<sup>3</sup> Kunsturhebergesetz of 9 January 1907.

<sup>4</sup> Bürgerliches Gesetzbuch of 18 August 1896.

<sup>5</sup> Kodeks cywilny of 23 April 1964.

<sup>6</sup> Ustawa o prawie autorskim i prawach pokrewnych of 4 February 1994.

<sup>7</sup> Codice civile of 16 March 1942.

<sup>8</sup> Protezione del diritto d'autore e di altri diritti connessi al suo esercizio of 22 April 1941.

<sup>9</sup> Entscheidungen des BGH in Zivilsachen 143, 214; Neue Juristische Wochenschrift 2000, 2195.



**Professor Ian Blackshaw**

**Honorary Fellow – International Sports Law Centre, TMC Asser Instituut, The Hague**

**Visiting Professor, Cambridge University**

**Court of Arbitration for Sport Member**

**Tel:/Fax: + 33 3 21 90 42 03**

**E-Mail: [ian.blackshaw@orange.fr](mailto:ian.blackshaw@orange.fr)**

**EUROPEAN SPORTS MERCHANDISING AGREEMENTS:  
CONTROVERSIAL CLAUSES AND HOW TO DEAL WITH THEM IN LEGAL AND  
PRACTICAL TERMS**

Sport is now big business accounting for more than 3% of world trade and more than 2% of the combined GNP of the twenty-seven Member States of the European Union.

The commercialisation of sport takes many forms. Sports merchandising is one of them and is an integral, well-established – and lucrative – component of the sports marketing mix.

The Paper will critically examine several controversial clauses in European Sports Merchandising Agreements, from an English Common Law, European Civil and Community Law point of view:

- *enforceability of exclusivity and territorial restrictions;*
- *so-called ‘Morality Clauses’ particularly topical in view of the Tiger Woods affair;*
- *force majeure and suspension clauses;*
- *exchange control restrictions;*
- *tax impact on the ‘bottom line’ and mitigation; and*
- *‘rights of first refusal’ and ‘matching options’.*

The Paper will also offer some legal and practical solutions addressing these problematic clauses.



MOROĞLU ARSEVEN

SOUTHERN ILLINOIS UNIVERSITY  
EDWARDSVILLE





**Abigail Bright**

Teaching Fellow in Law, University College London (UCL)

abbie\_bright@hotmail.com

## **SHOULD DOPING IN SPORT BE CRIMINALISED AS A DISCRETE OFFENCE IN THE UK?**

This paper looks at the rationales for doping among the athlete community and considers why doping seems different (for the purposes of invoking criminal law) to use of other performance-enhancing products. An uncontroversial premise is that doping is a real, if not rife, feature of elite and amateur involvement in sport. A theory is developed here as the thesis idea: regulatory interventions should further the value that participation in sports should be transparent, rather than drug-free. Current practice is in contrast to this, in that it (exclusively) pursues a policy of prohibition. Hence, doping is a covert practice. Accordingly, there is no regulatory system to absorb the reality of doping athletes. The paper takes as a precept that individuals who are using drugs in order to enhance sports performance *should* be regulated. That is a legitimate role that either the State or regulatory bodies should and can perform. To that end, fair and effective regulation should reflect the most defensible, evidence-led clinical and scientific understanding of the risks and effects of drug-taking.

The paper considers the readiness of other (Continental) jurisdictions to discretely criminalise doping associated with sport (as a separate offence in the criminal calendar). Currently, doping regulatory breaches in the UK are classified as 'violations' because they are not discrete criminal offences. Having considered these other regulatory models, an administrative law-based model is proposed in preference to criminal law-based interventions and disposals. Finally, the feasibility of two mutual regulatory models are discussed; introducing biological passports for athletes and a pharmacy-based dispensing model to advise and service doping athletes. These proposals are specifically adapted to fit the sports regulatory context. Each furthers the policy aim identified here: good sports regulatory practices should value transparency in sports, rather than pursuing prohibition as a panacea.



MOROĞLU ARSEVEN

SOUTHERN ILLINOIS UNIVERSITY  
EDWARDSVILLE





**Rook Campbell**  
Doctoral Candidate  
Politics and International Relations Program  
School of International Relations  
University of Southern California  
3518 Trousdale Parkway  
Von KleinSmid Center 330  
Los Angeles, CA 90089-0043  
Rook.campbell@usc.edu  
214.478.2261

## **GLOBAL GOVERNANCE: REGULATING SPORT TRANSNATIONALISM**

Sport global governance -institutions such as the International Olympic Committee (IOC); Fédération Internationale de Football Association (FIFA); Union of European Football Associations (UEFA); World Anti-Doping Agency (WADA) and Union Cycliste Internationale (UCI)- have powers to decide who participates, when, and where. Decisions on athletes eligibility -including doping bans and non-doping issues such as nationality transfer- as well as decisions on commercial, endorsement, and labour contracts are to name but a few areas of major importance to states, societies, and individuals. Regulating global sport markets also involves multinational corporations and global capital. Issues of corruption, bribery, and financial ‘doping’ threaten fair play and stability of teams, leagues, sport international institutions and as well as domestic and global economies. Ultimately, this paper is about global governance. Sport transnationalism opens space for conceptual innovation and working through broader dilemmas of global governance. Sport governance reveals both points of convergence and contestation for issues of legal regulations, political authority, economic interests, and social norms. I examine questions on the relationship between globalization and global governance through institutional, labour, and political economy analysis in the area of sports.



**Dr. Georges Cavalier**

University of Lyon

University Jean Moulin – Lyon 3

Law School

Institute for Business Law & Economy (IDEA)

18 rue Chevreul – 69362 Lyon Cedex 07 - FR

T. + (33) 4.78.78.73.38

F. + (33) 4.78.78.71.44

cavalier@univ-lyon3.fr

<http://ssrn.com/author=878763>

[http://www.edocdroit-lyon3.com/annuaires\\_pop\\_prof.php?id=5008](http://www.edocdroit-lyon3.com/annuaires_pop_prof.php?id=5008)

**TAXATION & SPORTS' BUSINESS: AN INTERNATIONAL AND FRENCH PERSPECTIVE**

Why was France's national soccer team eliminated, a few weeks ago, in the first round of the World Cup? Why did the *Lyon Olympique* (OL) soccer team lose in the Champion League play-off in 2009? Is it because the Lyon club cannot compete financially with big European clubs like Real Madrid, Manchester United or FC Barcelona? This simple economic assessment follows a revenue analysis of the richest European clubs. The truth is, France is lagging behind, not to say *red card* or *flyweight*. That is to say, if we consider the hypothesis that the best players are paid more, it is not surprising that the largest revenues paid to sportsmen and women outside of France produce superior performance.

However, since the *Bosman* decision of 1995, players are free to circulate throughout all European Union countries. Being able to offer an attractive salary is thus partially determined by the working cost for the club, and the tax aspect partially determines the ability to offer an attractive salary. What then is the situation in France with regard to this tax regime? What then is the situation in France with regard to France's European competitors? The *Besson* report clearly spells out that France has social and fiscal withholding taxes that are 16% higher than the UK. Moreover, French budgets are 134% less than some other European clubs. Decidedly, OL is not playing in the same financial league... It is in this context - not purely French, but European - that the question of tax law as applicable to sportsmen and women should be examined.

This topic has the taste of a *cream pie*. All the more to talk about specificity/characteristic as a concept always poses a relative problem: in relation to what subject matter or discipline? Taken as such, tax law was long considered autonomous.

Moving away from the worn-out debate about whether tax law is autonomous or not in relation to civil law, and getting back more precisely to the question of the characteristics of sports tax law, the discussion is going to take on a new light. In fact, a soccer player often retires at age 30. Generally speaking, sports people have a career that is terribly - or wonderfully - short, depending on our viewpoint of life. During this short time however, he or she often earns a considerable sum of money that is hard to conserve until *retirement* comes around.

Should tax law not take into account this unusual situation? If yes, could French public finances bear the burden of not replenishing their coffers? Does respecting the principle of equality towards tax constitute different treatment for sports people? To the contrary, could one argue that it is more profitable for our country to attract, rather than chase away, *sports business* by offering an advantageous tax regime? Should we try to prevent massive relocation of liable taxpayers? All these questions constitute the backdrop of a sports tax system. And, in many ways, these questions are posed in other sectors as well. This introduction is a reminder that general tax law is applicable to the sports sector, whether group activities, or individual sportsmen or women.

For sports clubs, their profits, means, and activities are subject to taxes. First of all, profits are subject to corporate tax. This is particularly true for sports-oriented limited companies that are subjected to a 33.1/3% tax rate. This is ordinary tax law. And, the State benefiting from a third of the profits is not just an anecdote: the income statement cumul of the 20 Ligue 1 clubs in France represents a tax of 21 million Euros!

Nonetheless, if taxing a sports company is the rule, it becomes an exception to the rule if the same activity is controlled by a public person or a non-profit organization. For a non-profit organization, being liable for corporate tax depends on the management system, whether or not it is equivalent to that of a commercial company.

Besides profits, a territorial economic contribution (formerly “business license tax” or “*taxe professionnelle*”) is levied on the rental value of capital assets used by sport organizations, the tax rate of which depends on regions with a measure of autonomy: one must simply be engaged in a *regular, unpaid professional activity*. Thus, the limited liability company that organizes the *Tour de France* bicycle race is subject to type of tax. However, one must also consider high value stadiums that bear both local, and real property taxes.

Finally, these companies are potentially subject to taxes on turnover, the first tier of which is VAT. VAT is levied on a great number of sport organizations, in particular sport companies. The problem involving VAT is neither new nor original: for example, one could ask the classic question regarding taxation on transfer indemnities for professional players or subsidies.

The rules for general taxation mentioned previously regarding organizations is also true for the sports people themselves. Like all natural persons, sports people are taxed on a progressive tax scale, on their revenue by adding diverse revenue categories calculated according to appropriate rules. More precisely, the revenues of sports people are taxed (i) either in the tax category of “*Salary Income*” if they have an employment contract – which in general is the case for soccer players or motorcyclists; (ii) or, if they exert an independent activity, in the category of “*Non Commercial Profits*” – or even in the category of “*Industrial and Commercial Profits*,” should they carry out commercial activities. Professional boxers, golf or tennis players all operate as independent contractors. They too are subject to VAT levied only on activities such as commercial advertising or, capitalizing on the publication of their photo.

Here again, it is not only the application of ordinary tax law; here and there weary debates still appear, like for example the deduction of allowable expenses, or the fiscal regime in relation to indemnities for breach of an employment contract. Add to that other measures like the tax shield (“*bouclier fiscal*”), or lowering the tax scale on revenue. It is therefore necessary to remove from this study a number of rules which, although relevant to non-profit sport organizations, are not limited to them: other non-profit organizations in the social, educational, and cultural domains are subject to a similar tax regime. If one wants to tighten the tax rules specific to sports activities, one will realize that even these rules also target other categories: artists and wealthy taxpayers.

First, this paper investigates the question of relocation of sports people – those who emigrate to avoid French taxation. These tax rules have an international flavor and are gathered in this paper under the heading of *International Tax*. A second set of rules, more or less specific, vary from staggering sports revenue – like artists – to the *Buffet* tax, applied *only* to sport organizations. These last rules, which do not directly target relocation, in the objective, are examined under the heading *Domestic Tax*.



**Prof. Avv. Lucio Colantuoni**  
Univ. of Milan Law School, Italy  
Attorney At Law  
IASL Board Member  
UIA President of Sports Law Commission  
[http://iasl.org/pages/en/about\\_iasl/member\\_cv.php?uid=63](http://iasl.org/pages/en/about_iasl/member_cv.php?uid=63)  
[lucio.colantuoni@unimi.it](mailto:lucio.colantuoni@unimi.it)  
[lucio.colantuoni@studiocolall.it](mailto:lucio.colantuoni@studiocolall.it)

## INTELLECTUAL PROPERTY RIGHTS IN BASKETBALL

A growing part of the economic value of sports is linked to Intellectual Property Rights (IPR). In an increasingly globalised and dynamic sector, the effective enforcement of IPR around the world is becoming an essential part of the health for sport economy.

The branding of sports, sports events, sports clubs and teams, through the application and commercialisation of distinctive marks and logos, and the exploitation of image and TV rights, constitute a marketing phenomenon that has led to a new lucrative global business of sports marketing. The complexity of the issues hinders the achievement of complete international harmonization, and notwithstanding the great advances that have been made, there still remain significant areas of divergence both in substantive law and in procedure.

The contribution of jurisprudence has been of fundamental importance for the application of IPR to sport and, in this regard, American courts are particularly influential, mostly in consideration of the fact that the principles asserted in that system have influenced various European juridical cultures. This paper will focus on the continuing struggle over the extent to which sports leagues, teams and athletes are able to control – and prevent the unauthorized use of – their IPR.

An analysis of the main legal aspects will specifically refer to recent practical developments, with a focus on basketball, where experts and courts have adapted relevant useful principles to draft contracts and understand legal issues in the matter of IPR applied to sports. Regarding basketball, there will be a comparative analysis of relevant cases, mainly in the USA, but also some interesting ones in Italy and other EU member states. This approach will yield an understanding of the leading role carried out by US courts. In this field, cases studies are absolutely relevant and morph into a worldwide pattern, which defines disputes regarding IPR in basketball. On the other hand, in Italy, like in all European countries, the IPR controversies, even if interesting, have lesser impact. In fact, in EU countries, the basketball movement does not reach the highest financial levels and the competitions are known often only within their states. The comparative view will point out the peculiarities of both systems and their distinct differences.



**Ricardo Morte Ferrer**

Lawyer

Master in Sports law

Master in Information and Knowledge Society

Ph.D. in Sports Law candidate, University of Lleida

Tutor, Universitat Oberta de Catalunya, Barcelona

IASL member. Member of the Audit Committee and the Case Law Committee

Avenida Jaime III, nº3, 2º2º

07012 Palma de Mallorca

Illes Balears

SPAIN

Phone : +34 971 726508

Mobile: +34 627 647891

rmorte@arcor.de

rmorte@uoc.edu

**A COMPARATIVE RESEARCH BETWEEN THE SPANISH AND GERMAN ORGANIZATION SYSTEMS FOR PROFESSIONAL LEAGUES**

In this paper I will make a general comparison between these two systems, studying the relationship between leagues and sport federations and some other topics, the main one will be: Which kind of organization and financial requirements do the professional teams need to fulfill in order to be accepted in the Professional league? For this topic I will research the Football and Basketball professional leagues of these two countries.

The main difference is that in Spain the teams must have the form of Sports Corporation, compulsory due to Sports Law regulation.

In Germany the teams can keep the status of "normal" sports clubs, but they need to pass a control check (Lizenzierungsverfahren) by the League. They can also take the form of a Corporation or a limited company, or some other German company form, but this step is not compulsory.

For someone who does not know much about these two countries, this difference could look as a small one, and he or she could think that the Spanish system could be the better one in order to control the new clubs and to be sure that all teams are financially healthy and properly managed, but after analyzing both systems and the different leagues we will find out that the truth is another one.

Next, to focus the economical and business aspect of this topic, I will compare both systems in the field of TV rights.

And, last but not least, after analyzing these both systems, maybe we can try to answer a bigger question: Is State intervention useful in Sport?

**Ricardo Gentzsch**

Abogado LLM/K

SCHILLER Abogados

Gran Vía 55, 1º Dcha

48011 Bilbao

SPAIN

Tel : +34 944 395 649

Fax: +34 944 274 399

[r.gentzsch@schillerabogados.com](mailto:r.gentzsch@schillerabogados.com)

[www.schillerabogados.com](http://www.schillerabogados.com)

Member of the GLOBAL ADVERTISING LAWYERS ALLIANCE, an international network of independent law firms specialising in advertising and marketing law [www.gala-marketlaw.com](http://www.gala-marketlaw.com)

**TRANSFER OF ADOLESCENTS<sup>1</sup>**

This research investigates principles, according to which FIFA, FIBA, and EHF determine that minors cannot be transferred, unless special conditions<sup>2</sup> arise. These self-regulatory bodies do not depend on governments and sometimes clash with them<sup>3</sup>. This examination teases out such private entities norms' compliance with certain aspects of public law<sup>4</sup>.

In *Bernard*<sup>5</sup>, it was established that national sport policy and governing bodies' rules (applied to soccer) can prevail over the freedom of movement if they fulfill four conditions<sup>6</sup>. In strict legal terms, adolescents, minors under 16 years old<sup>7</sup>, cannot sign a binding contract, thus one expects that their parents act in their child's best interest.

It is e.g. surprising that Spanish adolescents can be transferred to English football clubs, leaving the local Spanish club without any legal protection. As a result of *Bernard*, more clubs will see this as a "golden parachute" to protect their investment in the grassroots. Admittedly, most disputes are solved amicably.

Inverting the interpretation of *Bernard*, can a club be held liable for not investing sufficiently in the grassroots so that when the time comes for concluding on professional contracts no player would desire to remain in the particular club? It can be argued that we are entering a new stage where proportionality of investment and rate of return for grassroots are vital for teams of modest financial means. Will such teams maintain investments in their grassroots?

<sup>1</sup> Directive 94/33/CE, Article 3 Definitions. For the purposes of this Directive:

(c) 'adolescent' shall mean any young person of at least 15 years of age but less than 18 years of age who is no longer subject to compulsory full-time schooling under national law...

<sup>2</sup> EHF, FIFA and FIBA include these special conditions for transfers, having two primary justifications: (i) due to the parents' work, (ii) education for the player is provided both during his immediate training period, and in view of an overall education helping the player after a professional career. Thus one notes that the international federations' common theme is to consider the athletes' further education and ensuing days upon concluding the professional sports career.

<sup>3</sup> As was recently observed during the Football World Cup, whereby FIFA President threatened the French government with sanctions levied against the French federation and national team, should the government continue to meddle with the federation's affairs.

<sup>4</sup> See Directive 94/33/CE of June 22, 1994, on the protection of young people at work.

<sup>5</sup> Case C-325/08, *Olympique Lyonnais SASP v. Olivier Bernard, Newcastle United FC*, ECJ 16 March 2010. Freedom of movement for workers as well as compensation debated, although Olympique Lyonnais requested indemnity for damages.

<sup>6</sup> 1. Must be applied in a non-discriminatory manner, 2. Must be justified by overriding reasons in the public interest, 3. Must be suitable for securing the attainment of the objective which they pursue, and 4. Must not go beyond what is necessary for that purpose.

<sup>7</sup> For example Gai Assulin, from humble Israel to Barcelona Atlètic with only 12 years of age.

**Dr. M. Goodarzi**  
**Physical Education and  
 Sport Science College  
 Sport Management  
 Department  
 University of Tehran  
 Tehran, Iran  
 mgoodarzi@yahoo.com**

**M.H. Ghorbani**  
**Physical Education and  
 Sport Science College  
 Sport Management  
 Department  
 University of Tehran  
 Tehran, Iran  
 Ph.D. candidate  
 ghorbanimh@ut.ac.ir  
 ghorbani\_2@yahoo.com  
 +98-21-61115135**

**H. R. Safari**  
**Physical Education and  
 Sport Science College  
 Sport Management  
 Department  
 University of Tarbiyat  
 Moalem  
 Ph.D candidate  
 hamidsafari83@gmail.com**

### **FACTORS AFFECTING THE INCIDENCE AND THE SPREAD OF ADMINISTRATIVE AND PERCEIVED CORRUPTION AND ITS CONTROLLING METHODS IN IRAN SPORT ORGANIZATIONS**

Today sport in Iran is experiencing a quantitative and qualitative development when compared to the period before the Islamic Revolution (1979). Various sport organizations and professional leagues for different sport fields as well as many medals are the current results of sport in Iran. However, in parallel with the development of sport organizations and sport teams, one of Iranian sport managers' apprehensions is administrative corruption in these organizations. As a result, the aim of the present research was to identify the factors which bear an effect on the incidence and spread of administrative corruption and to develop methods to control it in Iranian sport organizations.

This research was a descriptive, survey and field study; it was considered as an applied research based on its aim as well. To provide the research tool, the literature on corruption in Iran and abroad was reviewed. Then, the elites were interviewed to collect the factors affecting the incidence and spread of corruption and the controlling methods in Iranian sport. A researcher-developed questionnaire was prepared based on the above data. The questionnaire investigated the staff members' viewpoints on the factors which can spread corruption in sport as well as the factors which can prevent the incidence and spread of corruption in sport. After the reliability and validity of the questionnaire had been approved, it was distributed among the statistical population. The statistical population consisted of all staff members of the Central Organization of Physical Education Organization, sport federations and elite athletes (n=975) and the sample included 521 subjects. Descriptive and inferential statistics were used to analyze the data.

The results showed that staff members' economic status, cultural features, organizational features and the quality and quantity of rules respectively played a role in the incidence and the spread of administrative corruption in Iranian sport organizations. The findings also showed that all methods which controlled administrative corruption played a role in controlling it in sport organizations and they were ranked as follows: a rise in staff members' income to prevent employment corruption, efficient financial systems to collect efficient rules, to acquaint clients with rules, to depoliticize administrative system, to establish an independent center to fight administrative corruption in organizations, to educate staff members on administrative corruption, privatization and harsher punishments. The findings of this research can help sport organization managers and policy makers to coordinate and decide how to control and prevent the incidence and spread of administrative corruption and how to create an organization with administrative health so that sport in Iran can be promoted.

#### **References**

- Everett, J., & Neu, D., & Rahaman, A, S (2007). Accounting and the global fight against corruption. *Accounting, Organizations, and Society*, 32, 513-542.
- Maennig, W. (2005). Corruption in International Sports and Sport Management: Forms, Tendencies, Extent and Countermeasures. *European Sport Management Quarterly*, Vol. 5, No. 2, 187-205.
- Mason, D. S. Thibault, B. Misener, L. (2006). An Agency Theory Perspective on Corruption in Sport: The Case of the International Olympic Committee. *Journal of Sport Management*, 20, 52-73.
- Numerato, D. (2009). The Media and Sports Corruption: An Outline of Sociological Understanding, *International Journal of Sport Communication*, 2, 261-273.
- Tanzi, V. (1998). Corruption around the world: Causes, consequences, scope, and cures. *IMF Staff Papers*, 45, 559-564.



Genevieve Gordon (assisted by Matt Wasserberg)  
Ithaca College London & Birkbeck, University of London  
gen@venire.co.uk  
+447809757913





**Nobuki ISHII**

Associate Professor

Faculty of law, Setsunan University, Japan

17-8 ikedanakamachi, Neyagawa, Osaka 572-8508 Japan

Telephone: +81-72-839-9523; Fax: +81-72-838-6636; e-mail: ishii@law.setsunan.ac.jp.

**Shinji MORINO**

Professor Emeritus

Chukyo University

**SPORTS LEGISLATION IN JAPAN**

Sports legislation reflects the will of a country toward sports policy. The legal foundation which regulates sports legislation is the Fundamental Law of Sport. To acquire some guidance in a country's sports policy, therefore, it is crucial to analyze the Fundamental Law of Sport.

In Japan, whose Constitution does not have any provisions concerning sports, the role of the Fundamental Law is played by the Sports Promotion Act. This Act, although it has undergone several revisions since its establishment in 1961, is still in force. The document consists of four chapters and twenty-three sections. The first chapter: „General Provisions”, says that the government and local authorities shall endeavor to maintain the conditions for practicing sports. In order to achieve this purpose the Minister of Education, Culture, Sports, Science and Technology formulates the necessary basic plan for sports promotion. Chapter 2 contains „Measures of Sports Promotion”. It also provides regulations and support for holding the National Athletic Meet, and the promotion of all kind of sports. Chapter 3 specifies the data concerning the establishment of the Sports Promotion Council and the Physical Education Committee members, while Chapter 4 determines guidelines on the government subsidy. In fact, this law has constantly contributed to holding the National Athletic Meet every year since 1946, and to maintaining some of the sports facilities.

However, the Sports Promotion Act has some characteristics worth highlighting: 1) a number of provisions specify that the government and local authorities are not under an obligation to promote sports, but are under an obligation to *endeavor* to promote sports, 2) the Laws and Cabinet Order are insufficient to put the Act in practice, 3) unlike e.g. the French Fundamental Law of Sports, it does not clearly determine either the authority of the government in the domain of sports or the real obligations that accompany it.

In conclusion, the facts mentioned above show that the Japanese Fundamental Law of Sports declares the responsibilities of the government and local authorities for undertaking endeavors to promote sports, and that the actual promotion of sports in Japan is being achieved by „self-help” of the sports circles rather than by strong initiative of the government.



MOROĞLU ARSEVEN

SOUTHERN ILLINOIS UNIVERSITY  
EDWARDSVILLE





### Harris Kalofonos

Manager of Development & Marketing, USA Wrestling, U.S. Olympic Committee Member  
Phone: 719. 265. 3629 | Fax: 719. 598. 8181 | Cell: 970. 301. 8045  
6155 Lehman Drive, Colorado Springs CO, 80918  
HKalofonos@usawrestling.org

### Dr. Chrysostomos Giannoulakis

Aquatics Sport Manager, Organizing Committee Special Olympics  
World Summer Games ATHENS 2011  
Assistant Professor  
Department of Recreation & Sport Management  
William F. Harrah College of Hotel Administration  
University of Nevada Las Vegas  
4505 Maryland Parkway - Box 453035  
Las Vegas, NV 89154-3035  
ph:702-895-0155 / fax:702-774-8994  
cgiannoulakis@unlv.edu  
<http://faculty.unlv.edu/cgiannoulakis/Home.html>

### **SPONSORSHIP ACQUISITION AND ACTIVATION WITH FORTUNE 100 COMPANIES: THE CASE OF USA WRESTLING (USAW)**

In the early years of sport marketing, sponsorship activities often served the interest of corporate executives (Stotlar, 2005), and they were focused on advertising opportunities. USA Wrestling had utilized this philosophy in its sponsorship approach for some time. The purpose of this case study is to present the strategic approach implemented by the NGB<sup>1</sup> of wrestling in the U.S. in order to acquire and fulfill sponsorship agreements with Fortune 100<sup>2</sup> companies. A case study methodology was used, as documentation/archives (sponsor progress reports) and direct observations (USAW events) were sources of evidence.

In 2008, USAW presented to several prospect partners a proposal aiming to engage its members and their families with the sponsors' brand attributes. Activation programs utilized interactive web features, celebrity interviews, social media opportunities, and award programs. The outcome of the initiatives was: excitement and engagement of the USAW membership base; establishment of agreement with four new sponsors, including two Fortune 100 companies; 100% increase in sponsorship revenue within two years; measurable data for sponsors to evaluate their impact. This presentation will expand on strategic sponsorship initiatives related to USAW, and illustrate practical implications.

### **References**

- Mullin, B. J., Hardy, S., & Sutton, W.A. (2007). *Sport Marketing (3<sup>rd</sup> ed.)*. Champaign, IL: Human Kinetics.
- Shank, M.D. (2009). *Sports Marketing: A Strategic Perspective (4<sup>th</sup> ed.)*. Upper Saddle River, NJ: Pearson Education.
- Stotlar, D. K. (2005). *Developing successful sponsorship plans (2<sup>nd</sup> ed.)*. Morgantown, WV. Fitness Information Technology.
- Yin, R. K. (2003). *Case study research: Design and methods (3<sup>rd</sup> ed.)*. Thousand Oaks, CA: Sage.

<sup>1</sup> National Governing Bodies (NGB) of an Olympic sport in the U.S. are non-profit organizations assigned by the U.S. Olympic Committee (USOC) to manage the Olympic Teams of the sport and all grassroots efforts. Such organizations as the USOC in the U.S receive no public funding.

<sup>2</sup> The **Fortune 100** is an annual list compiled and published by Fortune magazine that ranks the top 500 U.S. closely held and public corporations as ranked by their gross revenue after adjustments made by Fortune to exclude the impact of excise taxes companies collect. The list includes publicly and privately-held companies for which revenues are publicly available.



MOROĞLU ARSEVEN

SOUTHERN ILLINOIS UNIVERSITY EDWARDSVILLE

NOMOS

INTERNATIONAL ASSOCIATION OF SPORTS LAW





**Prof. Oskar Kayasan**

**Director: The Game of Fairplay**  
**45 Russell Square, London, WC1B 4JP**  
**United Kingdom**  
**Tel: (+44) 207 9533709**  
**Fax: (+44) 207 9533709**  
**Mobile: (+44) 07900 865 025**  
**oskargamefairplay@yahoo.com**

**APPLICABILITY OF RULES ON THE FIELD OF FAIRPLAY ON FOOTBALL  
THE ESTABLISHMENT OF A FAIRPLAY CODE OF CONDUCT**

This paper explores various theories of social conflicts which evaluate fairplay in football. The author focuses on the concept of fairplay as the transcendence of boundaries. This interpretation presents complex phenomena in the contemporary game of football. The importance of football-specific laws and research models in trans-national and international variations are also highlighted. Research undertaken in the field of fairer game was rather diverse; patterns of geographic variation (Bale, 1994), emergence of new cultural geography (Raitz, 1995; Pred, 1995), notion of “placelessness” (Rah, 1976; Auge, 1995), geographic perspective conventionalised places (Wagner, 1981), cultural perspectives (Eichberg, 1998; Loland, 2002), and the work of Sack (1986), who argued that territorialisation of power over people and space was a way of making football a fairer game. The need for enforceable fairplay conduct is discussed, and a theoretical, composite view of an applicable fairplay law is proposed. There is an argument to establish “laws of the game” to institute a systematic and coherent use of football in economic and social development while maintaining fairplay. The game of football is a notion of social cohesion to address social concerns, both symbolically at the global level and practically within and between communities. Therefore, football is to commit to the principle of playing to win, consistent with fairplay, and complying with the laws of the game. This paper goes on to explore one of the key questions raised by this stream, namely how commercialisation altered fairplay in general, and the role of regulation within the game in particular. The author concludes by suggesting that the applicability laws on fairplay could force many stakeholders (*players, managers, coaches, officials, clubs, owners*), to comply with the conduct of fairplay in contemporary football.

**References**

- Augé, M. (1995) *Non-Places: Introduction to an Anthology of Modernity*, London Verso.  
Bale, J. (1994) *Landscape of Modernity Sport*, Leicester University Press.  
Eichberg, H. (1998) *Body Cultures* (ed. J. Bale and C. Philo). London, Routledge.  
Horne, J. (2005) *Sport in Consumer Culture*, Palgrave Macmillan, pp. 150-156  
Loland, S. (2002) *Fair Play in Sport. A Moral Norm System*, London Routledge  
Pred, A. (1995) *Re-cognizing European Modernity's*, London, Routledge  
Raitz, K. (ed) (1995) *The Theater if Sport*, Baltimore, Joghnn Hopkins University Press.  
Relph, E. (1976) *Place and Placelessness*, London, Pion.  
Sack, R. (1986) *Human Territoriality*, Cambridge, Cambridge University Press.  
Wagner, P. (1981) *Sport: culture and geography*, in A. Pred (ed), *Space and Time in Geography*, Land, Glerup.

*Internet Resources*

- [www.fifa.com](http://www.fifa.com)  
[www.uefa.com](http://www.uefa.com)  
[www.gamefairplay.com](http://www.gamefairplay.com)  
[www.guardian.co.uk/football](http://www.guardian.co.uk/football)





Renata Kopczyk

Chair of International and European Law  
Faculty of Law, Administration and Economics

University of Wrocław

ul. Uniwersytecka 22/26

51-136 Wrocław, Poland

[kpme.prawo.uni.wroc.pl](mailto:kpme.prawo.uni.wroc.pl)

[renata.kopczyk@prawo.uni.wroc.pl](mailto:renata.kopczyk@prawo.uni.wroc.pl)



MOROĞLU ARSEVEN

[www.morogluarseven.av.tr](http://www.morogluarseven.av.tr)

SOUTHERN ILLINOIS UNIVERSITY  
EDWARDSVILLE



INTERNATIONAL  
ASSOCIATION of  
SPORTS LAW



**Dr. Roland Krause**

Lecturer, Freie Universität Berlin

Judge, German Court of Arbitration for Sport (VDST)

CMAS Diving Instructor

Dr. Krause & Partner, Am Erlenbusch 8, D-14195 Berlin, Germany

Fax: +49 30 202395859

mail@krause.es

**SPORTS ARBITRATION - A JUDGE'S PERSPECTIVE**

This comparative law paper focuses on sports arbitration and compares three sets of rules: German national DIS Sport Arbitration Rules<sup>1</sup>, internal procedural rules by National Federations like Deutscher Fußballbund<sup>2</sup> and international CAS arbitral proceedings. Although quite similar, the procedural approach varies due to a different legal tradition<sup>3</sup>. For example, DIS does not provide for a consultation while the CAS rules do.

Germany was a latecomer to the international arbitration scene<sup>4</sup>, largely due to an outdated arbitration law and the lack of an internationally recognised arbitration institution<sup>5</sup>. As of 1 January 2008 the German Institution of Arbitration has established the German Court of Arbitration for Sport<sup>6</sup>. By contrasting the jurisdiction of each institution and thus delimiting the field of jurisdiction of the German Court and the CAS, comparative charts and graphics point out the areas in which exclusive jurisdiction of one of these institutions exists.

Various reasons may lead to international sports federations being prevented from enforcing their sanctions on an equal basis. External sport governance and internal political pressure may lead a national federation to either facing international sporting exclusion or internally the discontinuation of state funding<sup>7</sup>, or the state accreditation/support/recognition of its policies, not to mention judicial sanctions in case of contempt of a national court's decision.

Concluding remarks from a judge's viewpoint outline the reasons behind the recent changes and give recommendations for future changes of the arbitral proceeding rules in Germany. Reasons include the need for faster proceedings, higher arbitration fees, electronic court files, clearer wording and transparency of the proceedings<sup>8</sup>, more opportunities for involvement for young colleagues<sup>9</sup>, and more chances for support and recognition within political circles<sup>10</sup>.

<sup>1</sup> [www.dis-arb.de/sport](http://www.dis-arb.de/sport)

<sup>2</sup> <http://www.dfb.de/index.php?id=504064>

<sup>3</sup> DFB has created its own "homegrown" rules, others ([www.vdst.de](http://www.vdst.de)) copy the Civil Procedure Code or refer to Criminal procedure law.

<sup>4</sup> Until recently, German law excluded recourse to arbitration, a point that states should take into consideration when implementing arbitration clauses in favour of a specific arbitral institution.

<sup>5</sup> The European & Middle Eastern Arbitration Review 2009, <http://www.globalarbitrationreview.com/reviews/14/sections/54/chapters/521/germany/>

<sup>6</sup> Mertens, SpuRt 2008, 180

<sup>7</sup> The German horseriding federation being dissolved and thus prevented from national funding: [www.tagesspiegel.de/sport/deutscher-reitsport-nicht-mehr-fest-im-sattel/1532284.html](http://www.tagesspiegel.de/sport/deutscher-reitsport-nicht-mehr-fest-im-sattel/1532284.html)

<sup>8</sup> For online publication of rulings, cf. Vieweg, SpuRT 2009, 192

<sup>9</sup> Those interested who are sport- as well as ADR-lovers and not necessarily legal scholars.

<sup>10</sup> Especially in doping cases, the aim of politicians for "clean games" is rising.

**Dr. Johan Lindholm**  
LL.M., LL.D., Senior Lecturer  
Umeå University  
Department of Law  
901 87 Umeå, Sweden  
+46 90-786 5603  
johan.lindholm@jus.umu.se

## **THE MORE THE MERRIER? THE CHANGING EUROPEAN LANDSCAPE OF ANTI-DOPING**

Initially, combating doping was primarily a concern for sporting organizations. Over time, political institutions have become increasingly involved on a national and global level. This paper brings attention to a current shift in the European regulatory landscape of anti-doping as the European Union and European Union law are becoming increasingly significant.

After the Treaty of Lisbon, the EU has both interest and competence to play a larger role in the European anti-doping movement<sup>1</sup>. Increased involvement by the European Union is likely to be advantageous from certain perspectives, e.g. by introducing more effective measures of enforcement. However, the paper argues that “EUridification” is also prone to change antidoping in Europe in regards that warrant careful consideration. EU involvement will shift power away from current actors and to the EU. As a consequence, Member States will experience that the field for exercising national policy becomes more limited. Similarly, increased EU regulation in the field is likely to add to the juridification of sport, something that according to some already constitutes a significant problem. It is also likely to affect the direction of the European anti-doping movement.

Unlike sporting organizations and to a greater extent than national governments, the EU must balance the interest of effectively combating doping against the general aims of the Union, including the protection of fundamental rights and the realization of the internal market<sup>2</sup>. Another foreseeable consequence of increased involvement by political institutions is a shift in focus away from doping in sport and towards doping in society more generally.

---

<sup>1</sup> Article 165 TFEU. *See, e.g.* White Paper on Sports, COM(2007) 391 final, 2.2.

<sup>2</sup> *See, e.g.*, Case C-519/04 P *Meca-Medina and Majcen v. Commission* [2006] ECR I-6991.

**Sergios I. Manarakis, LL.M. (Edinburgh Univ.)**  
Attorney at Law, PhD Candidate in Sports Law  
CIArb Accredited Mediator  
Member of I.A.S.L. and H.C.R.S.L.  
sergios.manarakis@gmail.com, smanarakis@phed.uoa.gr

**APPLYING THE APPLICABLE LAW**  
**THE *EX AEQUO ET BONO* PROVISION OF THE F.A.T. RULES**

One of the characteristics of arbitration is the freedom of the parties to choose the applicable law, i.e. the law governing the merits of the dispute. A freedom existing not only in the ad-hoc, but also in the institutional arbitration, such as the arbitration held by the FIBA Arbitral Tribunal. However, the latter has expressly shown its preference to the *ex aequo et bono* doctrine.

According to the theory<sup>1</sup> the arbitrator, when asked to act *ex aequo et bono* may either apply the relevant rules of law ignoring formalistic rules or rules which appear harsh or unfair to the certain case, or decide according to the general principles of law, or even ignore completely any rules of law and decide the case on its merits as those strike him.

F.A.T. rules are in favor of the second of these alternatives, stating (in art. 15.1) that “*Unless the parties have agreed otherwise the Arbitrator shall decide the dispute ex aequo et bono, applying general considerations of justice and fairness without reference to any particular national or international law*”.

Moreover, according to the F.A.T. jurisprudence<sup>2</sup>, the *ex aequo et bono* doctrine allows the arbitrator to “*pursue a conception of justice which is not inspired by the rules of law which are in force and which might even be contrary to those rules*”.

Aim of this paper is to examine the way F.A.T. applies this doctrine throughout the four years of its function.

<sup>1</sup> See, among others, Redfern, A and Hunter, M. *Law and practice of international commercial arbitration* 3<sup>rd</sup> edition, 2-72.

<sup>2</sup> See, among others 0073/10 FAT, available at <http://www.fiba.com/pages/eng/fc/expe/fat/p/openNodeIDs/16810/selNodeID/16810/fat-awards.html>



**Dr. David McArdle**  
Senior Lecturer in Law  
Editor, *Entertainment and Sports Law Journal*  
Room 2.2, Airthrey Castle  
School of Law  
University of Stirling  
Stirling  
FK9 4LA  
Scotland  
UK  
Tel: + 44 (0) 1786 467285  
Fax: + 44 (0) 1786 467353  
Email: [d.a.mcardle@stir.ac.uk](mailto:d.a.mcardle@stir.ac.uk)





**Professor Gerard McCormack**

**Center for Business Law and Practice, University of Leeds, UK**

**Professor of International Business Law, Director of Research**

**School of Law**

**20 Lyddon Terrace**

**University of Leeds**

**Leeds, LS2 9JT**

**UK**

**Room: G.26 26 Lyddon Terrace**

**Tel: +44 113 343 7160**

**Email: [G.McCormack@leeds.ac.uk](mailto:G.McCormack@leeds.ac.uk)**





**Richard McLaren, HBA, LLB, LLM, C. Arb.**

**Professor, Faculty of Law**

**The University of Western Ontario**

**Court of Arbitration for Sport arbitrator -- Ad Hoc Division for the Olympic Games arbitrator**

**Counsel - McKenzie Lake Lawyers LLP**

**Innovative Dispute Resolution Ltd.**

**300 Dundas Street**

**London, Ontario N6B 1T6, Canada**

**Phone: 519-679-1407; 519-672-5666 Ext: 366**

**Fax: 519-672-2674**

**McLaren@mckenzielake.com**

**CONTEMPORARY ISSUES IN DRUG TESTING AND DOPING CONTROL – COURT OF ARBITRATION FOR SPORT EXPERIENCES AND THE CURRENT ADR PROCESS**



MOROĞLU ARSEVEN  
www.morogluarseven.av.tr

SOUTHERN ILLINOIS UNIVERSITY  
**EDWARDSVILLE**





**Ioannis Mournianakis, LL.M. (Heidelberg)**

**Attorney-at-law, Member of the Athens Bar Association**

**PhD Candidate, University of Athens, Faculty of Law**

**Secretary General of the International Association of Sports Law (IASL)**

**Armatolon 6, GR-17563, Athens**

**Tel. +306938965067**

**im@dsa.gr, jmournianakis@yahoo.gr**

## **THE CONCEPT OF THE PUBLIC INTEREST IN SPORT: JUSTIFICATIONS OF RESTRICTIONS OF THE FUNDAMENTAL FREEDOMS OR RESTRICTIONS OF COMPETITION IN THE CASE-LAW OF THE COURT OF THE EUROPEAN UNION**

The place of *'the state'* in economic life and the role of *'private actors'* and the *'market'* in the provision of collective goods are changing. Public functions are delegated to private actors and the increasing interdependencies between the public and private spheres of economic action in the single European common market have as a result a convergence in the interpretation and application of the EU provisions on fundamental freedoms and competition law. The decisions of the Court of Justice of the European Union concerning sport governing bodies show that entrusting private parties with governance functions does require new legal answers to prevent the abuse of their powers and fill the lacuna between competition and fundamental freedoms.

The purpose of this paper is to examine in more detail the convergence between the fundamental freedoms and competition law provisions in the field of sport, focusing on how restrictions of the fundamental freedoms or competition can be justified on the basis of the evaluation of social policy (non-market) goals. This value conflict is demonstrated in the case-law of the Court on sporting rules, both on cases concerning restrictions of fundamental freedoms and competition. For instance, restrictions of the fundamental freedoms were justified by imperative requirements in the public interest in the case-law of the Court on sports betting, as well as in its recent decision in the *Bernard* case (C-325/08, decision dated March 16, 2010). At the same time in the field of competition law, the contested FINA anti-doping rules were found not to *"necessarily constitute a restriction of competition incompatible with the common market, within the meaning of Article 81 EC, since they are justified by a legitimate objective. Such a limitation is inherent in the organisation and proper conduct of competitive sport and its very purpose is to ensure healthy rivalry between athletes."* (C-519/04 P, *Meca-Medina*, para 45). Furthermore, the Commission acknowledges the overriding role of non-market goals in the assessment of the competition provisions of the Treaty by stating that: *"Goals pursued by other Treaty provisions can be taken into account to the extent that they can be subsumed under the four conditions of Article 81(3)"* (Guidelines on the application of Article 81(3) of the Treaty, OJ C 101 2004, para 42).

However, the boundary between common market and competition policy and non-market goals is very fragile. Given the special nature of sport, I will attempt in this paper to define which non-market goals in the field of sporting rules may constitute *imperative requirements in the public interest* or *legitimate objectives*, able to justify restrictions of the common market or competition provisions. When do the activities, competences and objectives of sport actors and governing bodies constitute requirements of public interest and when do they become an attempt to promote and protect the private financial interests of the sport stakeholders? The recently established supplementary competence of the EU on the field of sport (Art. 165 TFEU) and the objectives of the EU action in the field of sport will also be taken under consideration.



MOROĞLU ARSEVEN

SOUTHERN ILLINOIS UNIVERSITY EDWARDSVILLE





**Dr. Mark S. Nagel**  
Associate Professor  
University of South Carolina  
2012 Carolina Coliseum  
Department of Sport and Entertainment Management  
Columbia, SC 29208  
1-803-777-3751 (p)  
1-803-777-8788 (f)  
nagel@sc.edu

## **GLOBALIZING BASEBALL: THE WORLD BASEBALL CLASSIC AND OTHER MLB INITIATIVES**

In 2006, Major League Baseball (MLB) president Bob DuPay noted, “Our world has become increasingly smaller. As a result, entertainment product – our product – is going to be worldwide...It can’t just be about the United States” (King, 2006, para 60). Though MLB recognizes that it must expand its marketing activities beyond the United States, there are a variety of potential political, economic, legal, and technological concerns that must be overcome to effectively grow the game of baseball and, more importantly to MLB owners, the MLB brand.

One of the primary mechanisms for growing the game of baseball and MLB’s worldwide influence was the establishment of the World Baseball Classic (WBC) in 2006 (Nagel, Brown, Rascher & McEvoy, 2010). Despite some initial problems, the 2006 tournament generated sufficient attendance and media attention that the event was contested again in 2009. After a “successful” 2009 tournament, the next WBC has been set for 2013. Though the next WBC has been scheduled, there are a variety of questions regarding the number of participants and format that have not yet been answered. However, more important are the questions regarding the growth of the WBC, MLB’s influence (rather than an “independent” governing body) over the sport’s development, and disbursement of potential emerging revenues.

This presentation will examine the current state of MLB’s globalization efforts. It will discuss pertinent issues pertaining to the past and future operation of the WBC as well as explore the likely successes and failures of other MLB marketing initiatives. The presentation will incorporate interviews with various MLB representatives as well as baseball officials from multiple countries.

### **Reference**

Nagel, M. S., Brown, M. T., Rascher, D. A., & McEvoy, C. D. (2010). Expanding global consumer market for American sports: The World Baseball Classic. In C. Santo, & G. Mildner (Eds.), *Sport and public policy* (pp. 215-229). Champaign, IL: Human Kinetics.



MOROĞLU ARSEVEN

SOUTHERN ILLINOIS UNIVERSITY  
EDWARDSVILLE



**Dr Leanne O’Leary**  
PhD, LLM(Hons), BA  
Employment Law Solicitor  
Armitage Sykes LLP  
Huddersfield, United Kingdom  
+44 1484 550420  
Leanne.OLeary@armitagesykes.co.uk  
olearylk@tcd.ie

## COLLECTIVE ORGANISATION AND EXTERNAL REGULATION OF PROFESSIONAL RUGBY LEAGUE IN THE UNITED KINGDOM<sup>1</sup>

The Super League is Europe’s premier professional rugby league competition<sup>2</sup>. It is regulated by the Rugby Football League (RFL) and in 2010 involves fourteen clubs, of which thirteen are in the United Kingdom and one in France. The RFL and the clubs manage the competition’s commercial arrangements under Super League (Europe) Ltd (SLE).

Certain regulatory measures applied in the Super League competition affect detrimentally the employment interests of players<sup>3</sup>. The measures are adopted by the clubs and the RFL through decision-making processes contained in the constitutional documents of SLE and the RFL. The decision-making processes do not involve the players and there is no obligation to consult with players prior to the implementation of a measure.

Some professional rugby league players are represented by the Rugby League Players’ Association (RLPA). In 2007 the RLPA did not appoint player representatives at clubs and it did not inform players of measures or their effects for a player’s employment. The extent of consultation (if any) undertaken by the RFL with the RLPA prior to the adoption of regulatory measures was also unclear.

A number of measures adopted by the RFL and the clubs infringe European competition law. External pressure in the form of European competition law and the principles of free movement can exert a restraining influence on the RFL’s regulatory activities. Effective collective organisation of professional players is also required to control the exercise of private regulatory power. Incorporating the measures in a collective bargaining agreement balances the interests of all participants in the competition.

<sup>1</sup> The information contained in this presentation is based on doctoral research conducted by the author between 2006 and 2009. In the course of that research the author interviewed thirty-one participants in professional rugby league including the Rugby Football League, the Rugby League Players’ Association, Super League clubs, professional players, coaches and sports agents. Information extracted from the interviews was incorporated in a doctoral thesis to support arguments made regarding the organisation and regulation of the competition. The thesis, entitled “Collective Organisation and External Regulation of Professional Rugby League in the United Kingdom”, was submitted in October 2009 to fulfil the requirements of the degree of Doctor of Philosophy at Trinity College, Dublin, Ireland.

<sup>2</sup> Rugby league differs from rugby union although historically the two codes are linked: see Tony Collins, *Rugby’s Great Split: Class, Culture and the Origins of Rugby League Football* (2006) 2ed, Routledge, London.

<sup>3</sup> For example, the competition operates under a salary cap (which limits the total amount a club may spend on player salaries) and the “club trained rule” (which specifies the number of “club trained”, “federation trained” and “academy” players that a club may include in its first team).



**Dr. Dimitrios P. Panagiotopoulos**

**Associate Professor, University of Athens, Advocate-Attorney at Law**

**President of International Association of Sports Law (IASL)**

**info@iasl.org, dpanagio@iasl.org**

## **INTERNATIONAL SPORTS ACTIVITIES**

### **LEX SPORTIVA AND INTERNATIONAL LEGITIMACY**

The origin and legal nature of the rules of law in the world of sport is an important issue in the field of Sports Law. The sports legal order (*Lex Sportiva*) consists of state law and the law of the national and international bodies representing organised sport. However, this special feature of the *Lex Sportiva*, raises a series of questions concerning: a) the application of its provisions in each national sports legal order and b) conflicts regarding which law will prevail.

The complexity of the regulation and organisation of international sport activities gives rise for the need to clarify the relationship between *Lex Sportiva* rules and: a) the domestic law of any given state and the national legal order, b) the international legal order and c) the law of supranational bodies such as the European Union.

Private initiative which shaped and organised sport as we know it today played a leading role in creating the field of sporting activity. Key elements of the sporting autonomy at state level are:

- a) Volunteers and sports clubs as key factors in the development of sport,
- b) The recognition of organisational autonomy for the sports movement, even if subjected to restrictions and
- c) Its social importance, and the need for financial support.

The autonomous Olympic and sporting legal order (*Lex Sportiva* and *Lex Olympica*), to the extent that they relate to the domestic *Lex Sportiva* (rules of sports federations) prevails over national rules of sports law while in the case of conflict between rules on a sport covered by the Olympic Charter it regulates special problems concerning such sport in a unique manner. In this context, there cannot be any conflict between the *Lex Sportiva* system and public international law. *Lex Sportiva*, as a special body of sporting, non-national law, regulates relations within the sporting order, which is a field that international law would not appear to be interested in regulating.

Major questions for sports law are, who is the proper judge and how should sporting disputes be resolved by the sporting jurisdictional order. Another major question is whether a form of private law, such as international, non-national sports law -the *Lex Sportiva*- can ensure its own implementation, and how conflicts between national sporting legal orders and national courts can be avoided.

Disputes are initially resolved before the jurisdictional bodies of sports associations and then by recourse to the Court of Arbitration for Sport (CAS).

In the case of professional athletes, their actions are subject to the rules of the European Union, as actions related to an economic activity. Matters of personal and economic freedoms of the athletes are also related with provisions of Federations regulating the number of non-national players in professional leagues.

Similarly in the international field of sporting activity, the expansion of the rules of the *Lex Sportiva*, on matters not purely of sporting nature, for example on areas of economic and personal freedom, lacks or a certain legitimizing basis. Such ability could only be given to a legal entity contracted on the basis of international law. A legal entity provided with the competence to issue such rules and regulations. Furthermore such legal entities could be provided with the competence to shape the *Lex Sportiva* to the appropriate point in accordance with the general principles of law relating to personal and economic freedom.

The second matter is the lack of the special procedural provisions needed for the resolution of the relevant disputes concerning the application of both the *Lex Sportiva* rules, and the rules of sports and the public law, applied either by sports special tribunals, or by the specifically legitimized courts for the remaining differences in sport. Consequently, the recourse to a tribunal such the Court of Arbitration for Sport (CAS), at an international legitimized basis, would give the right solution to the problem of resolving sport related disputes both internationally and nationally.

Such a legitimation would also be the router for the determination of the jurisdiction of the resolution bodies for disputes arising in the field of the *Lex Sportiva*, while solving once and for all the problem of ensuring a “fair” trial.



**Panagiotis Panagiotopoulos**  
MsC in Sports Management  
PhD Candidate, University of Thrace, Faculty of Law  
ppanagiotop@hotmail.com

## THE OPINION OF THE FANS FOR SPORTS JUSTICE IN GREECE

This survey investigates the opinion and feelings of fans in relation to the Greek sports justice system and its bodies, namely it aims to gauge the level of satisfaction of fans related to sports justice.

The Greek Sports Justice system is complex and its bodies are not recognized by the Constitution as courts. Their decisions are either considered of administrative nature, subject to appeal at the Conseil d'Etat (see the example of the motorcycle federation of Greece - MO.TO.E.<sup>1</sup>), or of civil nature subject to appeal at the Civil Courts of second instance.

The survey follows the methodology of empirical research and in combination with statistical data, the relevant literature, and case law, leads us to some conclusions. The problem in this investigation is the way fans form an opinion on sports courts, and their perception of the Greek sports justice system.

The survey investigated the views of fans on the structure of the Greek sports justice system, its alleged defects, whether it fulfills its role, their opinions in relation to its rulings, and finally whether they feel justice is served.

For the purpose of this research, a questionnaire of 30 questions and 45 variables was created and distributed to five hundred people that were selected randomly among students of the Faculty of Physical Education and Sports Education and the Faculty of Law of the University of Athens, Lawyers and members of the Hellenic Center on Research of Sports Law – HCRSL.

After the data collection and the verification of its statistical significance (Cronbach's  $\alpha = 0.768$ ), ( $K.M.O.^2 = 0.757$  and  $27 FL^3 > 0.6$ ), it was thoroughly analysed with the use of SPSS (quantification of the data once they were grouped).

The analysis of the data leads us to the finding that fans have a negative view of the Greek sports justice system, mainly because of the lack of specialised judges, the archaic relevant legislation, and the structure of this system that does not ensure a fair trial despite the relevant provisions of the Greek Constitution and the European Convention for the protection of Human Rights.

Furthermore, the analysis shows that the negative feelings of fans for the Greek sports justice system do not affect their feelings towards their beloved clubs and their devotion to them.

Finally, the survey shows that fans favour the creation of a special Court with specialised Judges as the best solution for the purification of the Greek sports justice system.

<sup>1</sup> A very important decision from the European Court of Justice in C-49/07 *Motosykletistiki Omospondia Ellados NPID (MOTOE) v Elliniko Dimosio*, 1 July 2008.

<sup>2</sup> The Kaiser-Meyer-Olkin test measures the sampling adequacy which should be greater than 0.5 for a satisfactory factor analysis to proceed.

<sup>3</sup> The Factor Loadings are the correlation coefficients between the variables and factors.



**Dr. Marios Papaloukas**

**Assist. Professor in Sports Law**

**Univ. of Peloponnese**

**Attorney at Law**

**14, Moschonission Str.**

**11252 – Athens**

**Tel.: +30 210 8212133, +30 6944540350**

**[www.papaloukas.gr](http://www.papaloukas.gr)**

**[mpapalouka@gmail.com](mailto:mpapalouka@gmail.com)**

**“SPORTS IMAGE” AND THE LAW**

In the context of what is called the new media environment, the term “sports image” is used meaning the athlete’s right to their own image as well as the right to exploit commercially a sports event.

Under Greek law sports events are not recognised as original intellectual products, so they are not protected under the Law on Intellectual Property. Individuals (sportsmen) producing the sports event, are not aware of the result, i.e. its final form. The elements of competition and improvisation combined with physical contact are enough to guarantee a different result every time, no matter how many times the event is repeated. This is why a special legal provision had to be introduced.

To what the athlete’s right to their own image is concerned the Greek legislator seems to have defined the personality right in a general way allowing thus the content of this right to be constantly expanded in order to cover for the ever growing needs of our times. As a result enumerating all the rights contained in the general personality right is neither possible nor useful. It is up to the bearer of the right to decide each time whether their personality is offended in any way. The protection of one’s image right does not come without restrictions or exceptions. Also the athlete as a bearer of the right may “legitimise” an infringement. The most common legal tools in order to justify an otherwise illegal infringement in most European countries are the athlete’s consent or the doctrine of the acceptance of risk or the public’s right to information.

The purpose of the present paper is to present the Greek law concerning the protection of the sports image as well as the exceptions to this protection and to compare the provisions to those of other European countries in order to show that more often than not similar problems inevitably result to similar solutions.





**Katarina Pijetlovic, LL.M, LL.Lic**  
Lecturer in EU Law  
Tallinn Law School  
Tallinn University of Technology  
+372 5825 4072  
katarina.pijetlovic@ttu.ee

#### LEGAL ANALYSIS OF THE ECJ JUDGMENT IN C-325/08 *BERNARD*

The aim of this paper is to provide a multi-context legal analysis of the *Bernard* judgment and its practical impact on sports. It can be said that the judgment has contributed towards the specificity of sports and further recognition of their social and educational function mentioned in the second subparagraph of Article 165(1) TFEU. However, the question remains if and to what extent has this article been a factor behind the rule in *Bernard* or whether the pre-TFEU sports law and policy were decisive factors with Article 165(1) performing only a symbolic supportive role. Such exploration of the reasons behind the rule should shed some light on the yet undecided legal issues in sports. Thus, reflecting on *Bosman* and considering the compliance of a '6+5' rule against free movement provisions will be particularly interesting in the light of *Bernard*. This also involves consideration of those analytical points of the judgment that might render *Bernard* in conflict with *Bosman* and other ECJ judgments on the one hand, and the search for consistency, on the other. Furthermore, in terms of immediate practical contribution of the judgment the enquiry focuses on the issue of application of the *Bernard* rule regarding training compensation to other sports and other sectors. A follow-up question regards the criteria for calculation of training compensation and who should be paying for it. Finally, current FIFA regulations and CAS jurisprudence on compensation systems, notably in *Matuzalem* and *Webster*, will be looked at through the lens of *Bernard*.





**Josephine (Jo) R. Potuto**

**Richard H. Larson Professor of Constitutional Law**

**Faculty Athletics Representative**

**College of Law, University of Nebraska Lincoln**

**National Collegiate Athletic Association Division I Committee of Infractions Past Chair**

**232 LAW UNL 68583-0902**

**(402)472-1252**

**jpotuto1@unl.edu, dschiessler2@unl.edu**

**PRIVATE ASSOCIATIONS GOVERNING SPORT IN THE U.S.  
THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION  
STRUCTURE, POLICY, RULES ENFORCEMENT, AND EXPERIENCES FROM THE  
COMMITTEE OF INFRACTIONS**

The National Collegiate Athletics Association (NCAA) is a private association of more than 1000 U.S. colleges and universities. It administers amateur athletics competition among teams of student-athletes. As with any athletics association, the NCAA sets and enforces rules of competition and also monitors certain conduct off the field that has impact on competition (performance-enhancing substances, for example). Because the NCAA regulates competition among *students*, its regulations extend to other areas, including academic standards to compete and financial aid, as these also have impact on a level playing field.

My goals in this presentation are two-fold. First, I seek to provide a fuller picture of how a collegiate model of athletics participation is administered. To that end, I will describe the NCAA's organizational structure, areas that are regulated, and the relationship of the NCAA national office to member institutions. Second, I focus on how the NCAA enforces and interprets rules. Here I will discuss the Committee on Infractions, which handles institutional culpability for major violations and is a form of alternative dispute resolution. Here I also will discuss the student-athlete reinstatement [to eligibility] process, which deals with the eligibility consequences to student-athletes of their commission of violations. To clarify the relationship between institutional and individual (student-athlete, coach, athletics staff member, booster) responsibility, I will briefly address agency law. Finally, I will address the nature of private associations and the legal structure in the United States that governs those, like the NCAA, whose membership is multi-state or national.





**Reza Shajie**

Islamic Azad University, Young Researchers Club (YRC) of Tehran Science & Research Branch  
reza\_sunboy@yahoo.com

**Dr. Hamid Ghasemi**

Deputy of Communication & Education & Cultural Affairs,  
Physical Education Organization- I.R. IRAN  
Assistant Professor, Sport Management  
Department of Kinesiology  
Islamic Azad University, Karaj Branch, Iran

**HOW TO DEVELOP ENTREPRENEURSHIP CULTURE IN THE SPORT INDUSTRY:  
OBSTACLES AND CHALLENGES – EXPERIENCES FROM IRAN**

The rapid changes in science and technology throughout the world and the transformation of sport into an industry, have led to physical education and sport professionals in Iran being confronted with new challenges. To overcome such challenges sport professionals need to employ creative approaches and methods (Shajie & Hojatian, 2006). In this regard, the role of entrepreneurship and entrepreneurs can be instrumental. Entrepreneurship may bring economical boom, change in life style and creation of career opportunities for people from all walks of life (Ball, 2005).

The main objective of this research is to investigate entrepreneurship culture in the Iranian sport industry with an emphasis on the obstacles and demographical problems in this geographic region. Factors such as education system, values, outlooks, cliché beliefs, the contrast of roles and others are examined. For this purpose, 97 males and 64 females, randomly selected from sport and physical education departments in Governmental, Non-profitable and Profitable universities in Iran were stratified and Shajie Entrepreneurship Obstacles measurement questionnaires (SEOMQ) were distributed. Data analysis was performed by one way ANOVA, Independent-samples T test, and Pearson correlation coefficient. Results showed that major entrepreneurship obstacles are Problems in providing capital (23.5 %), Government policies (18.2 %), academic field (8.4 %), lack of career opportunities (7.8 %), lack of guidance and consultation (6.5 %), Cultural problems of the society (5.2 %) and Economical problems of the society (5.2 %). Therefore, physical education students require organized and accurate plans for developing entrepreneurship behavior and overcoming the existing obstacles and problems.





**Reza Shajie**

Islamic Azad University, Young Researchers Club (YRC) of Tehran Science & Research Branch  
reza\_sunboy@yahoo.com

**Dr. Nasrollah Javadian Sarraf**

Assistant Professor  
Department of Physical Sciences  
Faculty of Physical Education  
Ferdowsi University Of Mashhad (FUM) Iran

**Mona Nabili**

Islamic Azad University, South Tehran Branch, Iran

**Mohammad Hasan Tavakoli**

Birjand University, Iran

**Hamed Safari**

Payam Noor University, Iran

**FACTORS INFLUENCING SPORT CAREER CHOICE OF STUDENTS IN IRANIAN UNIVERSITIES**

The purpose of the study was to determine the factors that influence sport career choice of Iranian Universities' students. 97 males and 64 females, randomly selected from sport and physical education departments in Governmental, Non-profitable and Profitable universities in Iran were stratified and Kniefelkamp and Sleptiza's revised scale were distributed. Content validity was confirmed by experts and internal consistency of questions in a pilot study was 0.83. Data analysis was performed by one way ANOVA, Independent-samples T test, and Pearson correlation coefficient. There was a significant relationship between students' intellectual development of career choice and field of study and type of university as the factors of success in career choice ( $p < 0.05$ ). Based on the results, the majority of the students were willing to accept more responsibility in relation to their career choice (relativism position). The students' achievement at this level of intellectual development may arguably result from hopelessness or lack of confidence in external mechanisms, rather than the result of educational outputs. Therefore, conducting career counseling workshops for faculty members and students, offering internship courses, motivating the students to network professionally and develop research agendas, are useful to enhance intellectual development in sport and physical education students.





**Rudresh Pratap Singh**  
Ram Manohar Lohiya National Law University, India  
rudreshpsingh@gmail.com

## **ANTITRUST LAWS AND THEIR RELEVANCE IN THE PROFESSIONAL SPORTS INDUSTRY – EXPERIENCES AND THE INDIAN PERSPECTIVE**

Sport accounts for 3% of world trade. With the development of antitrust laws, it has become a major concern for competition authorities across the globe because this field has historically been dominated/controlled by a very small group of people. With the ever-increasing commercialization of sports, the sporting clubs/federations/corporate houses that govern/promote sport invest heavily in it by means of sponsorships, player acquisitions, etc. These federations or corporate houses employ all affordable avenues that may maximise profits so that they can maintain a sustainable and lucrative business practice. They also justify their profit maximising practices and the risks involved on the basis of the traditional self-regulation of sport. These practices raise antitrust concerns.

With this in the backdrop the main focus of this paper would be to compare and explain practices of US, EU, and Indian professional sport governing entities that may be held as anti-competitive under the respective competition laws. In the process, relevant theory and jurisprudence will reflect on US and EU Competition Laws and the 2002 Indian Competition Act, the recent SCOTUS decision in *American Needle*, the ECJ's decisions in *Meca-Medina* and *Bernard*, and contemporary problems in Indian professional (and rapidly growing) sports such as cricket, basketball, soccer, tennis, track and field, swimming and diving, auto racing, field hockey, water sports, et al<sup>1</sup>. The paper also highlights the intersection between sport and antitrust laws with regard to dominance of federations, sale of exclusive rights, denial of the use of stadiums, and the Essential Facilities Doctrine. This research addresses significant aspects of the integration of sports in competition policies, the application and enforcement of contemporary competition law, and the need for sports authorities to abide by national laws upholding fair competition.

---

<sup>1</sup> See K.K. Ramachandran, *Sports in the country of a billion: a study of the marketing possibilities and the resulting development of less popular sports in India*, in Simon Chadwick and Dave Arthur (eds.) *International Cases in the Business of Sport*, pp 165-177, (2008).





**Jacopo Tognon**  
Attorney At Law  
Professor of European Sport Law  
Jean Monnet Chair, Padova University  
Court of Arbitration for Sport Member  
[jacopo.tognon@unipd.it](mailto:jacopo.tognon@unipd.it), [jacopotognon@avvocatitognon.com](mailto:jacopotognon@avvocatitognon.com)  
<http://www.avvocatitognon.com/jacopotognon.htm>

#### **THE COURT OF ARBITRATION FOR SPORT AND DOPING CASES: THE PROBLEM OF REFUSAL AND COMPELLING JUSTIFICATION UPON ART. 2.3 OF THE WADA CODE**

Doping constitutes a conduct that is clearly against the principles of sporting fair play, as well as being dangerous to the health of the athletes. In the international sphere there are numerous conventions that govern this issue, of which the most important are the Strasbourg Convention of 1989 and the Unesco Convention of 2005. In the sporting field, however, the main sources of governance are the Medical Code (1995-1995), the Olympics Anti-Doping Code (1999-2003) and, since 1<sup>st</sup> January 2004, the WADA Code. WADA is the Worldwide Anti-Doping Agency, which has the task of harmonizing national legislation and promoting research, as well as discouraging improper behaviour. The code that is currently in force was issued in November 2007 in Madrid. In matters of anti-doping procedure the TAS is responsible as appeal judge and throughout the years has developed an efficacious style of jurisprudence in evidential standards, objective responsibility, contractual law and *lex mitior*. Among the most debated violations of the WADA Code in this period is that of article 2.3, that is the refusal, without justification, to undergo blood testing. Ample space will be given to cases CAS 2009/A/1857 (Mannini/Possanzini versus Coni) and CAS 2009/A/1892 (Slay and Diaz versus Coni), the first cases to pose this problem, as well as a critique of the interpretation provided by the CAS.





**Dr. Özgerhan Tolunay**  
Doctor of law, Attorney at law,  
TOLUN Consulting Trading  
Sport Law Center  
13, chemin des Jonchères  
CH-2022 Bevaix  
Tél. : +41.32.842 18 90  
Fax : +41.32.841 34 59  
E-Mail : [toluninfo@tolun.ch](mailto:toluninfo@tolun.ch)

### **THE LEGAL STATUS OF THE PLAYERS' AGENTS IN TURKISH CIVIL LAW: COMPARISON BETWEEN THE EU ACQUIS**

As in any other modern country, the role and number of players' agents in Turkey have significantly increased in recent years. Legal status of Turkish players' agents, who have reached hundreds in numbers and created hundreds of millions of USD in value in professional sports, follow this trend.

The related agents' developments may be studied under two groups:

- Legal Status of the Players' Agents under Turkish Civil Law.
  - Regime (Regulations) of the International and National Sports Federations.
- EU Acquis will affect Turkish Legislation on this matter, as it has done in others.

There are three Acts which may be applicable to the activities of players' agents at present under Turkish private internal law :

Turkish Civil Code (TMK)  
Turkish Code of Obligations – Contract Law (TBK)  
Turkish Commerce Law (TTK)

One can not say that the current situation fully responds to the expectations arising from agency contracts concluded by players' agents with clubs and players, as well as ancillary matters resulting from the activities of players' agents.

Quite naturally it is the amendments and coordination in legislation that are required in view of rapid developments in sports and EU Acquis; moreover it is within the realm of possibility that a special Act on players' agents could be enacted.

Furthermore, the extent to which Turkish players' agents could enjoy the Cross-Border Services freedom under EU should also be scrutinized.

In synthesis, three main developments may be foreseen:

(EU's role will also be significant on the matter, as provided in the study on sport agents in the EU published in November 2009).

- Regulations of International and National Sports Federations applicable to the activities of sports agents that restrict EU Law freedoms are presently placed under the tolerance recognized by EU (Piau case and last EU study). These rules may be revoked or amended.
- Harmonization among countries may increase in terms of agents' regulations.
- Measures may be taken in the sector for improving ethics, correcting agents' image, and toward professionalization of sport placement activities.





**Damir Valeev**

**Attorney at Law**

**Lecturer - Westminster International University in Tashkent**

**Legal Consultant - Uzbekistan Committee on Preparation for Olympic Games in London 2012**

**Legal Manager - Uzbekistan National Olympic Team, Olympic Games in Beijing 2008**

**Editor Assistant - Harvard Journal of Sports and Entertainment Law**

**LL.M. in International Business Law (Fletcher School of Law)**

**B.A. in Sports Studies and Management (Tashkent Institute of Sports)**

**Tel.: +1 (617) 717-4869**

**E-mail: drvaleev@gmail.com**

**SHAPING SPORTS LAW IN CENTRAL ASIA:  
WHY SOUND REGULATION MATTERS?**

The growing importance of sport and sports-related international ambitions of Central Asian countries<sup>1</sup> have raised interest in the region as an emerging sports market. Sports achievements have been traditionally viewed by the states in the region as a means to boost national pride and promote a country's image internationally. However, this domain still considerably lacks specialized regulation and public policy remains predominantly focused on social implications of sport. Although all Central Asian countries have adopted laws "On Physical Culture and Sports", the regulatory framework does not specifically address the challenges of the contemporary market-driven sports industry. Despite an increasing number of mega-deals in the region<sup>2</sup> sports law remains an exotic area both for scholars and practitioners. Meanwhile, disputes over athletes' contracts breaches progressively increase. If foreign stars' interests are usually protected by well-drafted contracts and also by the significance of their deals to the attractiveness of local sports market, domestic athletes do not enjoy fundamental legal protection and in many occasions are bound by informal agreements that do not provide any remedies in case of breach. Given the lack of efficient legal protection and mechanisms of sports disputes resolution, regulatory intervention addressing commercial relations in sports is critical for all Central Asian countries. Sports regulation in this context should also ensure that investments brought to this sector target sustainable development of sport in Central Asia, rather than pursue short-term commercial goals or media effects.

Based on the fieldwork experience in Central Asia and Uzbekistan in particular, the author intends to analyze common problems and challenges of shaping sports law in the region, with particular insight into the creation of an efficient legal framework for agency and contract relations with athletes and sports managers, based on the analysis of Standard Player Contracts of various sports federations and in several jurisdictions<sup>3</sup>, as well as mechanisms of sports disputes resolution<sup>4</sup>. Considering the importance of the legal profession in finding solutions to the aforementioned problems, a study focusing on initiatives and accomplishments of sports law promotion in the academic realm and legal training will supplement the analysis.

<sup>1</sup> In modern context Central Asia includes such countries as, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan.

<sup>2</sup> Such as \$14 million two-year contract with Brazilian football player Rivaldo to play for Uzbek club Bunyodkor and \$18 million annually two-year contract with Luiz Felipe Scolari to coach the same team.

<sup>3</sup> The analysis will specifically cover: FIFA Regulations on the Status and Transfers of Players, Players' Agents Regulations, Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber; FIBA Players' Agent and Player Standard Contract; NBA Standard Player Agent Contract.

<sup>4</sup> Such as Court of Arbitration for Sport (CAS), FIFA Dispute Resolution Chamber (DRC), FIBA Arbitral Tribunal (FAT) and other alternative dispute resolution mechanisms in sports.





**Professor John Wolohan**  
Ithaca College  
Professor and Chair  
Sport Management and Media  
School of Health Sciences and Human Performance  
13 Hill Center  
Ithaca, NY 14850  
(607) 274-3128  
jwolohan@ithaca.edu

**A LOOK AT THE CURRENT NBA LABOR NEGOTIATIONS:  
WHAT ARE THE ISSUES AND WHAT ARE THE STAKES?**

With the National Basketball Association (NBA) and the National Basketball Players Association (NBPA) beginning talks on a new Collective Bargaining Agreement (CBA) there are several issues to be resolved. The purpose of this presentation is to examine some of the key issues surrounding the new CBA. As a backdrop for this examination, the presentation will use the various CBAs from other American professional sports leagues.

In particular, the presentation will begin by examining the impact of the economic downturn on NBA teams under the current CBA, i.e. declining attendance v. escalating first year player salaries and the unsustainable, per NBA officials, cap exceptions. Next, the presentation examines the owners' initial proposal, which has been floating in the press, as a way of reducing the financial impact of the current CBA. Some of the proposed terms include the redistribution of Basketball Related Income (BRI), with teams keeping a larger slice of the total revenue pie, making some long-term deals non-guaranteed, which would allow teams to cut players without paying the full value of their contracts. In addition, the owners would also like to change the current salary-cap system. In particular, they would like to move from the current soft cap, with its' many exceptions, to a harder cap with few or no cap exceptions.

The presentation will also examine some of the counter proposals by the NBPA, as published over the summer of 2010, with particular attention to those proposals that challenge or contradict the NBA positions.

Finally, the presentation will conclude by examining the potential impact any new CBA might have on player movement to and from countries outside the United States.

