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CHINA'S SPORTS LAW

By:

JAMES A.R. NAFZIGER* and LI WEI**

China's first Sports Law[1] reflects the complexity of a legal system in transition, giving new meaning to the concept of Market-Leninism.[2] On one hand, the legislation confirms state control over sports by relying heavily on standard political ideology, centralized policy-making, and traditional administrative practice to help the national government achieve several major objectives. These objectives include gaining greater international prestige from the success of Chinese athletes; creating a structure of dynamic sports organizations; providing reliable sources of funding for sports; and deterring the use of banned drugs in sports activities, bribery of athletes sports officials, and gambling on sports events. On the other hand, the Sports Law shifts much of the day-to-day control over sports to nongovernmental initiatives. In particular, it has formalized the establishment of market-oriented, western-style sports associations to carry out national sports policy, develop new sources of funding, and impose sanctions against athletes for non-criminal violations of anti-doping and other organizational rules.

The Sports Law also provides for the establishment of a special body to mediate and arbitrate disputes arising in competitive sports. Although the Chinese normally prefer mediation and arbitration to adjudication, the new dispute resolution body is noteworthy because it will share its authority to resolve disputes with the nongovernmental sports associations. The new mechanism will put China squarely in line with a transnational trend toward resolving sports disputes by a combination of administrative review within sports associations and specialized arbitration.[3]

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** Member, Oregon Bar; Assistant Professor of Law, Shanghai University (1987-1991). The authors would like to thank Yong Zhao for helping to translate the Sports Law.

1 Zhonghua Renmin Gongheguo Tiyu Fa (The Sports Law of the People's Republic of China) (1995) [hereinafter Sports Law], was adopted by the Standing Committee of the National People's Congress (NPC), which is China's national legislative organ. Strictly speaking, the Sports Law is modern China's second. The Nationalist government built China's first administrative structure for sports and adopted the National Sports Law of 1929. After the Maoist revolution of 1949, however, the new government of the People's Republic of China annulled the 1929 law together with all other laws enacted by the Nationalist government. Renping Jiang & Juchang Liu, Tiyu Faxue (Sports Law Study) 33 (1994).

2 A term borrowed from Nicholas D. Kristof & Sheryl WuDunn, China Wakes 440 (1994).

3 The Court of Arbitration for Sport is especially significant. See, e.g., Luig

From a western viewpoint, what is missing in the Sports Law is, first, an identification of the rights of athletes, for example, to enjoy impartial rules of eligibility and due process; and, second, any recognition that adjudication can play a positive role by providing a remedy in exceptional cases involving the most serious breaches of fairness and justice. The new Chinese legislation may therefore not be an appropriate model for Europe and North America, but it does serve as a reminder that western principles of individualism and personal autonomy should not be taken for granted.

Beyond such generalities, it is difficult to situate the new law among national sports regimes. Comparative sports law is in its infancy.[4] Analysis is largely confined to specific issues, such as justiciability and judicial review of sports disputes,[5] eligibility of athletes for competition,[6] and commercial sponsorships and marketing of athletes and competition.[7] More comprehensive studies have focused largely on the growth of a European regime of sports law.[8] Although national programs in such countries as the former Soviet Union, the former East Germany and Cuba have attracted much public attention, there has been very little comparative scholarship on sports regimes outside the western industrialized countries. The enactment of China's Sports Law therefore provides an opportunity to gain fresh perspectives on developments not only in China itself but in a global arena — sports — of growing legal import.

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i Fumagalli, «Il Tribunale Arbitrale dello Sport: Bilancia dell'Attivitΰ e Prospettive Future,» 47 Rivista di Diritto Sportivo 715 (1995); James A.R. Nafziger, «International Sports Law as a Process for Resolving Disputes,» 45 Int'l & Comp. L.Q. 130, 143 (1996).

4 For an annotated list of international and comparative legal scholarship, see Sports Law and Legislation: An Annotated Bibliography 115-23, 161-64 (John Hladczuk, Sharon Hladczuk, Craig Slater & Adam Epstein eds. 1991).

5 See, e.g., Margareta Baddeley, «La Rιsolution des Litiges dans le Sport International: Importance et Particularitιs du Droit Suisse,» Revue Juridique et Ιconomique du Sport, No. 43, at 5 (1997) (comparison of Swiss and international authority); Markus Buchberger, Die άberprύfbarkeit sportverbandsrechtlicher Entscheidungen durch die ordentlich Gerichtsbarkeit: Ein Vergleich der Rechtslage in der Bundesrepublik Deutschland und den Vereinigten Staaten von Amerika (1997) (unpublished Ph.D. dissertation, Ruhr University - Bochum, copy on file at Willamette University with the authors) (German and United States law); Burkhard Hess, «Hochleistungssportler zwischen internationaler Verbandsmacht und nationaler Gerichtsbarkeit,» ZZPInt. 1, at 371 (1996) (German, United States and international sports law); Patrick Jacq, «L'intervention du Juge dans le reglement des conflits sportifs dans les Etats-Membres de la Communautι Europιene,» Proceedings of the 1st International Congress of Sports Law 403 (1993) (judicial role as it pertains to sports in several European legal regimes.

6 See, e.g., Nafziger, supra note 3, at 134-49 (comparison of English and United States law).

7 Klaus Vieweg, «Sponsoring und Sportrecht (Teil I),» 1 Spurt: Zeitschrift fύr Sport und Recht, Nos. 1-2, at 6 (1994); id. (Teil II), No. 3, at 73 (1994 (German and United States law).

8 See, e.g., Michael R. Will, Auf dem Wege zu Einem Europδischen Sportrecht? (1988) (essays by Autexier, Bermejo Vera, de Cristofaro, and Hφrster on sports law regimes in France, Spain, Italy, England, and Portugal, respectively); Mario Pescante, «Different Models of Sports Law in Europe,» International Athletic Foundation, Supplement to the Official Proceedings of the IAF Symposium on Sport & Law 127 (1997) (classification of European national sports regimes into laissez-faire and interventionist models, largely correlated, respectively, with northern and southern European legal systems).

In order to clarify the main characteristics of China's Sports Law for comparative purposes, this study traces its origins, defines its objects and purposes, and summarizes its most important provisions. The first English translation of it appears in the appendix.

Historical and Political Background

Until the National People's Congress (NPC) enacted the Sports Law in 1995, the powerful State Physical Culture and Sports Commission (SPCSC) governed Chinese athletic activity. Its policies and decisions were based on three administrative rules adopted by the State Council and 523 regulations of the SPCSC.[1] Provincial sports commissions helped implement SPCSC policies and decisions. The Sports Law, though comprehensive and innovative, is rudimentary in style, reflecting its bureaucratic foundations. Its provisions appear to claim only minimum authority over administrative discretion. They are more like policy declarations than concrete rules.[2] Nevertheless, the policy declarations mark new directions. The signposts will be a new set of regulations that specifically implement the law, together with whatever subsequent regulations the State Council — China's central administrative organ -- or the General Bureau of Physical Culture and Sports (GBPCS)[3] may independently adopt. Provincial legislation, encouraged by the national Sports Law, further elaborates the new sports regime.[4] To understand the evolving Chinese regime of sports law, a little background will be helpful.

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1 Law & Rule Section, Law Division, State Physical Culture and Sports Commission, Yu Tiyufa Youguande Jige Zhongdian Wenti [Some Significant Issues About the Sports Law] 4 (1995) (on file with the authors) [hereinafter Issues].
2 Indeed, the declared objective of the law is simply to set forth general principles. Wang Junpu, «Result of Countless People's Hard Work,» People's Daily (Overseas ed.), Sept. 27, 1995, at 5; Issues, supra note 9, at 8.
3 As a result of reforms in the administrative system adopted by the National People's Congress (NPC) in 1998, the former State Physical Culture and Sports Commission, which used to be a ministry represented in the State Council, was downgraded to the sub-ministry level of a bureau and was renamed the General Bureau of Physical Culture and Sports. This change reflects the diminished role to be played by a central political organ in Chinese sports. Li Peng, «Zhengfu Gongzuo Baogao» («Report on Governmental Work»), People's Daily, March 21, 1998, at 1.
4 By September 1997, provincial legislatures had adopted 22 sports laws. Xinhua News Agency Reporter, «Zhongguo Tiyu Hui Huangde Wunian» («The Glorious Five Years of the Chinese Sports»), People's Daily (Overseas ed.), September 5, 1997, at 10.

A. The Constitutional and Ideological Premises

The Chinese Constitution provides that "[t]he state develops physical culture and promotes mass sports activities to build up the people's physical fitness."[1] It is not surprising, therefore, that over a third of the provisions in the Sports Law emphasize the traditional Maoist principle that sports should serve «the people.»[2] «Sports for all» is a hallmark of the new legislation, forged by Mao Zedong's understanding and resolution of modern Chinese history.[3]

Although Mao himself did not originate China's mass exercise movement, its historic roots are not deep. Despite a long history of athletic competition in China,[4] Confucian tradition frowned on sport, particularly as a profession.[5] Only at the turn of the twentieth century did Chinese educational policy, on the initiative of foreign missionary and military schools, begin to encourage the development of athletic training as an antidote to China's persistent weakness.[6] The modern Chinese sports movement originated from this development.

Mao's first published article, which appeared in 1917, was entitled "A Study of Physical Education"(Tiyu zhi Yanjiu).[7] It was prompted by his

1 Constitution of the People's Republic of China, art. 21 (1982).

2 The Sports Law, infra, Appendix. Se also Wang Shuwen, «Report of the Legal Commission of the NPC on the Deliberation of the Sports Law (Draft)», in Zhonghua Renmin Gongheguo Tiyu Fa (The PRC's Sports Law) 18 (1995) [hereinafter 1995 Sports Report].

3 Zou Sicheng, «China's Sports Poised for Reform,» Beijing Rev., July 15-22, 1995, at 8-10.

4 Records of Chinese sports events go back about three thousand years. See, e.g., Jiang & Liu, supra note 1, at 26-27. See also, «Sports in China Has Ancient History,» Beijing Rev., Feb. 3-10, 1986, at 32.

5 Ralph C. Wilcox, Sport in the Global Village 407 (1994). In Confucian thought, brains rule and brawn is ruled. Athletes were typically considered to be brawny. Thus, as late as the end of 1980's, when China began to commercialize sports, Chinese athletes rejected sports as a profession. Even those who had won world championships, such as gymnast Lou Yun, refused to become professionals. Trip Gabriel, «China Strains for Olympic Glory,» N.Y. Times., Apr. 24, 1988, (Magazine), at 30, 33. See also Y.L. Fung, A Short History of Chinese Philosophy (1948). A 1983 survey of 1,632 Beijing residents showed that athletes ranked eighth out of fifty occupations in terms of occupational prestige, below «mental workers», such as doctors, engineers, scientists, writers, college and middle school teachers, officials, accountants, secretaries, and librarians. See Lin Nan & Xie Wen, «Occupational Prestige in Urban China,» 93 Am. J Soc. 793-832, 805 (1988).

6 It was commonly thought that the poor health of the modern Chinese people, which was partly attributable to opium-smoking and indolence, contributed to China's tragic and humiliating sufferings in modern history. As a remedy, modern Chinese sports education began to appear in schools at the turn of the century. Jiang & Liu, supra note 1, at 30-32. Although athletic programs for the purpose of body-building started in military schools as early as 1875, they were not the same as the sports education implemented in non-military schools that initiated and shaped the modern Chinese sports movement. See Susan Brownell, Training the Body for China 39 (1995).

7 See John M. Hoberman, Sports and Political Ideology 219-20 (1984). The SPCSC republished Mao's article recently as a reminder of the importance and patriotic significance of mass sports. The achievements of Chinese athletes, especially those who participate in international competitions, are said to confirm the superiority of the socialist system and the physical health of the Chinese people. People's Daily (Overseas ed.), Dec. 27, 1995, at 5; Sports Law, art. 27, infra, Appendix.

concern about the effect of widespread poor health among the Chinese people. While the Chinese word for physical culture ("Tiyu") embraces three activities--sports, physical education and exercise--Mao trumpeted the virtues of exercise above all.[8] His enthusiasm for mass exercise grew out of contemporary intellectual discourse about the connection between sports and nation-building.

Mao's concept of physical culture, expressed in the revolutionary adage that a healthy body and mind beget a strong socialist nation, remains the official ideology.[9] In 1952, after consolidating his victory in the Chinese Civil War, Mao called on the Chinese people to «promote physical culture and sports, and strengthen the people's physique.[10] Accordingly, the Chinese government established a program called The National Physical Training Program, based on the Soviet model, as the essence of mass exercise. The Sports Law reinforces the current National Fitness Program, which the SPCSC adopted in 1995.

B. Characteristics of Maoist and Early Post-Maoist Sports Diplomacy

During the Maoist era (1949-76), China's commitment to mass exercise did not translate into victories at the Olympic Games or other international competitions. Unlike the former Soviet Union and its East European satellites, particularly East Germany, China did not use sports for national aggrandizement. Beijing did not seem to recognize the role of mass exercise in helping China achieve the status of a world power even though Mao extolled its virtues in building the nation and the socialist order. Even China's limited aspiration to leadership in the Third World did not prompt an assertion of athletic prowess. Instead, Beijing's sports policy was insular and reactionary. The Chinese government apparently wanted to use sports simply for nation-building and as a means of protest in diplomacy.

"Friendship first, competition second" was the national motto in international competition. The bright-eyed and rosy-cheeked waves of peasants and workers depicted in propaganda posters and postage stamps therefore did not set any world records. Indeed, they could not even compete in the Olympic Games for several years after the P.R.C. withdrew its team in 1956 to protest the presence of Taiwan at the Melbourne Games that year. During the Cultural Revolution (1966-1976), "Maoist zealots considered sports a manifestation of bourgeois self-centeredness.»[11] After

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8 Hoberman, supra note 19, at 222-23.

9 See e.g., Brownell, supra note 18, at 44-48, 57, 219-20 (1984). See also, The Xinhua News Agency Reporter, supra note 12.

10 Id.

11 Gabriel, supra note 17, at 34.

the Maoist era, a P.R.C. team rejoined international sports organizations, including the Olympic Movement in 1979, but boycotted the Moscow Games the following year to protest Soviet intervention in Afghanistan. "Ping-pong diplomacy," initiated by China in 1971 during the Cultural Revolution to improve its relations with the United States, was a brilliant exception to China's generally inept conduct of sports diplomacy during the Maoist and early post-Maoist era. During those years the exclusion of Taiwanese athletes from international competition seems to have been the name of the game.[12] Ping-pong's symbolism of initiative and response and of lively human exchange could not have been lost on Beijing. China's successful manipulation of this symbolism, though impressive, was not characteristic of Chinese behavior in the global sports arena during that period of time.

12 See James A.R. Nafziger, International Sports Law 58, 74 (1988). The 1971 ping-pong initiative was followed by similar ventures, for example, "tennis diplomacy" between South Korea and China in 1984. Id. Eventually, basketball diplomacy enabled P.R.C. athletes to compete in Taiwan. Diana Lin, «First mainland basketball teams visit,» Free China J., Mar. 2, 1993, at 4.

After Mao's death in 1976, Chinese sports began to change, but not very quickly. Deng Xiaoping's Four-Modernizations[1] did not include sports, and China's new sports diplomacy continued to be decidedly clumsy. Far from glorifying international competition in the Soviet-East European tradition, China's attention remained fixed on the problem of Taiwan and other perceived challenges to her sovereignty and national dignity.[2] Far from seeking to use sports to leverage better foreign relations, China magnified minor embarrassments into full-scale disruption of cultural exchange. The Hu Na case in 1983 is a poignant example.[3] Hu Na was China's top-seeded woman tennis player and its Female Athlete of the Year in 1981. After the United States had granted political asylum to her, Beijing reacted sharply. Claiming that the grant of asylum had been immoral and a "grave incident harming the relations between the two countries,"[4] the Chinese government temporarily suspended all bilateral cultural exchange programs.

In 1984 China revived a moribund national sports program based on its new pragmatism. The backbone of this program has always been a system of part-time sports schools, where young athletes train in the afternoon after finishing their classes.[5] During the early 1980's, the government initiated work on the Sports Law.

II. Legislative History

A. The Drafting Process[6]

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1 Viz., agriculture, industry, defense, and science and technology. See Richard Evans, Deng Xiaoping and the Making of Modern China 204 (1993).

2 See Nafziger, supra note 24, at 50, 75, 89, 91-92, 93-96, 182, n.100.

3Id. at 67.

4 N.Y. Times, April 5, 1983, at A1.

5 Gabriel, supra note 17, at 30, 36.

6 See generally Issues, supra note 9, and Wang Junpu, supra note 9.

In 1980, after yet another Chinese exercise to deny Taiwanese participation, this time in the Lake Placid Winter Games, Wang Meng, Minister of the SPCSC, led China in a new, more positive direction. He proposed a sports law to complement the Four Modernizations policy of the post-Mao era. Preparatory work started in September 1980, just after the conclusion of the politically-charged Moscow Games, when the policy research section of the SPCSC began to collect foreign sports laws for reference and to outline comprehensive legislation.

In June 1984 the SPCSC convened a special session, attended by some 60 sports experts, to articulate basic principles and a structure for the proposed legislation. Immediately after the 1984 Los Ageless Olympic Games, Peng Zhen, Chairman of the Standing Committee of the National People's Congress, instructed the SPCSC to accelerate the drafting process. Only in 1988, however, did the SPCSC organize a blue-ribbon leadership corps to supervise the actual drafting by a task force. The Chinese were so optimistic about the legislative project that same year that Xinhua, the national news agency, predicted that the new law would be completed by the end of the year.[1] Instead, the process slowed down for lack of adequate resources..

In 1989 the newly elected Minister of the SPCSC, Wu Shaozu, revived the drafting process. Meanwhile, members of the NPC and the National People's Political Consultative Conference (NPPCC) jumped on the bandwagon. Such leading legislators as Qian Zhenying, Vice Chairman of the NPPCC, and Zhao Dongwan, Chairman of the Education, Science, Culture & Health Committee of the NPC, urged adoption of a sports law. In March 1992, the task force submitted a draft of it to the State Council. That body was, however, preoccupied at the time with drafting economic legislation. It therefore took no action other than to voice its dissatisfaction with the draft.

In 1993 the drafting pace picked up again, ostensibly because of Beijing's failed bid to host the Olympic Games, but also because of a mounting problem of doping among its athletes, to be discussed in Part II(B) of this article. The task force, prodded by Chinese sports authorities, prepared a revised draft that was finally submitted by the State Council to the NPC in May 1994. Thereafter, the NPC's Education, Science and Culture Committee and its Legal Affairs Committee, together with the Legal Affairs Bureau of the State Council and the SPCSC, jointly dispatched three research groups to several provinces for opinions on the draft. During more than thirty sessions these groups elicited comments on

1 Xinhua News Agency, June 10, 1988.

legislative proposals for the development of mass sports activities, the training and management of athletes, the development of a sports industry, and other topics. After further consultative sessions conducted by governmental agencies, provincial authorities and mass organizations, the NPC's powerful Standing Committee began a three-day review of the draft on June 23, 1995. All of those present voted in favor of adopting the law on August 28, 1995.

B. The Doping Issue: A Shot in the Arm of Legislative Drafting

Several objects and purposes underlie the Sports Law. The original impetus for it was simply to codify and modernize the Maoist and post-Maoist concept of mass physical culture in order to improve China's standing in global sports. Elite training would join mass exercise as a core tenet of national sports policy. As the drafting process progressed, however, charges of doping against Chinese athletes emerged as a prominent issue.[1] By the end of 1994, although Beijing still pointed a finger at foreign and capitalist origins of doping, it agreed that the problem had become a serious one for Chinese athletes and for China's reputation in the international sports arena.

This acknowledgment of reality represented a stunning reversal of Chinese policy. Until 1994 the Chinese government, though officially opposed to performance-enhancing drugs, had routinely denied the existence of a doping problem among Chinese athletes.[2] The problem, according to Beijing, was ideological. Doping was both a capitalist disease rooted in commercialization of sports activities, denial of mass participation in them, and a corruption of Marxist ideology in former socialist countries in East Europe.[3] The Chinese were theoretically drug-free because they believed in "friendship first, competition second."

Theory, however, is not necessarily reality. As sports increasingly became a tool of foreign policy and as commercialization of the Chinese sports arena grew, rumors of doping inevitably spoiled the pristine image of rosy-cheeked Chinese athletes. By 1994, evidence of doping among Chinese athletes had became rampant in the foreign press, even though random testing had turned up only isolated cases.[4] On November 29, 1994, the

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1 As late as October, 1994, when initial, unconfirmed reports indicated that Chinese athletes had tested positive for doping during the Asian Games in Hiroshima, Japan, top officials from the SPCSC and the Ministry of Foreign Affairs still insisted that the accusation of doping among Chinese athletes was motivated by "jealousy and racism" on the part of Japanese and Western sports officials. Wu Shaozu, Guanyu Zhonghua Renmin Gongheguo Tiyu Fa (Caoan) de Shuoming (An explanation of the Sports Law of the People's Republic of China (Draft)) in 1995 Sports Report, supra note 14, at 16. In submitting the draft law to the NPC, Wu Shaozu highlighted the doping issue and the importance of addressing it in the new law. Id. The SPCSC issued Temporary Regulations Banning the Use of Stimulants in Sports in March, 1995, just prior to the adoption of the Sports Law, in order to quiet the shock waves of an emerging doping scandal. «China: Law Blunts Sports Doping,» Shanghai Star, Sept. 1, 1995, at 1.

2 Steven Mufson, «China Leaps Backward; Swimmers' Positive Drug Tests Cast Pall,» Wash. Post, Dec. 6, 1994, at B2.

3 Hoberman, supra note 19, at 223-25.

4 Muttered accusations began in 1990, when the Chinese swept all the gold medals in swimming at the Beijing-hosted Asiad, but these accusations of doping were never published. The whispers continued in 1992 when Zhuang Yong broke the record in the women's 100-meter freestyle to win China's first-ever Olympic swimming gold, amidst observations about the Chinese women' s muscled physiques and deep voices. Phillip Whitten, «China's March to Swimming Dominance: Hard Work or Drugs?,» Swimming World & Junior Swimmer, Jan. 1994, at 34. A U.S. swimming

issue became unavoidable when the Olympic Council of Asia (OCA) officially notified the China Olympic Committee (COC) that eleven of her athletes, including seven swimmers, had tested positive for a banned muscle-building drug during the Hiroshima Games.[5] After a hearing, the OCA decided to withdraw all honors and medals that these athletes had won.[6] It was a major shock.[7] The OCA's action was definitive. Only then

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official openly accused them of using banned substances after they had set five world marks and won twelve gold medals. The Scandal Could Hurt China's Olympic Hopes, Asia Wk., Dec. 7, 1994, at 38; Leigh Montville, «Flora and Furor,» Sports Illus., Sept. 19, 1994, at 40-42. As the scandal became highly visible in 1993 and 1994, five Chinese swimmers tested positive for drugs. «The International Swimming Federation imposed sanctions,» The Christ. Sci. Monitor, Mar. 1, 1994, at 20; "Thirty-one Chinese athletes tested positive for banned drugs in 1994." N.Y. Times, July 28, 1995, at B8.

5 Robert Fachet, «Chinese Officials Express Shock at Drug Violations,» Wash. Post, Dec. 1, 1994, at B2.

6 «Severe Punishment,» Xinhua News Agency, Dec. 5, 1994.

7 For example, one of the accused, Lu Bin, the only athlete to break a swimming world record at the event, had garnered four gold and two silver medals at the Hiroshima Games. Another, Yang Aihua, a former gold medalist in Rome, was banned from competition for two years when testosterone appeared during a random urine test at the Games. Id.

did China officially acknowledge the reality of its problem.[8] Since then the Chinese press has reported numerous doping incidents involving Chinese athletes.[9]

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8 The Chinese Sports Daily published China's first report of the doping problem among Chinese athletes. Fachet, supra note 36.

9 For example, at the end of 1994, the International Amateur Athletic Federation (IAAF) formally notified the concerned Chinese federation that Han Qing, a woman field athlete, had failed a doping test. In 1995, two weightlifters, Li Dan and Wang Sheng, who had shared gold in the 54 kg class at the world championships in Istanbul, Turkey, were cited for doping. In November 1994 Li had set new world records for his class of 104.9kg and 106.4kg in the snatch. Yang Tianle, a member of the Anti-Doping Commission of the COC and Director of the Doping Control Center which had begun tests on athletes in 1990, openly admitted that in 1993 twenty-four athletes, some of them world-class, had tested positive and had been sanctioned accordingly. Yang claimed that China had ranked second in Asia and tenth in the world in 1993 in the roster of athletes caught using drugs. Yang's admission revealed the failure, and perhaps corruption, of China's previously undisclosed anti-doping program. «Beijing to Continue to Take Its Firm Stand Against Drug Taking in Sports,» Xinhua News Agency, Dec. 29, 1994. [hereinafter Beijing to Continue]. No such reports

The Chinese Olympic Committee (COC) asserted vehemently that it had started to take a tough line on drug-taking as early as 1989. In that year, the COC adopted the "three stricts" against doping--strict ban, strict testing and strict penalties--and established the China Doping Control Center.[10] In 1992 the COC established an anti-doping Commission.[11]

One comparative insight into China's bureaucratic process of sports management is that, throughout the doping crises, the SPCSC and the COC acted fully in concert. There was none of the bureaucratic infighting or tensions between the central ministry and the Olympic committee that have beset national sports management in other countries.

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whatsoever seem to have been published in the Chinese press before the 1994 scandal. China's official news agency, Xinhua, did not say which nation ranked first in the incidence of doping in Asia.

10 Xinhua News Agency, Dec. 24, 1994; supra note 30.

11 Beijing to Continue, supra note 40.

Apparently, however, the joint efforts of the COC and SPCSC failed to deter some Chinese athletes from using performance-enhancing drugs. Leaving ideological remonstrations aside, the refusal of governmental agencies to acknowledge the problem until it lurched out of control in 1994 may have been attributable to any or all of five possibilities: a fear of embarrassing Chinese athletes, an assumption that positive tests must have been mistaken,[1] efforts to regain control over the problem discreetly before it become too obvious, the inconsistency of drug-taking with ideological theory, or, worst of all, complicity in the doping by government sports officials.

The extent of the Chinese government's involvement in the doping of athletes is uncertain.[2] Several international officials concluded that doping could have occurred only on the government's initiative and with its encouragement, but the COC pointed the finger at individual athletes.[3]

Whether the Chinese government was deeply involved or not in the doping of national athletes, two things became clear immediately after the shocking exposure of doping among world-class swimmers in 1994. First, the Chinese government had to take some action beyond a formal recognition of the problem and, second, the draft Sports Law would have to include express provisions against doping and perhaps other sports-

1 On the eve of the 1994 scandal, the Chinese officials were still claiming that the positive tests were mistaken. For example, when people expressed surprise after Wang Junxia's record breaking performance as a long-distance runner, "[t]he Chinese authorities, deeply resentful of Western suspicions of drug use, insisted that the secret of Wang's success is simply that she trains 180 miles each week and drinks a potion made from caterpillar fungus as well as a soup made from soft-shelled turtles." Kristof & WuDunn, supra note 2, at 374 (1994).

2 Some Chinese athletes, coaches and officials of government-run sports institutes, where gifted youngsters are selected and groomed for competition, have admitted that steroid use was part of the training regimen in Chinese sports. It was reportedly common for promising young athletes, as young as 14 or 15 years of age, to start getting steroid injections at sports institutes. See Bus. Wk., June 19, 1995, at 140. Two swimming coaches working in Thailand, Ren Chun Sheng and Tien Sac Tia, claimed that China had adopted an East German-style system that relied on the use of drug by athletes. Elliott Almond, «Olympic Sports Scene,» L. A. Times, Feb. 12, 1996, at S1.

3 Dr. Yoshio Kuroda, chairman of the OCA Medical Committee, asserted that young Chinese young athletes, having no knowledge of drugs, must have been instructed by experts with such knowledge. Dave Lindorff, «Does China Feed Its Athletes 'Juice'?» Bus. Wk., June 19, 1995, at 140. Prince Alexandre de Merode, the president of the IOC's Medical Commission, suspected that Chinese coaches and athletes had learned to use drugs from their former East German swimming coaches. «Former Germany Influenced Massive Doping,» Japanese Economic Newswire, Dec. 14, 1994, available in Lexis- Nexis Library, JEN File. The COC, on the other hand, insisted that individual athletes had been entirely responsible for the problem. Meanwhile, the COC, under pressure, was obliged to request all national sports associations to follow administrative rules strictly against the use of drugs. The COC also expressed its willingness to cooperate with international sports federations in their efforts to eliminate coping of athletes. «China Promises Severe Punishment for Doped Athletes, Mainichi Daily News, Dec. 5, 1994, at 1. He Zhenliang, former President of the COC and later Vice-President of the International Olympic Committee (IOC), blamed the problem on outside influences. «Now the China Lifters Test Positive,» New Straits Times, Jan. 7, 1995, at 48. For him, doping was a world disease that had contaminated Chinese athletes

related improprieties. China's reputation as a good sport and future sports power was on the line.

The COC, therefore, reacted quickly and firmly. Within a week, Beijing formed a committee to investigate and punish athletes who took drugs. The COC also requested all sports associations to strengthen their rules against the use of drugs.[4] Investigations and sanctions against guilty athletes followed quickly and regularly.[5] In March 1995 the SPCSC confirmed its new attack on doping by adopting Temporary Regulations Banning the Use of Stimulants in Sport.[6] These regulations, as modified, implement the Sports Law.[7] Accordingly, athletes taking performance-enhancing drugs must be punished. Their prizes are to be seized and their titles stripped from them. In addition, they are be barred from recognized competition for a certain period. The problem of doping among Chinese athletes remains, however.[8] Apparently, the prospect of material gains from competition is increasingly seductive as commercialization of sports in China continues apace.

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4 Fachet, supra note 6.

5 On Dec. 8, 1994 China barred seven swimmers from competition for two years for using banned drugs at the Asian Games, and also barred five coaches from its scandalous swimming squad from coaching for a year because of their involvement in the Hiroshima Games scandal in 1994. In the same year, China reported that a woman hurdler also faced a four-year ban for doping. Later, the Tianjin Track and Field Association suspended its coach, Bai Lin, because he had been the trainer of top Chinese discus thrower, Qiu Qiaoping, who had failed drug tests during the 1994 Asian Games. In 1995 Beijing officials investigated charges against the two women world champions in weightlifting who had tested positive for banned substances. In the same year, canoeists Zhang Lei and Qiu Suoren were banned for two years by the Chinese Canoe Association, and cyclist Wang Yan was banned for six months by the Chinese Cycling Association. Shortly afterward, four more coaches were each banned for one year.

6 It was reported that originally Chinese sports authorities had been considering more serious criminal penalties to deter doping, but they did not do so. John Goodbody, «China Pledge to Jail Drug-Takers,» The Times (London), Mar. 2, 1995. A spokesman for the SPCSC explained on Mar. 1, 1995 that no country jails athletes for taking performance-enhancing drugs. Since they typically do not threaten the safety of others, according to the SPCSC's theory, they have violated no law. «China Intensifies Doping Crackdown,» UPI, Mar 1, 1995, available at Lexis, Nexis Library, UPI File. Thus, although the Sports Law has banned listed drugs and therapies, it provides only for sanctions by sports associations and public security organs without stipulating any specific penalties. Sports Law, arts. 34, 50, infra, Appendix.

7 Id.

8 On January 14, 1998, for example, the International Swimming Association concluded that four Chinese swimmers had tested positive for doping. People’s Daily (Overseas ed.), Jan. 15, 1998, at 2. According to another report published by the Chinese Anti-Doping Committee (CAC), 24 Chinese athletes were caught for doping offenses in 1997. (Apparently this number represented only those athletes who had been caught for doping offense inside China). «24 Chinese Athletes Caught for Doping Offenses in 1997,» Xinhua News Agency, April 6, 1998.

C. The Human Rights Issue

Beijing aggressively sought to host the Olympic Games for the year 2000.[1] In 1993, however, the IOC selected Sydney over Beijing by a narrow vote of 45-43.[2] The decisive issue, just four years after the government's Tiananmen Square-centered massacre of its own citizens, was human rights.[3] Ironically, the Chairman of the Olympics campaign was Chen Xitong, who as mayor had signed the martial decree that led to the massacre.[4] Understandably, China's reaction to the IOC decision was one of profound disappointment because of the enormous prestige attached to the status of hosting the Games.[5]

This experience, along with the doping scandals, accelerated the process of completing the Sports Law. Chinese leaders hoped that, by enhancing China's performance in the global sports arena, the law might eclipse memories of doping and human rights abuses and enlarge China's image as a global heavyweight.[6] This has not happened, however, partly because the Sports Law itself fails to articulate any rights for athletes; human rights do not qualify for competition with nationalist aspirations in the bold new program of Chinese sports. Nor does the law explicitly protect a right to challenge decisions of the newly empowered sports associations, although it is possible that athletes will have standing to do so in the mediation and arbitration body under the Sports Law.

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1 See Kristof & WuDunn, supra note 2, at 94 (recounting tragic consequences of Beijing's determination to put on a good face in its campaign to secure award of the Games); Patrick E. Tyler, «Lure of Olympic Flame Defrosts China, Unevenly,» N.Y. Times, Sept. 19, 1993, at A4; Nicholas D. Kristof, «The Yin and Yang of China's Bid for the Olympics,» Int'l Herald Trib., July 29, 1993, at 17.

2 Paul Mastrocola, «The Lord of the Rings: The role of Olympic Site Selection as a Weapon Against Human Rights Abuses: China's Bid for the 2000 Olympics,» 15 B.C. Third World L.J. 141 (1995); Philip Hersh, «IOC Brass Say Chinese Boycott Unlikely,» Chicago Trib., Jan. 4, 1996, at 1.

3 Id.

4 Kristof & WuDunn, supra note 2, at 162 (citing media account). In a further twist of irony, he was soon dismissed from powerful posts as a Member of the Politburo of the CPC Central Committee and Mayor of Beijing. Citing numerous serious corruption charges, the authorities also put him under criminal investigation. People's Daily (Overseas ed.), Apr. 27, 1995, at 1.

5 On the prestige of hosting the Games, see James A.R. Nafziger, «International Sports Law: A Replay of Characteristics and Trends,» 86 Am. J. Int'l L. 489, 496 n.29 (1992).

6 For the Chinese ruling party, athletic performance is enlisted of behalf of patriotism, or nationalism. A good record in sports bespeaks a powerful nation. See, e.g., Brownell, supra note 18, at 74-87.

III. Summary of the Sports Law

A. A Brief Summary

Premised in the Constitution and Maoist ideological tradition, the Sports Law contains 56 articles in eight chapters. The Chapter entitled "General Provisions" enshrines the state's commitment to sports as a means of enhancing public health and social development.[7] The next three chapters are devoted to community sports, school sports, and competitive sports.[8] The chapters on community sports and school sports adopt Mao's ideas of nation-building and mass exercise, focusing on promotion of mass exercise by the state, communities and schools. The chapter on competitive sports provides for their organization, establishes a process for resolving sports-related disputes, and prohibits doping, corruption and gambling.

Chapters 5 and 6 concern the role of sports associations and support of sports activities, respectively. Besides noting the leading role of the COC in the development and advancement of the Olympics, Chapter 5 assigns the sports associations a central role in administering sports. The apparent intent is to vest primary authority over athletes and athletic activity in nongovernmental associations of athletes. Chapter 6 requires the national and provincial governments to allocate necessary financial sources for sports activities and to increase investment in them whenever it is economically feasible.

7 Ch. 1, arts. 1-16, Sports Law, infra, Appendix.
8 Ch. 2, 3, 4, Sports Law, infra, Appendix.

Chapter 7, on legal liabilities, lists general principles dealing with sports-related infractions such as gambling on sports and drug-taking. The law generally subjects these infractions to administrative sanctions and criminal investigation, but falls short of setting forth specific penalties for them. Chapter 8 provides the Central Military Commission with general authorization to regulate sports activities inside the armed forces.[1] Given the size and special status of the armed forces in China, this provision has substantial implications. Several provisions of the law merit attention beyond this brief summary.

B. Mass Sports Training

The Sports Law, bearing its Leninist-Maoist pedigree, provides that the state shall continue to implement a National Fitness Program.[2] The legislation adopts several reforms that an earlier program had recommended: allocating more money for mass sports, training more sports instructors, opening all state-owned sports grounds and facilities to the public, and prohibiting them to be used for any other purpose.[3] Provincial governments must take measures to implement the program accordingly.[4]

Mass exercise in itself requires only modest funding. The people themselves pay for most of the necessary training to develop basic techniques of such exercises as morning drills, basic tai chi, and simplified wu shu (martial arts).[5] The Sports Law, however, provides technical support of mass exercise in four ways: (1) a ranking system for community sports instructors who are to be paid according to their technical rankings;[6] (2) the construction and maintenance of playgrounds for mass sports;[7] (3) special encouragement of students, the elderly and the mentally and

1 Ch. 8, Sports Law, infra, Appendix.

2 The current program was unveiled just before, and apparently in contemplation of, the NPC's adoption of the Sports Law.

3 Zou Sicheng, supra note 15, at 8-10.

4 Already, the city of Beijing has undertaken to train 1,000 local instructors and 10,000 volunteers to promote mass sports, to conduct physical examinations for 100,000 adults annually, and to encourage one million of that city's residents to exercise daily. Shanghai has already opened all of its sports facilities to the public and is determined to achieve, by the end of this century, such goals of mass sports as encouraging families to own at least one piece of sports equipment; providing exercise sites for communities; and providing daily, on-premises exercise to all students. Several provinces are moving in a similar direction, as required by the State. Id.; see also People's Daily (Overseas ed.) Dec. 22, 1995, at 10; Dec. 29, 1995, at 10.

5 According to an official report, about one third of the Chinese population regularly participates in varied physical exercises, probably because they are deemed to enhance longevity. Every morning, it is very common for people, regardless of age or sex, to visit nearby parks and playgrounds for exercise. Training courses for physical exercise often attract many people. Zou Sicheng, «Olympic Spirit Spreading in China,» Beijing Rev., Sept. 20-26, 1993, at 22.

6 Sports Law, art. 11, infra, Appendix.

7 Several provisions instruct that land-use plans for any urban area must provide for adequate playgrounds to be used for sports only. Sports Law, art. 41-48, infra, Appendix.

physically disabled; and (4) a requirement that schools hold annual games and boost mass sports activities by releasing students for sports activities.[8] These provisions are designed to overcome the underutilization and backwardness of sports facilities and playgrounds.

Ironically, just as the Sports Law and a reinvigoration of governmental commitments to mass sports have emerged, China's market-driven population has become hard pressed to find time for the exercise regimen prescribed by the National Fitness Program.[9] As a result, both the government and the nongovernmental associations emphasize professional training as a means to global prowess in the sports and political arenas. At least that is where the money has been going.

C. Commercialization

An important feature of the Chinese Sports Law is that it legalizes and codifies the commercialization of sports as «[a] core of sports reform.»[10] Within an essentially statist framework, the law establishes a modern, Western-style organizational structure to create a more dynamic, profitable sports industry.[11] Although the extent of commercialization cannot yet be compared with Western systems, the legislation nevertheless encourages substantial reforms in that direction[12] and thereby boosts a rapidly developing sports industry in the country.[13]

1. Sports Sponsorship

Before the end of the Cultural Revolution, all sports funding was from governmental sources.[14] No sponsorships of sports events existed.[15] Beginning in 1977, however, China gradually allowed for such

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8 Sports Law, art. 19, 20, infra, Appendix.

9 According to Chinese newspapers accounts, young people, including college students, consider that regular exercise, as prescribed by the National Fitness Program, is a luxury for retired people, rather than a normal activity for young people busy making money. On the lack of interest by college students in sports, see Brownell, supra note 18, at 193. Unfortunately, too, much sports equipment remains a luxury for ordinary working people.

10 Issues, supra note 9, at 7, 11. The proclaimed purpose of establishing a sizable sports industry is to overcome the shortage of sports funds necessary for improving the prowess of Chinese athletes. Id., at 19; People's Daily (Overseas ed.), Dec. 27, 1995, at 6.

11 The reforms that were initiated primarily to overcome the shortage of sports funding have evolved in the direction of commercialization, which Beijing now promotes. Zou Sicheng, supra note 15, at 8; Issues, supra note 9, at 18-19.

12 Issues, supra note 9, at 11.

13 For example, the Eighth China National Games, the first held after the adoption of the Sports Law, were officially trumpeted for their spirit of commercialization. «Zhonghua Ernude Chuse Dajuan» («The Chinese People's Excellent Answer»), People's Daily (Overseas ed.), Oct 25, 1997, at 1.

14 James Riordan, Sports, Politics and Communism 5 (1991).

15 Zou Sicheng, supra note 15, at 9.

sponsorship, first from public work-units, then from private enterprises as well. Sports sponsorships have caught on quickly as a marketing tool among both foreign and major Chinese companies.[16] They now spend millions of dollars annually on sponsorships,[17] each costing between $ 1,000 and $100,000.[18] Nowadays, whether the sponsor is hosting a tennis match in Beijing, a soccer tournament in Chengdu, or a regional athletic event such as the Asian Games, China's sports stadiums are festooned with the names and logos of products ranging from Marlboro and Salem cigarettes to M&M candies.[19] The Sports Law encourages private investment in sports[20] without providing any effective regulatory guidance. More recently, impressed by sports lotteries in foreign countries, Chinese sports officials have turned to this form of mass sponsorship as another source of funding.[21]

2. Club System

China's emerging structure for sports organization relies on a western-style club system whose impetus has been the need to equip athletes with necessary nongovernmental funding for their facilities, training, and material incentives.[22] The China Football (Soccer) Association initiated the club system and a professional league, with the establishment in 1992 of the «Sichuan Nande Soccer Club» in Chengdu.[23] Gamely selling shares

16 Karina Lam, «Into the Big League,» Chinese Bus. Rev., Nov. 1994, at 41.

17 Id. Cleveland-based International Management Group (IMG), one of the pioneer agents of sports sponsorship in China, estimated that sponsorship money channeled to the PRC in 1994 was at least 200 percent above the previous year. The company predicted similar growth for 1995. Id.

18 Id. Lam, supra note 74, at 43.

19 Id.

20 Sports Law, arts. 3, 42, infra, Appendix. In explaining this provision, Minister Wu assured the NPC as it reviewed the draft Sports Law that such investment tallied with state practice elsewhere. Wu Shaozu, supra note 32. The SPCSC, in a document distributed nation-wide to promote the Sports Law, confirmed that this reform put the development of China's sports system on the right track. Issues, supra note 9, at 22.

21 In 1997, Wu Shaozu, former Minister of SPCSC and current director of the new GBPCS, was deeply impressed by the scope of the national sports lottery in Italy while visiting there. He actively supported the development of a sports lottery system in China. By 1997 the lottery system had claimed 1.2 billion Chinese yuan (approximately 140 million dollars). Li Zenghui, «Zhonggui Tiyu Chanyie, Yige Shenmoyangde Gainian» («China's Sports Industry: a What Kind Conception»), People's Daily (Overseas ed.), November 28, 1997.

22 China had been frustrated for many years in its efforts, without a market mechanism, to develop football (soccer) as a major sport of obvious international importance. Tian Bo, «Reform to Turn Round Soccer,» Beijing Rev., Sept. 6-13, 1993, at 31-33.

23 Lou Linwei, «Reforms in Soccer,» Beijing Rev., Dec. 28, 1992-Jan 3, 1993, at 36. The Nande Soccer Club is jointly sponsored by the Nande Economic Group, a well-known private enterprise, the Sichuan Provincial Sports Commission and the Information Research Institute of the State Sports Commission. The club is an economic entity with legal status and independent accounting. It has a registered capital of 10 million yuan (about $1.2 million), and allocates 500,000 yuan (about $60,000) each year for training, competition and awards, staff salaries, and bonuses. This amount does not include any income from the club's commercial activities.

in an untested market, Sichuan Nande and other clubs achieved surprising success. Football (soccer) and its profits boomed in a little more than a year.[24] The sport soon replaced table tennis in popularity, as reflected in both match attendance and television viewing.[25] The Marlboro Football (Soccer) League alone managed to raise more than a million dollars, which was then distributed among all teams in the new league.[26] Club football (soccer) has led to interest in commercialized club systems for other major sports such as basketball, volleyball, swimming and table tennis.[27] China's renovated sports policy recognizes the club system as an efficient, revenue-saving alternative to the traditional state monopoly.

3. New Functions for Sports Associations

24 Id.
25 Lam, supra note 74, at 41.
26 Id. at 43.
27 Beginning in 1995, shortly before enactment of new Sports Law, the SPCSC began aggressively to promote a comprehensive commercialization of sports. Zou Sicheng, supra note 15, at 9. Take basketball as an example. By 1997, there were two leagues competing with each other for funding and marketing. Yu Xueguang, «Lanqiu Gaige HaiXu Shenglu» («Deepening the Reforms in Basketball»), People's Daily (Overseas ed.), Sept 5, at 10.

Since the beginning of 1998, as a result of the Sports Law, sports associations have entirely replaced the former SPCSC in the daily administration of sports organizations and competitions. The Chinese sports structure therefore conforms closely to a western model of national sports management. The GBPCS, as the bureaucratic successor to the SPCSC, continues to formulate sports law and policies, provide limited funding to sports associations, regulate sports lotteries, and select sports officials and other personnel, just as western governments often do.[1]
Before the new law, China's sports associations had been essentially administrative units within state sports organs. Limitations on the use of their funding greatly restrained their work.[2] The Sports Law grants sports associations managerial responsibilities and independence, including the power to raise funds from private sources and the capacity to earn a profit by organizing their own commercial events.[3] They are also vested with the authority to apply sanctions against doping and gambling.[4] Specific rules and regulations will elaborate the new authority of the associations. The Sports Law stipulates only that they shall function, each according to its own rules. They are thus left to make their own rules in accordance with the new law and under SPCSC guidance.[5]

C. Privileges and Responsibilities of Athletes

The Sports Law reaffirms extant privileges for athletes. These include a ranking system,[6] which, on the former Soviet model, grants allowances and bonuses in amounts that correspond to a ranking of individual athletes, and ensures college enrollment and job security.[7] These privileges, along with strengthened recruitment efforts,[8] are intended to improve China's future athletic performance.

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1 Xinhua News Agency Reporter, supra note 12.
2 Issues, supra note 9, at 7, 9.
3 Wu Shaozu, supra note 32, at 15; Issues, supra note 9, at 11, 18.
4 Sports Law, art. 50, infra, Appendix.
5 Sports Law, art. 36, infra, Appendix; Issues, supra note 9, at 11.
6 Sports Law, art. 30, infra, Appendix.
7 Id., art. 28.
8 Experienced scouts now routinely seek out young children whose physiques indicate athletic potential. The most promising children are then sent to special sports schools, usually away from

home, for full-time or all but full-time training. Sometimes, the chosen few live with their coaches. Kristof & WuDunn, supra note 2, at 374-75.

As to responsibilities, the new legislation strictly prohibits the use of banned drugs and therapies in sports activities, as well as gambling on sports events.[1] According to the letter of the law, violations of either prohibition are subject to administrative and criminal action as well as the application of sanctions by sports associations. In practice, however, only the sports associations have imposed effective sanctions against ordinary doping. To assist the sports associations, governmental drug-testing agencies are required to conduct the necessary tests according to the rules and procedures of the IOC and international federations.[2] This decentralized approach is somewhat less rigorous than had been expected, though state officials will be subjected to administrative sanctions if doping occurs within their ambit of supervision.[3] Other prohibited conduct --such as gambling, fraud, bribery and corruption, destruction of state sports property, embezzlement, and violation of public order during sports activities -- will be subject not only to administrative sanctions but criminal liability.[4]

D. Dispute Resolution

Article 33 of the Sports Law makes clear that " [a]ny disputes arising in competitive sports shall be subject to mediation and arbitration by bodies established for that purpose. Rules governing the establishment of bodies for sports arbitration and the scope of their mandates shall be adopted by the State Council."[5] This provision for non-adjudicative dispute resolution, though largely a reiteration of traditional Chinese methods of dispute resolution, is nevertheless progressive in its reliance on a specialized process in which nongovernmental sports associations presumably will play a role. This is in line with official endorsement of nongovernmental (private) tribunals to arbitrate disputes.[6] One possible conflict-of-interest problem is, of course, that if dispute resolution is largely left up to the sports associations or bodies closely related to them, the body that applies sanctions might be the same as, or closely associated with, a party to a dispute.

1 The Sports Law, art. 34, infra, Appendix.
2 Id.
3 Id. The Sports Law does not, however, spell out what kind of administrative sanctions may be imposed. Probably this was because the Temporary Regulations were already in force when the NPC enacted the Sports Law.
4 The Sports Law, arts. 49, 51, 52, and 53, infra, Appendix. The SPCSC expects that more than fifty laws and regulations will be eventually implement the Sports Law. Jiang & Liu, supra note 1, at 14.
5 The Sports Law, art. 33, infra, Appendix.
6 Shanghai Star, Sept. 1, 1995.

IV. Implementation of the Sports Law

A. The 1996 Olympic Games

The first test of the Sports Law occurred during the 1996 Olympic Games in Atlanta. Although too little time had lapsed since adoption of the law to judge its effect on the caliber of athletic performance, it can be said that the law had no positive effect on China's new sports diplomacy. Instead, China missed an opportunity to improve its post-Tiananmen Square image. It sent a large delegation to the Atlanta Games, led by senior sports officials, including Minister Wu Shaozu and Deputy Minister Yuan Weimin of the SPCSC. During the Games and immediately afterward, the officials blamed the Atlanta Organizing Committee for poor administration, anti-Chinese bias among judges, the absence of good Chinese food, a faulty bus system and its tolerance for what the Chinese deemed to be unfair television commentary about China and its athletes.[1] What makes the Chinese complaints ring somewhat hollow is that as early as 1993, they had warned the United States that they might lodge such protests at a later date in "revenge"[2] for Beijing's failure to secure an invitation from the IOC to host the 2000 Games. However true the deficiencies and insults in Atlanta may have been, the Chinese government certainly did not win any medals for its comments, nor did it help to improve its international image by these comments. Instead, the Chinese government encouraged continuing skepticism about its sensitivity to the etiquette of sports diplomacy and diplomatic sportsmanship. Though muscle-flexing on the world stage can be a normal part of nationalist showmanship for domestic consumption, it is hard to see how China's quest for greater international prestige from athletic success was served by official Chinese complaints about the Atlanta Games.

B. Regulations

The new legislation is just the beginning of China's efforts to regulate athletic activity. The GBPCS has already undertaken to draft regulations governing sports arbitration, the construction and maintenance of sports facilities, the protection of athletic trademarks, and the management of

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1 «Asian 'Big 3' Complain, Others shine in Atlanta,» Japan Economic Newswire, Aug. 5, 1996, available in Lexis-Nexis Library, JEN File.

2 In a television interview broadcast in Australia, a Chinese Olympic official, Zhang Baifa, said that if Beijing were passed over, "We could, frankly, boycott their Atlanta Games in 1996." And he added, "If our bid fails, we cold write to Congress to protest about their interference and justifying our revenge." Alan Riding, «With Politics Again at Center Stage, the I.O.C. Must Choose a Site for 2000,» N.Y. Times, Sept. 20, 1993, at B9.

commercial sports. The declared goal of the national sports policy is a full-fledged legal regime for sports.[3]

3 See Wei Qun, «Zhongguo Tiyu zhi 'Sihua,'» («The Four Modernizations of Chinese Sports»), People's Daily (Overseas ed.), Jan. 5, 1996, at 10.

V. Conclusion

The dominant theme of China's Sports Law is the establishment of a more dynamic, decentralized organization of an important social and economic activity under governmental policy and supervision. It is by now a familiar theme. Fundamentally, the Chinese have clung to a Maoist interpretation of the role of physical culture in society and a heavy, traditional reliance on centralized policy-making and administrative discretion to govern sports activity. Much of the law, in the style of a declaration, modernizes and codifies extant rules and procedures within an established framework of bureaucratic control. Much of the Sports Law therefore reads like a restatement of superseded Soviet or East German practice. The legislative style is dated and the provisions are state-centered. Vaguely expressed responsibilities, prohibitions and sanctions provide very little actual check on administrative discretion. Even in its innovative empowerment of nongovernmental sports associations, the law confines their activities to "appropriate roles,"[1] which are to be defined, presumably, by the State.

The style of the law may be somewhat deceptive, however. In practice, the Sports Law has vested administration of sports activities in nongovernmental associations and clubs, including their competence to impose sanctions against doping and other threats to fair play. It has also been instrumental in encouraging private sponsorship and other market mechanisms to finance and promote sports. The P.R.C.'s first sports law is thus a hybrid of the old and the new.

1 The Sports Law, arts. 37, 39, infra, Appendix.

It is noteworthy, however, that the Sports Law rejects any recognition of the adjudicable rights of athletes, although it does entitle them to financial, educational and other privileges. In lieu of litigation, article 33 of the Sports Law prescribes mediation and arbitration by special, presumably nongovernmental bodies to be established for the purpose. In this respect, China, doing what comes naturally, is part of a global trend toward shunning the courtroom to resolve disputes involving athletes and sports activity. Taking an approach that is traditional for it but progressive for the global system, China may better avoid the risks and complexity of dispute avoidance and resolution that so beset the sports arena in other countries. On the other hand, China's refusal to adjudicate *any* rights of individual athletes denies them an appropriate remedy for the most serious breaches of fairness and justice that more informal methods of dispute resolution do not always rectify. The Sports Law has accorded individual athletes many privileges and a measure of autonomy from the bureaucracy as members of the newly empowered sports associations, but their standing to vindicate fundamental rights remains doubtful. The legislation is thus a product of China’s transitional policy of Market-Leninism.

The Sports Law is also a product of our times. For example, China seeks to deter the recently acknowledged problems of doping and bribery as well as the more traditional practice of gambling on sports activities. The growing commercialization of Chinese sports and the new access of Chinese athletes to worldly temptations justify new approaches to national sports management. China also appreciates the diplomatic role of sports in overcoming tarnished images of its government and in bidding for greater leadership in global affairs. Overall, the law encourages a large-scale, partially privatized program of sports development that China hopes will serve her national interests, if not her new nationalism, far more effectively than her sports system in the past. China has truly entered the modern sports arena under a banner of many colors.

Appendix

SPORTS LAW OF THE PEOPLE'S REPUBLIC OF CHINA
(Adopted by the Fifteenth Session of the Standing Committee of the Eighth National People's Congress on August 29, 1995)

Table of Contents:

Chapter 1 General Provisions
Chapter 2 Community Sports
Chapter 3 School Sports
Chapter 4 Competitive Sports
Chapter 5 Sports Associations

Chapter 6 Supporting Conditions
Chapter 7 Legal Liability
Chapter 8 Supplementary Provisions

Chapter 1: General Principles

Article 1. This law is formulated in accordance with the Constitution for the purpose of promoting the cause of sports, enhancing the health of the people, raising the level of sports activities, and accelerating the construction of socialist material and spiritual civilization.

Article 2. The State shall promote the cause of sports, carry out mass sports activities, and enhance the health of the whole nation. All efforts concerning the cause of sports shall be based upon the promotion of body-building activities throughout the nation, shall combine the popularization of sports with the improvement of standards, and shall accelerate the coordinated development of various sports activities.

Article 3. The State shall ensure that sports facilitate economic development, the development of the national defense, and social development. The cause of sports shall be included in national economic and social development programs.

The State shall promote the reform of the system of sports management. The State shall encourage enterprises and institutions, social organizations and citizens to establish and support the cause of sports.

Article 4. The administrative organ responsible for sports within the State Council shall administer nation-wide efforts concerning sports . The other ministries of the State Council shall administer this work within their respective areas of authority.
The administrative agencies responsible for sports within all local people's governments above the county level or the agencies authorized by the people's government at the same level shall administer local efforts concerning sports within their administrative competence.

Article 5. The State shall provide special support for sports activities of young people so as to improve their physical and mental health.

Article 6. The State shall promote the cause of sports in the regions where minority nationalities reside and train athletic talent among minority nationalities.

Article 7. The State shall promote physical education and sports science research, apply advanced and practical findings from sports science and technology, and base the development of the cause of sports on science and technology.

Article 8. The State shall award work units and individuals for their contributions to sports.

Article 9. The State shall encourage international sports exchanges. International sports exchanges shall uphold the principles of independence, equality and mutual benefits, and reciprocal respects. They shall also safeguard state sovereignty and dignity and abide by the international agreements that the People's Republic of China has concluded or entered into.

Chapter 2: Community Sports

Article 10. The State shall encourage citizens to participate in community sports activities to enhance their health.

Community sports activities shall be amateur, voluntary, small-scale and diverse, suitable to local conditions, and in line with science and mores.

Article 11. The State shall carry out a program for the health of the whole nation, implement sports exercise standards, and monitor the health of the people.

The State shall maintain a technical ranking system for community sports instructors. Community sports instructors shall direct community sports activities.

Article 12. All local governments shall provide necessary conditions for citizens to participate in community sports activities, and support and assist the development of mass sports activities.

In cities, grass-root organizations of communities such as residential committees shall be given free rein in organizing residents to conduct their sports activities.

In rural areas, village committees and other grass-root cultural and sports organizations shall be given free rein in developing sports activities suitable to the special conditions there.

Article 13. State organs, enterprises and institutions shall carry out a variety of sports activities and hold mass sports contests.

Article 14. Trade unions and other social organizations shall organize sports activities in accordance with their distinctive functions.

Article 15. The State shall encourage and support the development, processing and promotion of traditional national and folk sports.

Article 16. The entire society shall ensure and encourage participation by the elderly and handicapped in sports activities. The people's government at all levels shall adopt measures to provide facilities for the elderly and handicapped to participate in sports activities.

Chapter 3: School Sports

Article 17. Administrative organs responsible for education and schools administrations shall make physical education a part of schooling, in order to cultivate students morally, intellectually, and physically.

Article 18. Schools shall offer physical education courses and include physical education as a required course that every student shall take and pass.

Schools shall provide conditions to organize mentally and physically handicapped students for sports activities suitable to their capabilities.

Article 19. Schools shall implement national physical exercise standards and shall ensure that each student will have time for sports activities at school.

Article 20. Schools shall organize various extracurricular sports activities, carry out extracurricular training and athletic contests, and hold school games each academic year according to their respective capabilities.
Article 21. In accordance with relevant regulations of the State, schools shall employ qualified sports instructors and provide them with extra benefits related to their particular employment.

Article 22. In accordance with standards set by the educational organ of the State Council, schools shall provide playgrounds, facilities and equipment.

School playgrounds must be used for sports activities only. They shall not be used for any other purpose.

Article 23. Schools shall set up a system to monitor the health of students. Administrative organs responsible for education, sports and health shall strengthen supervision of the health of students.[1]

Chapter 4: Competitive Sports

Article 24. The State shall accelerate the development of competitive sports and encourage athletes to improve their level of technical competence, so as to achieve excellence in athletic contests and win honors for the nation.

Article 25. The State shall encourage and support the promotion of amateur sports training to prepare a reserve of outstanding sports talent.

Article 26. The athletes and athletic teams selected for major national and international games shall be based on merit, to be determined by fair competition. The administrative organ responsible for sports within the State Council shall establish detailed rules.

Article 27. Athletes must be strictly trained and administered in a scientific and moral way. Athletes must be educated about morality and discipline as well as patriotism, collectivism, and socialism.

Article 28. The State shall provide top athletes with preferential treatment in employment and enrollment in schools.

Article 29. Each national association of an individual sport shall administer the registration of its athletes. Registered athletes may participate in athletic contests and may transfer between sports teams in accordance with regulations established by the administrative organ responsible for sports within the State Council.

Article 30. The State shall maintain a technical ranking system for athletes and a technical ranking system for umpires and coaches.

1 These organs are, respectively, the State Education Commission, the SPCSC, and the Ministry of Health in the central government, and their provincial and local counterparts.

Article 31. The State shall administer athletic contests in accordance with the status and characteristics of the particular contest.

National Games that include all sports events shall be administered by the administrative organ responsible for sports within the State Council alone or together with concerned organizations.

National Games in each sport shall be administered by the respective national association for each sport.

Administrative rules for comprehensive athletic contests at the local level and for athletic contests for each individual sport shall be established by local governments.

Article 32. The State shall maintain a system of examining and approving national records of athletic contests. National records shall be affirmed by the administrative organ responsible for sports within the State Council.

Article 33. Any disputes arising in competitive sports shall be subject to mediation and arbitration by a sports arbitration body.

Rules governing the establishment of a sports arbitration body and the scope of its mandate shall be adopted by the State Council.

Article 34. Athletic contests shall follow the principle of fair competition. Organizers, athletes, coaches and umpires shall abide by sports morality and shall be forbidden from resorting to deception or engaging in improper practices for selfish ends.[1]

The use of banned drugs and therapies shall be strictly forbidden. The testing institute for banned drugs shall conduct strict tests for banned drugs and therapies.

All work-units and individuals shall be strictly forbidden to engage in gambling on athletic contests.

1 This provision, together with article 51, serves as the basis for claims of bribery or corruption.

Article 35. The names, emblems, flags, lucky symbols and other trademarks designed for major Games held inside China shall be protected according to relevant state regulations.

Chapter 5: Sports Associations

Article 36. The State shall encourage and support sport associations in organizing and carrying out sports activities according to their own rules and in advancing the development of the cause of sports.

Article 37. Sports associations at all levels are mass sports organizations for linking and uniting athletes and other people involved in the cause of sports. Sports associations shall play their appropriate roles in promoting sports.

Article 38. The China Olympic Committee is an organization which is primarily responsible for developing and advancing the Olympic Movement. It represents China in international Olympic affairs.

Article 39. Associations of sports science are mass academic organizations of workers engaged in sports science and technology. These associations shall play their appropriate roles in promoting sports science and technology.

Article 40. Sports associations for individual sports shall be responsible for popularizing and improving their respective individual sports, and for representing China in related international sport federations.

Chapter 6 Supporting Conditions

Article 41. All people's governments above the county level shall include an expenditure for the cause of sports and a fund for development of the sports infrastructure in their respective financial budgets, as well as investment plans for construction of the infrastructure, and shall gradually increase investment in sports to the extent that the national economy allows.

Article 42. The State shall encourage enterprises, institutions and social organizations to raise funds by themselves for the promotion of the cause of sports, and encourage organizations and individuals to help finance and sponsor the cause of sports.

Article 43. The concerned organs of the State shall strengthen the management and supervision of sports funds. No organization or individual shall be allowed to divert or embezzle any part of these funds.

Article 44. All local people's governments above the county level shall strengthen and supervise commercial sports, such as body-building and athletic contests, in according with State regulations.

Article 45. All local people's governments above the county level, in accordance with the State regulation concerning land-use distribution for urban public sports facilities, shall include urban public sports facilities in plans for urban construction and in the general plan for land use, and allocate these facilities rationally and in a uniform manner.

City administrations shall include sports facilities in their urban construction plans as part of their arrangements for zoning enterprises, schools, streets and residential areas.
Administrations of towns, minority towns, and townships shall gradually build and improve sports facilities consistent with their levels of economic development.

Article 46. Public sports facilities shall be kept open so as to facilitate the masses in their enjoyment of sports activities, and shall provide preferential treatment to students, the elderly and handicapped, in order to expand the use of these sports facilities.

No organization or individual shall be allowed to wrongfully appropriate or damage public sports equipment and facilities. Permission must be obtained from organs responsible for sports administration and construction planning if sports facilities need to be temporarily taken under special circumstances, but these facilities shall be timely returned for normal use. Before a playground may be transformed into any other use according to urban zoning plans, a new playground shall be built on newly selected land as a substitute, in accordance with pertinent State regulations.

Article 47. Sports equipment and appliances for national and international athletic contests shall be inspected and approved by the institutions appointed by the administrative organ responsible for sports within the State Council.

Article 48. The State shall promote specialized physical education and establish various sports colleges or sports departments in ordinary colleges,

in order to train professionals in fields of sports, sports-related training, teaching, scientific research, management, and mass sports activities.

The State shall encourage enterprises, institutions, social organizations and citizens to conduct specialized physical education in accordance with law.

Chapter 7: Legal Liabilities

Article 49. Violations of sports etiquette and rules in athletic contests, such as fraud and deception, shall be punished by sports associations in accordance with their respective rules; administrative sanctions shall be applied in accordance with the law to State employees who are directly responsible for violations.

Article 50. Those who use banned drugs and therapies in sports activities shall be sanctioned by sports associations in accordance with their respective rules, as well as by public security organs in accordance with the Provisions for Sanctions to Maintain Public Order.

Article 51. Public security organs assisted by administrative organs responsible for sports shall stop those who illegally engage in wagers on athletic contests, and the public security organs shall punish them in accordance with the Provisions for Sanctions to Maintain Public Order.

During athletic contests, those who bribe, defraud, or organize gambling activity of a criminal nature shall be investigated for criminal liability in accordance with the law.

Article 52. Those who wrongfully appropriate or damage public sports equipment and facilities shall be ordered by administrative organs responsible for sports to correct their wrongdoing within a specific time. They shall also bear civil liability in accordance with the law.

Such behavior, insofar as it violates sanctions for maintenance of public order, shall be sanctioned accordingly; if it constitutes a crime, it shall be investigated for criminal liability in accordance with the law.

Article 53. During athletic events, those who pick quarrels, make trouble, or disturb public order shall be criticized, educated and prohibited; if they violate the rules for the management of public order, they shall be sanctioned by public security organs in accordance with the Provisions for Sanctions to Maintain Public Order; if they commit crimes, they shall be investigated for criminal liability in accordance with the law.

Article 54. Those who violate state financial and accounting regulations, or divert or embezzle sports funds shall be ordered to return the diverted or embezzled funds by their supervising organs. Those in a managerial position who are directly responsible and others who are also directly responsible, shall be subject to administrative sanctions in accordance with the law. If their violations constitute crimes, they shall be investigated for criminal liability in accordance with the law.

Chapter 8: Supplementary Provisions

Article 55. Detailed rules for carrying out sports activities inside the armed forces shall be established by the Central Military Commission in accordance with this law.

Article 56. This law shall take effect on October 1, 1995.

NO LICENCE FOR THUGGERY: VIOLENCE, RUGBY AND THE CRIMINAL LAW

By:
JAC ANDERSON

Abstract

Rugby Union is one of the most popular team sports in the United Kingdom. It is a combative, contact sport. Aggressive tackling is a fundamental element of the game and rugby players expect and accept that in the course of the game they will be party to intense, physical play. What they do not expect, and increasingly what they do not accept, is rugby as an excuse for outright thuggery. This article examines the manner in which the criminal law, primarily in the common law jurisdictions of England and Ireland, has had to deal with the more notorious of these incidents. This brief study will begin by giving a short historical background of the sport of rugby union. It will then review early case law relevant to the relationship between violence, sport and the criminal law before detailing specific rugby-centred cases. The latter mentioned case law is the central element of this article. In conclusion, there will be a brief summary of the lessons that can be learned from the regrettable experiences of rugby in the courtroom.

A. RUGBY UNION: A HISTORY

According to an apocryphal English sporting story, in 1823 at the public school of Rugby, William Webb Ellis disrupted a game of soccer by picking up the ball and running with it and with that the sport of rugby was born. It is now played in over 100 countries though it is most popular in the five northern hemisphere nations of France, England, Ireland, Scotland and Wales as well as the three southern hemisphere nations of South Africa, New Zealand and Australia. Australia are the current world champions after winning the last rugby world cup held in 1999 and appropriately enough, the trophy awarded for that tournament - marketed as the third biggest sporting event in the world - is named after Webb Ellis.

The historical development of the sport of rugby union is outlined in detail elsewhere.[1] In brief, the administrative history of the sport begins in England with the formation of the Rugby Football Union in 1871, which drew up the first standardised rules of the game. The International Rugby Board (IRB) was founded in 1886 and remains the world-governing and law-making body for the game. The third key historical development was the schism in England with the rugby football league, which formed its own union in 1895 when 22 clubs from Yorkshire, Lancashire and Cheshire left the Rugby Football Union over the question of compensation for loss of wages sustained by players while participating in games. Later, this 13-man game spread to Australia, New Zealand, France and other countries.[2] In fact, until August 1995 the game of rugby union remained an amateur sport. At that point the

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[1] Dunning and Sheard Barbarians, Gentlemen and Players: A Sociological Study of the Development of Rugby Union Oxford: Martin Robertson, 1979.
[2] Collins, T Rugby's Great Split: Class, Culture and the Origins of Rugby League Football London: Frank Cass, 1998.

Executive Council of the IRB declared the game «open» i.e., for the first time players could be renemurated and possibly become full-time professionals.[3]

B. INHERENT DANGERS

Rugby union is a physical, invasive sport with inherent risks and inevitable injuries. The sport's authorities have long been aware of the dangers.[4] Indeed, the foreword to the IRB's «Laws of the Games» states: «Rugby Union is a sport which involves physical contact. Any sport involving physical contact has inherent dangers. It is very important that players play the game in accordance with the Laws of the Game and be mindful of the safety of themselves and others. It is the responsibility of those who coach or teach the game to ensure that players are prepared in a manner that ensures compliance with the Laws of the Game and in accordance with safe practices.»[5]

Despite this clear warning the rugby authorities remain disappointed at the relatively high level of injuries in their sport, particularly serious spinal cord injuries.[6] The increased intensity in both play and preparation that has followed in the professional era has added to safety concerns and according to a recent study published in the *British Journal of Sports Medicine*, injuries to rugby players have almost doubled since the sport turned professional.[7] The report argues that there are three reasons for this increase: that rugby union laws have been amended to encourage more open play and more forceful tackles; that the advent of professionalism has resulted in more emphasis being placed on the strength, speed and stamina of all players and finally that the adoption of protective equipment e.g., shoulder padding, has encouraged players to take greater risks in that it appears to give them a false sense of security.[8]

Furthermore, it is interesting to note that in the debate on the prohibition of boxing, one of the arguments used in defence of pugilism is that it is no more dangerous and violent than many other sports, notably rugby.[9] For example,

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[3] Chandler and Nauright (eds.) Making the Rugby World London: Frank Cass, 1999.

[4] «International Congress on Injuries in Rugby Football and Other Team Sports, 1975» Dublin: Irish Rugby Football Union, 1976.

[5] The Laws of the Game are available on the IRB's informative website: **Σφάλμα! Δεν έχει οριστεί σελιδοδείκτης.**

[6] See generally Payne, S (ed.) Medico-legal hazards of rugby union Oxford: Blackwell Special Projects, 1992 and specifically Noakes and Jakoet «Spinal cord injuries in rugby union players» (1995) 310 British Medical Journal 1345; Wilson et al «Spinal cord injuries have fallen in rugby union players in New South Wales» (1996) 313 British Medical Journal 1550; Wilson et al «The Nature and Circumstances of Tackle Injuries in Rugby Union» (1998) 2 Journal of Science and Medicine in Sport (2) 153 and Bottini et al «Incidence and nature of the most common rugby injuries sustained in Argentina (1991-1997)» (2000) 34 British Journal of Sports Medicine 94. Last year in Ireland, there were 20 former rugby players on the database of the Spinal Injuries Association, which is based in the National Rehabilitation Centre, Dublin.

[7] Garraway et al «Impact of professionalism on injuries in rugby union» (2000) 34 British Journal of Sports Medicine 348.

[8] See further Finch et al «What do under 15 year old schoolboy rugby union players think about protective headgear?» (2001) 35 British Journal of Sports Medicine 89 and Lee et al «Influence of rugby injuries on players' subsequent health and lifestyle: beginning a long-term follow up» (2001) 35 British Journal of Sports Medicine 38.

[9] See Gorn, M and Ormerod, D «The legality of boxing» (1995) 15 Legal Studies (2) 181 at pp193-6.

in 1991 in a House of Lords debate on a bill to ban boxing, Lord Brooks of Tremorfa highlighted statistics which showed that of the 480 deaths in sport between 1969 and 1980, only two occurred in professional boxing, whereas rugby had accounted for 32 fatalities.[10]

In response to the fact that the game has become more professional and physically intense, the authorities have had to ensure that coaching and refereeing standards as well as appropriate rule changes have also been maintained in line with these new developments.[11] Independent disciplinary mechanisms have been encouraged to ensure that player discipline is maintained and regulated.[12] Medical[13] and insurance schemes[14] have also been developed to cater for injured players.[15]

In any event, it is suggested that it is inaccurate to label rugby as dangerous in the sense that a sport such as boxing is, as only in boxing is the object of the exercise to inflict bodily harm on the opponent. In rugby, injury, though it may be serious, is an incidental and unintended element of participation.[16] However, it is now well established that where the inflicted injury is clearly intentional and reckless to the extent that it is beyond the rules and norms of the game, then other concerns may apply.

B. VIOLENCE, SPORT AND THE CRIMINAL LAW

In modern contact sports such as rugby, physical aggression of a kind that would otherwise be deemed a criminal assault under the common law is

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[10] Debate on the Boxing Bill Hansard 4 December 1991 at col 302.

[11] See Noakes and Jakoet, supra note 6, on the reaction of the rugby authorities to the high incidents of spinal cord injuries in rugby union players.

[12] For example, in the recent British and Irish Lions tour of Australia, any on-field ill discipline was regulated by a three-man International Rugby Board panel; comprising of chairman Nick Davidson QC, Sydney barrister Terry Willis and Peter Johnson, a former Australian rugby international. Apart from the direct evidence of the players involved, extensive use was also made of video evidence. The most notorious incident that the panel had to deal with was the eleven punch pummeling of Lions player Ronan O'Gara by New South Wales full back Duncan McRae. McRae was suspended from all forms of rugby for a seven-week period.

[13] The International Rugby Board even provides funding for medical research on areas such as the epidemiology and biomechanics of injury; see further **Σφάλμα! Δεν έχει οριστεί σελιδοδείκτης.**

[14] In his report for the years 1999/2000, the Chief Executive of the Irish Rugby Football Union remarked that the IRFU has increased the insurance benefit under its Compulsory Personal Accident Scheme to a maximum of £500,000, which he claimed is significantly more than that provided by other Rugby Unions. The maximum figure is applicable only in the case of an injury that results in permanent and total disability. There has been some criticism of the scheme; see the tragic case of Mark Governey as noted by Watterson, J «Getting on with life's great challenge» The Irish Times 28 June 2000. This article can be accessed through the newspaper's archive at **Σφάλμα! Δεν έχει οριστεί σελιδοδείκτης.**.

[15] On insurance and sport see generally Green, J «Insurance and Sport» (1997) 5 Sport and the Law Journal (2) 61; Griffith-Jones, D Law and the Business of Sport London: Butterworths, 1997 at pp315-324; Hartley, D «All part of the game?» Journal of the Chartered Insurance Institute, July 1997 at p12; Miller, F «A Sporting Chance: Personal Injury Compensation in a No-Fault System» (1999) 7 Sport and the Law Journal (2) 33; O'Brien, T «Liability Insurance and the Needs of Sport» (1994) 2 Sport and the Law Journal (1) 22 and (1997) 5 Sport and the Law Journal (2) 58; Stewart and Silver «Rugby: Catastrophic Injury, Claims and Insurance» (1994) 2 Sport and the Law Journal (1) 15.

[16] Undoubtedly, there is a far higher incident of serious injury in boxing than in rugby; see further the British Medical Association's «Report of the Working Party on Boxing» BMA, London, 1984 at p15 on the occurrence of «pugilistica dementia» i.e., the punch drunk syndrome, in contact sports.

permitted on the principle that the law recognises the consent of the participants as a defence. Contact sports are exempted from the usual scope of consent to assault not only on the grounds of public policy - they are said to be good for the physical well-being of society - but also because their methods of self regulation - their rules and disciplinary mechanisms - are for the main part satisfactorily drawn.[17] This «sporting» exemption applies only to the lower levels of consent; it is not a license to inflict serious harm and where the inflicted injury is clearly intentional and reckless to the extent that it is beyond the rules and norms of the sport in question, the criminal law's threshold of toleration will be breached.[18]

The origins of the debate within the common law as to the legal limits to which sports participants can consent to bodily harm within the course of their sport, can be traced to the following trilogy of English cases: *R v Bradshaw*[19], *R v Coney*[20] and *R v Moore*.[21] In *Bradshaw*, the accused, during a soccer game, struck an opponent with his knee, resulting in the eventual death of the opponent. Baron Bramwell's direction to the jury is well established as the historical source of the criminal law's approach to violence in sport:

«If a man is playing according to the rules and practice of the game and not going beyond it, it may be reasonable to infer that he is not actuated by any malicious motive or intention, and that he is not acting in a manner which he knows will be likely to be productive of death or injury. But, independent of the rules, if the prisoner intended to cause serious injury and was indifferent and reckless as to whether he would produce serious injury or not, then the act would be unlawful. In either case he would be guilty of a criminal act and you must find him guilty; if you are of a contrary opinion you will acquit him.»[22]

The jury, taking into account evidence from an umpire that no unfair play had occurred, acquitted the footballer on the manslaughter charge. In *Moore*, the accused had jumped with his knees up against the back of an opponent, and threw him violently against the onrushing goalkeeper. The victim was seriously injured internally and died a few days later. In summing up, Hawkins J remarked that the rules of the game were quite immaterial:

«Football was a lawful game, but a rough one, and persons who played it must be careful to restrain themselves so as not to do bodily harm to any other person. No one had a right to use force which was likely to injure another, and if he did use such force and death resulted the crime of

[17] For a review of English and Irish precedent on this issue see generally McCutcheon, P «Sports Violence, Consent and the Criminal Law» (1994) 45 Northern Ireland Legal Quarterly 267 and Anderson, J «Citius, Altius, Fortius? A Study of Criminal Violence in Sport» (2000) 11 Marquette Sports Law Review 87.
[18] Ibid. See also the (similar) Canadian precedent in R v Cey (1989) 48 Canadian Criminal Cases 480 and an American viewpoint in Clarke, C «Law and Order in the Courts: The Application of Criminal Liability for Intentional Fouls During Sporting Events» (2000) 32 Arizona State Law Journal 1149.
[19] (1878) 14 Cox's Criminal Cases 83.
[20] (1882) 8 Queen's Bench Division 534.
[21] (1898) 14 Times Law Reports 229.
[22] Bradshaw, 14 Cox's Criminal Cases at p85.

manslaughter had been committed. If a blow was struck recklessly which caused a man to fall, and if in falling he struck against something, and was injured and died, the person who struck the blow was guilty of manslaughter, even though the blow itself would not have caused injury.»[23]

Overall then, the above cases implied that deliberate and/or reckless tackling causing injury, particularly in breach of the playing laws of the game, creates a *prima facie* offence and the threshold of «sporting consent» for assault is breached where intention or knowledge that the act was likely to cause serious injury is proven. *R v Coney*, which concerned the sport of prize fighting, extended this principle by including non-fatal violence.[24] This standard of consent has also been reaffirmed in more recent cases such as *R v Donovan*[25], *Attorney General's Reference (No. 6 of 1980)*[26] and in *R v Brown*.[27] In *Brown*, the House of Lords took the opportunity to review fully the law on consent. It confirmed that, whereas consent negates liability for minor harm, the victim's consent does not provide a defence where actual bodily harms in intentionally or recklessly caused, unless the case falls within a range of special «socially acceptable» categories, including lawful sports and games.[28]

Despite this history, the first successful prosecution in the United Kingdom of a rugby footballer for assault as a result of an incident on the field of play did not occur until the 1970s.

D. RUGBY PROSECUTIONS

In *R v Billinghurst*[29], the defendant punched an opposing player in the face fracturing his jaw in two places. The incident occurred during a rugby match in South Wales in a so-called «off-the-ball» incident i.e., outside the course of play (and usually) with the referee's attention elsewhere. The victim was a prison officer whose principals were not happy to lose his services in such a manner without an attempt to let similar offenders realise the potential consequences of their actions. The accused was charged with inflicting grievous bodily harm contrary to section 20 of the Offences Against the Person Act 1861. At trial the only issue was consent. Evidence was given by the victim that on previous occasions he had been punched and had himself punched opponents on the rugby field. A defence witness - a former International rugby player - gave evidence that in the modern game of rugby punching is the rule rather than the exception.

It was argued by the defence that in the modern game of rugby players consented to the risk of some injury and that the prosecution would have to prove that the blow struck by the defendant was one which was outside the

[23] Moore, 14 Times Law Reports at p230.

[24] A review of Coney from a prize fighting point of view can be found in Parpworth, N «Boxing and Prize Fighting: The Indistinguishable Distinguished?» (1994) 2 Sport and the Law Journal (1) 8. A review of the case's contribution to the understanding of «sporting consent» can be found in Anderson, supra note 17.

[25] (1934) 2 King's Bench 498.

[26] (1981) 2 All England Reports 1057

[27] (1993) 2 Weekly Law Reports 556.

[28] See in particular the judgment of Lord Mustill, ibid, at p592-3. The case is further reviewed in context by Anderson, supra note 17.

[29] [1978] Criminal Law Review 553.

normal expectation of a player so that he could not be said to have consented to it by participating in the game. The prosecution argued that public policy imposes limits on violence to which a rugby player can consent and that whereas he is deemed to consent to vigorous and even over-vigorous physical contact on the ball, he is not deemed to consent to any deliberate physical contact off the ball.

The judge directed the jury that rugby was a game of physical contact necessarily involving the use of force and that players are deemed to consent to force «of a kind which could reasonably be expected to happen during a game.» He went on to direct them that a rugby player has no unlimited licence to use force and that there must obviously be cases which cross the line of that to which a player is deemed to consent. It was up to the jury to consider: «where the line has to be drawn between that to which a person taking part in a rugby game is to be deemed to be consenting, and that to which he is not deemed to consent.» In his direction, the judge also reminded the jury of a distinction that they might regard as decisive i.e., between force used in the course of play and force used outside the course of play. The judge told the jury that by their verdict they could set a standard for the future. The jury, by a majority verdict, convicted Billinghurst. He was sentenced to nine-month imprisonment, suspended for two years.

A leading commentator on sports law in the UK, Professor Edward Grayson, has criticised the above direction to the jury on the matter of consent.[30] Grayson cites from the aforementioned case of *R v Donovan*: «If an act is unlawful in the sense of being in itself a criminal act, it is plain that it cannot be rendered unlawful because the person to whose detriment it is done consents. No person can license another to commit a crime.»[31] Thus, Grayson is of the opinion that the summing up was technically wrong as it conflicts with the criminal law of England. Grayson excuses this error «because of the novelty at the time of such a prosecution».[32] It is clear that no similar mitigation exists now and indeed, rugby union has not been shy in taking its place on criminal dockets.[33]

In *R v Doble*[34], the accused allegedly gouged the eye of an opponent, causing him to lose the eye. The jury acquitted on the grounds of mistaken identity. The judge recommended that the victim approach the English Criminal

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[30] Grayson, E Sport and the Law 3ed., Butterworths, London, 2000 at p144-5.
[31] Donovan, 2 King's Bench at p507.
[32] Grayson, supra note 30 at p145.
[33] See Gardiner, S «The law and the sports field» [1994] Criminal Law Review 513; Gardiner, S «Tackling from Behind: Interventions on the Playing Field» in Greenfield and Osborn (eds.) Law and Sport in Contemporary Society London: Frank Cass, 2000 and the cases listed by the Law Commission of England and Wales «Consultation Paper No. 134 - Criminal Law: Consent and Offences Against the Person» HMSO, London, 1994 at paragraph 10.13. Other popular contact sports in the UK have equally commanded occasional court attention; see, for example, R v Marsh [1994] Criminal Law Review 52 and R v Lincoln (1990) 12 Criminal Appeal Reports (Sentencing) 250 (rugby league); R v Birkin [1988] Criminal Law Review 854 and R v Shervill (1989) 11 Criminal Appeal Reports (Sentencing) 284 (soccer). A socio-legal explanation is provided by Hartley, H «Hard Men – Soft on Sport» (1998) 6 Sport and the Law Journal (2) 37 and Young, K «Violence, Risk and Liability in Male Sports Culture» (1993) 10 Sociology of Sport Journal 373.
[34] Unreported, Stafford Crown Court, 8-10 September 1980.

Injuries Compensation board.[35] In *R v Gingell*[36], the accused faced a charge of inflicting grievous bodily harm contrary to section 20 of the Offences Against the Person Act 1861. During the course of the game, the defendant repeatedly punched an opponent in the face. The defendant's opponent was pinned to the floor during the punch up and suffered fractures to his nose, cheekbone and jaw. The defendant pleaded guilty. The court stressed that provocation could not be deemed a mitigating factor and was no excuse for the subsequent blows. The defendant was sentenced to six months imprisonment, later reduced to two.

In *R v Bishop*[37] the accused - a Welsh international - punched an opponent who lay on the ground during an «off-the-ball» incident in a club ruby match in Wales. Given the intensity of the violence and the personalities involved, the case attracted considerable publicity. Bishop pleaded guilty to common assault. He was convicted and sentenced to one month's imprisonment, later varied by the Court of Appeal (no reasons given) to 12 months' suspended.[38] In *R v Johnson*[39], the victim legitimately tackled the defendant. In an ensuing tussle for the ball, the defendant bit the victim's ear lobe and tore it away. The defence argued that the action was committed «in the heat of the moment» and they pointed to the defendant's previous good character. Lord Land C.J. was unimpressed and bluntly stated: «unlawful violence…on the football field needs discouraging as much as violence on the terraces or indeed anywhere else.»[40] The accused was found guilty under section 18 of the Offences Against the Person Act 1861 of grievous bodily harm and was sentenced to six months' imprisonment.

In *R v Lloyd*[41], the victim was tackled and was lying on the ground when the defendant kicked him in the face with such force as to fracture the victim's cheekbone. The victim subsequently spent four days in hospital. It was clear that the victim had not provoked the defendant. The Court of Appeal Criminal Division acknowledged that forceful contact was allowed by the rules of Rugby Union (and *semble* the law) but the game was not a licence for thuggery. The plea against a sentence of 18 month's imprisonment for causing grievous bodily harm under section 18 of the Offences Against the Person Act 1861 was dismissed.

In *R v Rees*[42], the prosecution argued that Rees approached an opponent from behind and that he threw a punch causing a fracture of the jaw. It was not in dispute that there was physical contact between the players; indeed it was uncontested that grievous bodily harm was suffered. The key issue was

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[35] The CICS is a State run compensation system for the physically injured and blameless victims of crime, including the victims of sports field violence, see the award made to a rugby player by the CICS in (1991) 141 New Law Journal 1725 and (1992) 142 New Law Journal 80; see further McCutcheon, supra note 17, at footnote 17.

[36] [1980] Criminal Law Review 661.

[37] The Times 12 October 1986.

[38] Later, in a then infrequent move, Bishop became a professional rugby league player; see further The London Independent 27 November 1992.

[39] (1986) 8 Criminal Appeal Reports (Sentencing) 343.

[40] Ibid at p345.

[41] (1989) Criminal Law Review 513, Bristol Crown Court; (1989) 11 Criminal Appeal Reports (Sentencing) 36 and The Times 24 January 1989.

[42] [1992] All England Reports Annual Review 365, Kingston-upon-Thames Crown Court.

whether that harm was inflicted unlawfully and maliciously as per section 20 of the Offences Against the Person Act 1861. The defendant argued that his opponent had been obstructing him throughout the match and the incident had resulted from an attempt by Rees to drag the opponent out of his way. Rees' character witness included an international referee, a former Welsh international coach and the rugby correspondent of the *Sunday Telegraph*. The jury accepted the defence of accident and passed a verdict of not guilty.[43]

There was also an acquittal in *R v Hardy*.[44] In this case a brawl developed between players wherein the defendant punched an opponent in the jaw. The opponent hit his head against the ground, which was still hard with frost, and died two days later in hospital. The defendant claimed that he only threw the punch as he was being hit from behind and he was simply defending himself. The defendant was acquitted. In contrast, in *R v Devereux*[45], the defendant punched the opposing captain from behind and broke his jaw. Devereux was sentenced to nine months' imprisonment after being convicted of inflicting grievous bodily harm with intent to cause it.[46] The presiding judge was slightly taken aback at the negative response to the sentence from the rugby press and public.[47]

There remain two final incidents of note.[48] First, in September 1998 *BBC News online* reported that a schoolboy had been jailed for kicking an opponent in the head during a school rugby match. The victim was knocked out and his jaw broken in the attack. The defendant, who admitted grievous bodily harm, was given 12 months' youth custody.[49] Second, the *London Times* reported that in late 2000 a club player in Wales admitted committing grievous bodily harm in punching an opponent with such force that the victim was compelled to retire from the game.[50] The guilty party was sentenced to 200 hours' community service and ordered to pay £2,000 in compensation. The presiding magistrate informed the player that his good character and previous clean record had saved him from a jail sentence.[51]

E. THE CRIMINAL LAW: A GOOD TEAM PLAYER?

In subsequent commentary on *R v Rees*, the trial judge remarked that the victim received no offer of compensation and no disciplinary hearing by the authorities hence he felt he had no alternative but to go to the police and

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[43] See the review of the case by His Honour John A Baker, Former Circuit and Resident Judge, Kingston-upon-Thames Crown Court (1982-98) in (2001) 9 Sport and the Law Journal (1) 95.
[44] The London Independent 27 July 1994.
[45] The Times 26 February 1996.
[46] He served just over four months after losing an appeal against conviction. On release he attempted to resurrect his career, see Rugby World November 1996 at p18-9.
[47] Baker, supra note 43.
[48] Invaluable updates on such incidents are provided in the Journal of the British Association of Sport and the Law in the regular contributions of Alistair Duff's «Scottish Updates» and Walter Cairns' «Sports Law Current Survey».
[49] BBC News online «Schoolboy jailed after rugby attack» **Σφάλμα! Δεν έχει οριστεί σελιδοδείκτης.**, 28 September 1998.
[50] The Times 19 December 2000.
[51] See summary by Cairns, W «Sports Law Current Survey» (2001) 9 Sport and the Law Journal (1) 2 at p8-9.

launch a prosecution.[52] There are two fundamental points implicit in this remark.

First, that the administrative authorities of rugby should be aware of the need to constantly review and update their disciplinary structures and insurance schemes.[53] Players, especially professional players, whose livelihoods are at stake, are now far more aware of their legal options[54] and expensive civil proceedings may follow criminal actions.[55] Society in general has become more litigious and rugby has seen injured players suing referees[56], coaches[57], schools[58] and clubs[59] for negligence.[60]

Second, there are significant problems with the use of the criminal law in this regard. Sports participants are reluctant to go to the authorities for fear of «letting the side down», so also may the police be reluctant to pursue unpopular cases against local sports heroes and in any event the criminal law may be a very blunt and inconsistent instrument as it may, for example, be seen to scapegoat individual participants for practices which are endemic in

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[52] Supra note 43 at p95 and 99.

[53] See supra note 12 and the English media's reaction to Duncan McRae's ban seven-week ban, during which it was unlikely that McRae was going to play any further competitive games. The author suggests that this inconsistency discredits and bedevils internal disciplinary mechanisms in many sports, see Anderson, J «Taking Sports Out of the Courts: ADR and the International Court of Arbitration for Sport» (2000) 10 Journal of the Legal Aspects of Sport (2) 123

[54] On players' rights see generally Beloff et al Sports Law Oxford: Hart Publishing, 1999 at pp67-102 and more specifically Moore, B «Know your rights» Rugby World, November 1996, at p76 (Part 1) and December 1996 at p84 (Part 2) and McInerney and Rush «Rugby Union Players' Contracts: Standard Provisions» (1998) 6 Sport and the Law Journal (2) 19.

[55] See Cooper, C «Rugby damages award set to spark legal goldrush» The Lawyer 22 February 1999 at p5.

[56] Smolden v Whitworth The Times 18 December 1996, which involved a claim in negligence by a young rugby player against both a fellow player and the referee for damages in respect of severe injuries caused when a scrum collapsed. The referee was held liable; see a review of this case by Pickford, V «Playing Dangerous Games» (1998) 6 Tort Law Review 221. For an American viewpoint on this issue see Biedzynski, K «Comment: Sports Officials Should Only Be Liable For Acts Of Gross Negligence: Is That The Right Call?» (1994) 11 University of Miami Sports Law Review 375.

[57] See generally Gardiner, J «Should coaches take care?» (1993) 143 New Law Journal 1598 and O'Brien v Mitchell College of Advanced Education, Supreme Court of New South Wales, Unreported, 1985. In this Australian case a rugby coach taught his players a dangerous tactic whereby they exercised pressure on their opponents in a V-formation. In the course of a game the tactic caused serious injury to an opponent ands severed his spinal cord. The plaintiff argued that the coach was negligent in teaching a tactic that was prohibited by the safety rules of the sport. The College, for which the coach worked, was found liable for the coach's negligence. The citation for this case is taken a paper delivered by Eck, H «Sports Injuries – Can You Claim Damages» in «Legal Issues Surrounding Sport: Lexicon Attorneys' Sport and the Law Conference» University of Port Elizabeth, South Africa, 22 February 2001. This and other relevant papers can be accessed through **Σφάλμα! Δεν έχει οριστεί σελιδοδείκτης.**

[58] Van Oppen v Clerk to the Bedford Charity Trustees [1990] 1 Weekly Law Reports 235. In this case a schoolboy was injured in a rugby tackle. He was not insured; it was held that there was no duty on the school to insure nor was there a duty on the school to advise the boy's parents to arrange insurance.

[59] Recently in France a rugby club was held vicariously liable for an injury caused by their player. The case was based on Article 1384 (1) of the French Civil Code; see further Denoix de Saint-Marc, S «La responsabilitι des clubs de rugby fondιe sur l'article 1384» (2000) La Dalloz 862 and Cairns supra note 51 at p32-3.

[60] All these volunteers - coaches, referees, umpires etc. – on whom the promotion of the sport depends, are now exposed to the risk of lawsuit, see Stewart, D «Safety in Sport» (1998) 6 Sport and the Law (1) 41.

the sport as a whole.[61] All in all, it is suggested that in these circumstances the criminal law should be seen as a last resort; in effect subordinate to the sport's internal disciplinary and compensatory mechanisms.[62]

Conclusion

Rugby is a physical sport, there are risks but it is not dangerous. It is submitted that prosecutions are, quite rightly, limited to and initiated by incidents of outright thuggery alone, usually perpetrated in so-called «off-the-ball» incidents. In short, the common law courts in their criminal jurisdiction have extended a certain amount of latitude to rugby players in pursuit of their sport. They should use it; or lose it.

[61] See further James, M «The Prosecutor's Dilemma» (1995) 3 Sport and the Law Journal (3) 60. There is a suggestion that prosecutors should be set guidelines to follow in deciding whether to prosecute a violent player, see the Lord Advocate's guidelines to Scottish Chief Constables reviewed by James and Gardiner «Touchlines and Guidelines» [1997] Criminal Law Review 38.

[62] This view that the criminal law should be seen as a «policeman of the last resort» is favoured by the Irish Law Reform Commission, see «Report on non-fatal offences against the person» Dublin: LRC, 1994 at par 9.155 et seq.

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TOTAL QUALITY MANAGEMENT IN SPORT ORGANIZATIONS

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A. The New Management System

Since the 1960s, the global business environment has undergone major changes that frequently have no precedent in the historical business climate (Ansoff, 1988). As the turbulence levels changed, management developed systematic approaches to handling the increasing unpredictability, novelty, and complexity (Ansoff and McDonnell, 1990). To deal effectively with factors such as economic conditions, societal changes, political priorities, and technological developments that affect the ability of a company to grow profitably, executives design strategic management systems they think will facilitate the optimal positioning of the organization in its competitive environment (Pearce and Robinson, 1985; Thompson and Strickland, 1987; Steiner, 1979).

According to Domb (1993), Edwin Artzt, Chairman of Procter and Gamble, has said that excellent strategy is vital and can start in any organization, but excellent execution and improvement of strategy comes only through policy deployment within the total quality management environment. It is a new world view, according to Scholtes (1988), that shifts emphasis from profits to quality. The focus is now on improving products and services by improving how work gets done (the methods) instead of simply what is done (the results). In addition, relationships between management and employees are restructured: a manager's job becomes helping people do the best job possible, foreseeing and eliminating barriers that prevent employees from making quality products or delivering quality services all the time. The new approach to quality has many names. In Japan, it is called "Total Quality Control" (TQC) or Company-Wide Quality Control (CWQC). In the U.S.A.and the European Union, it is called Quality Management, Total Quality Management, or more simply Quality Leadership. Quality Leadership emphasizes results by working on methods, and focuses on creating a workplace that encourages everyone to contribute to the organization. Employees learn to use a scientific approach to solving problems and making improvements. Simply providing a service is replaced by providing a service that surprises and delights customers by how well it meets their needs, even needs they had not thought of.

B. Deming's View about Quality

Aguayo (1990) explained Deming's theory about the relationships among quality, costs, productivity, and profit. As quality is increased, costs decrease, because better quality leads to reduction in variation, inspection rework and scrap, mistakes, delays, and therefore, produces fewer defects. Better productivity lowers unit costs, which lowers prices. By providing improving services and products with lower prices an organization develops loyal customers and increases its market share. The company is

producing higher profit margins, higher profits, higher stoch price, a secure and satisfied workforce, stays in business and, perhaps even creating more jobs.

Although Dr. Deming developed his methods in an industrial setting, he insisted that his approach was applicable to institutions generally, even those in service and nonprofit businesses (Holusha, 1993).

Walton (1986) analyzed Deming's management method as follows:

1. Dr.Deming suggests a radical new definition of a company's role. Rather than making money, it is to stay in business and provide jobs through innovation, research, and constant improvement.
2. Quality comes not from inspection but from continuous improvement of the process.
3. Purchasing departments should seek the best quality and work to achieve it with a single supplier for any one item in a long-term relationship. Seeking the lowest-priced vendor leads frequently to supplies of low quality.
4. Management is obligated to continually look for ways to reduce waste and improve quality.
5. The job of a supervisor consists of helping people do a better job and of learning by objective methods who is in need of individual help.
6. Drive out fear. It is necessary for better quality and productivity that people feel secure and are not afraid to ask questions or to take a position. For example, performance ratings build fear, and leave people bitter and beaten. Teamwork is destroyed. Annual review of performance should be eliminated.
7. Management must break down barriers between staff areas (departments, units). Teamwork is encouraged and rewarded.
8. Eliminate slogans, exhortations, and targets for the workforce.
9. Eliminate numerical quotas because quotas take account only of numbers, not quality or methods. An employee, to hold a job, meets a quota at any cost, without regard to damage to the company.
10. Remove barriers to pride of workmanship. Too often, misguided supervisors, faulty equipment, and defective materials stand in the way. These barriers must be removed.
11. Both management and the workforce must be educated in the new methods, including teamwork and statistical techniques.
12. It will take a special top management team with a plan of action to carry out the quality mission. Workers cannot do it on their own, nor can managers.

C. Definition of Total Quality Management

Dr. Chen (1994) defined Total Quality Management as a systematic approach to managing for quality and productivity and satisfy customers' needs focusing on continuous improvement of organizational processes (through an integrated system of tools and techniques) with participation and contribution by all members of the organization and cooperating units. This results in high quality products and services, and insures the survival and growth of the company in a competitive world.

D. Total Quality Management in Services

Industries ranging from banking to insurance to airlines are finding that quality is as vital a marketing tool as price. This realization is coming in the face of a tight economy and a growing refusal on the part of customers to stand for anything less than the best. The most aggressive in formal quality initiatives are the financial service providers, health care companies, government, and universities. The hard part in improving quality in services is that you cannot use the traditional manufacturing tools to measure it or inspect it before you deliver it. What management needs to understand is that it is not in charge of customer satisfaction. It is the employee who talks to the customer. Consequently, employees have to like their jobs, need more authority, and need more "empowerment training", which gives them wide latitude to step outside their normal jobs and solve customers' problems (Green, 1994).

E. Total Quality Management in Government

The people who work in the government are not the problem; the management systems in which they work are the problem. People need a more effective, efficient, and responsive government. They need a federal government that treats its taxpayers as if they were customers and treats taxpayer monies with respect for the sweat and sacrifice that earned them. Governments large and small, American and foreign, federal, state, and local have begun to respond. The U.S. government is in the process of eliminating unneeded bureaucracy, improving service to taxpayers, reducing waste, and creating a leaner but more productive government. The approach used to accomplish the above goal has much in common with the new management philosophies such as total quality management and business process reengineering (Gore, 1993; Osborne and Gaebler, 1992).

F. Total Quality Management in Education and Sport Organizations

According to Spanbauer (1992), fundamental causes of poor academic performance are not found in the schools but rather in the institutions that have traditionally governed the schools. The restructuring of education is needed because economic growth, competitiveness, and living standards directly correlate with the state of the schools. There is a great need for cultural change from the top down and away from the authoritarian management and bureaucratic practices that have been a part of the educational system for years. The reformation of education demands a model for quality improvement with proven success, similar to those tested and practiced in business and industry. A systematic approach to improving quality in education and sport organizatoins is the only solution (Kriemadis, 1995; Kriemadis, 1997; Kriemadis, 1998; Kriemadis, 1999; Pashiardis and Kriemadis, 1999).

G. Implementation of Total Quality Management in Sport Organizations

Ikezawa (1993) stated that it takes a long time, and a well thought plan for the introduction and implementation of Total Quality Management and top management that exceeds subordinates in enthusiasm for improving the quality. The President/CEO must be personally involved and must lead the effort to develop the strategy necessary to implement the new management system.

The next step in the implementation phase would be to establish a Quality Council where the CEO and other top managers must be involved. The purpose of the Council would be to develop the implementation plan, It should define the vision of what the organization should be. This vision explicitly includes the values and beliefs of Total Quality Management (Sashkin and Kizer,1993). The following values and beliefs make up an organization's new culture:

1. The new quality-driven organization is committed to listen and serve customers and thus, it produces delighted customers. Only by delighting customers, according to Ishikawa (1981), the organization's profits can grow. According to Whiteley (1991), the organization may use the following strategies to be customer driven:

1.a. Information from customers is used in designing products and services.

1.b. The organization regularly asks customers to give feedback about its performance (satisfaction measures look at the extent to which customers are satisfied with the service they have received).

1.c. Customers' complaints are regularly analyzed in order to identify quality problems.

1.d. Internal procedures and systems that do not create value for the customers are eliminated.

1.e. Employees are encouraged to go above and beyond to serve customers well.

1.f. Employees who work with customers are supported with continuous training and resources that are sufficient for doing the job well.

1.g. Employees are empowered to use their judgement when quick action is needed to make things right for a customer.

As mentioned before, the most obvious benefits of superior service to customers come in terms of money saved. Just as doing things right the first time on the factory floor saves the costs of rework and scrap, so providing good customer service avoids the costs of alienating buyers (Davidow and Uttal, 1989).

2. The new quality-driven organization uses performance information and quality information to improve the efficiency and effectiveness of the organizaton, and not to judge or control people. Dr.Deming urged management to "Drive out Fear" because it is impossible to improve quality of services by controlling people (Sashkin and Kizer, 1993).

3. Employees are now empowered to make decisions and take actions that will lead to high quality and excellent performance. They have the authority to control and improve their work. Tracy (1990) described ten different ways of employee empowerment:

3.a. Power through responsibility -the manager gives employees a clear understanding of the responsibilities of the job.

3.b. Power through authority -employees are given authority equal to responsibility assigned to them.

3.c. Power through standards of excellence -the manager empowers employees by setting standards of excellence that enable them to reach their full potential.

3.d. Power through training and development -the organization provides employees with the skills and confidence they need to reach the standards of excellence.

3.e. Power through knowledge and information -the manager empowers employees by providing them with the knowledge and information they need to make good, sound business decisions.

3.f. Power through feedback -if employees are to have the power to succeed they must know when and how they need to improve their performance.
3.g. Power through recognition -recognition enhances employees' self-esteem and motivates them to continue to do their best job.
3.h. Power through trust -trust helps employees believe more in themselves.
3.i. Power through permission to fail -when employees are given permission to fail, they risk more and push the limits, which enables them to discover the full extent of their power.
3.j. Power through respect -when employees are treated with dignity and respect, they have a greater motivation to perform.
Managers empowering employees using the above mentioned ways are creating a positive climate within the organization which is the greatest motivator factor for quality and productivity improvement.
4. Working as a team is a natural human behavior. In the new quality-driven organization everyone acts as part of a team, for the good of the entire organization. Dr.Deming also argued that competition is counterproductive inside an organization. The establishment of quality circles is a good example of teamwork. Quality circles consist of small groups of employees who meet to uncover and solve work-related problems. Members get together regularly to learn interpersonal skills and statistical methods associated with problem-solving and to select and solve real problems. Members meet an hour a week both during regular and outside of regular working hours. Meetings are chaired by a group leader. The leader is a discussion moderator who facilitates the problem-solving process. Problems are not restricted to quality, but also include productivity, cost, safety, morale, environment and other topics (Crocker, Charney and Chiu, 1984).
Verespej (1990) found that the most important benefits to working in teams are: a) improved involvement and performance, b) positive morale, and c) sense of ownership and commitment to the product/service that teams create.
5. The new quality-driven organization has reduced the disparities in pay between executives and workers. Large pay differentials make fairness more difficult to achieve and can undermine some of the other quality-driven cultural factors (Sashkin and Kizer, 1993).
6. Employees now have an ownership stake in the organization -they become owners through an employee stock ownership plan. When employees have a stake in the organization as well as a say in work-related matters, total employee involvement becomes even more effective. It also seems to strengthen the other quality-driven cultural factors (Sashkin and Kizer, 1993).
7. The new quality-driven organization requires that achievement be recognized both symbolically (certificate, newsletter story, employee's name on a plaque) and in terms of material rewards (cash bonuses, profit sharing plan, or special privileges that employees see as important) (Sashkin and Kizer, 1993).
8. The new quality-driven organization is always rethinking and redesigning its business processes to achieve improvements in critical contemporary measures of performance such as costs, quality, service, and speed. It continually ignores what is and concentrates on what should be (Hammer and Champy, 1993).

H. European Model for Total Quality Management

According to the European Foundation for Quality Management (1995), every organization can assess its progress against models of excellence such as the Deming Prize in Japan, the Baldrige Award in the USA, and most

recently the European Quality Award in Europe. Although each organization is unique, the European Model for Total Quality Management provides a generic framework of criteria that can be applied widely to any organization (public or private). The European Model for Total Quality Management underlies the European Quality Award and contains the following nine elements:

1. **Leadership:** How the executive team of the organization inspire, drive and reflect Total Quality as the organization's fundamental process for continuous improvement.
2. **Policy and Strategy:** How the organization's policy and strategy reflect the concept of Total Quality, and how the principles of Total Quality are used in the formulation, deployment, review and improvement of policy and strategy. The organization should establish and describe its policy and strategy including its processes and plans and show how they are appropriate, as a cohesive whole, to its own circumstances.
3. **People Management:** How the organization releases the full potential of its people to improve its processes continuously. The people of the organization can also be defined as the «internal customers» of the organization. Organizations should present the restrictions upon them and how they work within these restrictions to obtain the optimum potential from their workforce.
4. **Resources:** How the organization's resources (financial, information, technology, equipment, materials, buildings, etc.) are effectively deployed in support of policy and strategy.
5. **Processes:** How processes are identified, reviewed and, if necessary, revised to ensure continuous improvement of the organization's activities.
6. **Customer Satisfaction:** What the organization is achieving in relation to the satisfaction of its external customers. External is defined as the immediate recipient of the service the organization provides. Areas addressed in this element could include customers perceptions with respect to facilities available, reliability of services, price, etc.
7. **People Satisfaction:** What the organization is achieving in relation to the satisfaction of the individuals employed by the organization. Areas addressed in this element could include people's perceptions of working environment, reward schemes, recognition schemes, employment conditions, equality of opportunity, participation in decision making, communication, health and safety provisions, appraisal and target setting, training, etc.
8. **Impact on Society:** What the organization is achieving in satisfying the needs and the expectations of the community at large. This includes perception of the organization's approach to quality of life, the environment and to the preservation of global resources, and the organization's own internal measures.
9. **Business Results:** What the organization is achieving in relation to its planned service/business objectives and in satisfying the needs and expectations of stakeholders in the organization. Business Results are measures of the effectiveness and efficiency of the organization and can be both financial and non-financial.

I. Conclusion

Awareness of the importance of quality and organizational interest in Total Quality Management is a top priority in the contemporary sport business world. Managers of sport organizations -commercial sport clubs, colleges which offer sport management programs, spectator sports- must commit a

variety of resources if they are to survive and grow in today's turbulent business environment. The Total Quality Management principles such as:

- customer focus
- involvement and empowerment of people and teams
- business process management
- continuous improvement

should be encompassed in the management system of any sport organization. The implementation of Total Quality Management methods will create a competitive advantage for the sport organization. The results will be very positive in terms of long-term organizational effectiveness (profit, performance, and quality).

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THE GREEK TRANSFER SYSTEM OF ATHLETES AND THE RESPECT OF THE ATHLETES' PERSONALITY*

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Introduction

Sports and physical education in general are of paramount importance for the full development of human personality[1]. Free participation in the sports activities is recognized[2] as a fundamental right[3] in the education and development of citizens[4]. This right is protected by international treaties and agreements between states in international organizations[5]. The Greek Constitution, through physical education and sports, directly posits educational targets[6] and exercises control in the development of the students' personality and all participators in sports

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[1] See UNESCO Charter, International Physical Education and Sport, 21.11.1978, Paris. Also see D. Panagiotopoulos, (1990) «Physical Education and Sports according to the UNESCO Chart» (in Greek), ΣΤΑΔΙΟΝ, 1:1, pp.31-38

[2] See Sports for All, European Declaration, Meeting of European Ministers of Sports, Brussels, 1975 and Rhodes 1992.

[3] European Sports Charter for All (people with special needs), Recommendation no86, 18.11 Also see I.C. of PES, Art.1, par.1.

[4] According to the IC of UNESCO «One plan of development and operation of PE must be supported by: a) the material infrastructure, b) the research and validation, c) the national institutions, and d) the national co-operation», see D. Panagiotopoulos, 1999, op. cit, footnote 1. Also see A. Bredemas, «UNESCO's IC of PES- Legal, Political Dimension and Perspective», in Proceedings of 2nd ISLC, Oct.29-31, Olympia 1993.

[5] As the European Declaration, op. cit., also see UNESCO IC of PES, op.cit., art.1-2 and foreword p.159.

[6] Greek Constitution, art.16, par.2.

activities. Consequently, the existence of law texts that regulate the sports related institutions and organizations, particularly for the protection of the exercised and indeed the children and adolescents, is deemed necessary and demands constant adjustments.

1. Principles of the sports activities

1.1. The principle of personal freedom in sports activities

The exercise of the right of participation in the sports activities is directly related to personal freedom and free participation in the athletic activity. The display of the fighting and competitive spirit in humans is intrinsically related to their sense of absolute personal freedom, which is protected by many provisions of the state constitutions and specific regulations of sports legal[7]. There are limitations on personal freedom, only under the authorization of specific laws, which meet the need for the protection of the ideals and general perceptions of sports and athletic morals[8] (8). These limitations can be allowed to the degree they are allowed by the Constitution and the Law, and only if they are not too restrictive and there is no harm done on the personality of athletes. Also these limitations can be allowed when there are no violations on the rights of others, and the standards of common athletic morals are maintained. Limitations which put restrictions on personal freedom are related to the freedom of opinion, freedom of congregation, economic freedom and the free development of the athletes' personality. Restraints on the participation in sports, and the characterization of a law or natural entity in the athletic world as «non-sportsmanship»[9] (9), is a form of a reduction of personal freedom in sports. In these cases, there is not only a limitation of freedom for the purposes of the sports behaviour in general, but for its annulment [10](10).

1.2. The principle of free development of personality

«Personality» is the intrinsic right of a person on his/her own self, being a member of an organized society, and having the ability to move within a law-based context and at the same time to demand legal defense of his/her other rights. A person's personality is intrinsically related to his/her character that formulates and provides the characteristic properties to a person's behaviour[11] (11).

The development of personality is incorporated within a network of rights, as a «context of rights», which is composed by the value of

[7] Council of State 2944/1980.

[8] D. Panagiotopoulos (1998), «Legal Aspects and Protection of Fair Play», in Proceedings of International Olympic Academy, Olympia, 1997, pp.318-332.

[9] Art. 130, L.2725/99.

[10] According to the Law, the characterization of a person as an non-athlete is not a simple limitation of his/her personal freedom, but is its annihilation, since the sports related activities of a person is closely tied to his/her personal freedom. Council of State 1724/1965.

[11] See G. Statheas (1996), Interpretation of the new law on the press 2243/1994, (in Greek), p.33.

being human[12] (12) and the accompanying value of all characteristic things which make humans valuable: their bodily, spiritual, psychological and social dimension [13](13).
Among other things in one's personality are included the characteristic elements of one's bodily psychological and emotional health. In the context of the protection of the development of one's personality we include privacy[14], one's characteristic image, the immunity of one's home, one's honour[15] and freedom, which «is intrinsically related to the athletic and competitive in general character of each individual»[16] (16). The right for an uninhibited development of one's personal capabilities, respect for one's personality, the bodily integrity and the athletic environment in his sports related action should be guaranteed with rules of law[17] (17). In Greece the development of one's personality through his/her participation in sports is protected by the Constitution. The problem which interests us here is focused: a) on the participation to the sports related activity and b) on the protection of this right under the guarantee of the educational system and other facets of social life[18] (18). In the cycle of athletic activity being an athlete is accompanied by rights and obligations, the sources of which do not differ from those which exist in other more broadly based individual rights. Through the participation in the athletic activity we achieve the full development of personality[19] (19), which is a right[20] (20), and which is conducive to the cultural, social and financial life of a country[21] (21). Any attempt to

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[12] G. Karakostas (1991), Personality and the press, A. Sakkoulas, p.36.
[13] See Georgiades- Stathopoulos, Civil Code, art.57, no.1, and compare to the definitions of the Court of Appeal of Athens 1819/1955, EEN 23.241, of Patras 89/1958, No.B7.94, of Athens 3385/1958, Rec. N10.428, First Instance Court of Thebes 293, 294/1950, EEN 18.379, First Instance Court of Athens 10024/1950, Rec. L 2.212.
[14] On the privacy see related decisions: AP 60/1969, NoB 17, 562, First Instance Court of Thessaloniki 2964/1956, EEN 24, 416.
[15] See Greek Constitution, Art.2, par.1. According to Karakostas p.36, as above, «the value which is bestowed upon each person by society, known as «reputation» can not be compromised by any interest and is a nucleus of inviolable rights of one's personality, as it is determined by the Constitution».
[16] See Council of State 1724/1965.
[17] These clauses can be found in the articles of the New European Sport Chart, which was signed during the 7th Conference of Ministers of Sports in Rhodes, 14-15 of May 1992.
[18] See related decisions of the European Ministers of Sports on Sports for All, Council of Europe, Decision No. (76) 41, MSL-6 (88) B1-E, 24 September 1976, 1st Meeting of the European Ministers of Sports, Decision, No.2, MSL-6 (88) B1-E, 20-21 March 1975, 4rth Meeting of European Ministers of Athletes, Malta 15-16 May 1984, Decision 2, MSL (88) B1-E, 25 September 1984, ibid, 5th Conference, Recommendation R (86) 18, Dublin, 30 September-20 October 1986, MSL-6 (88) B1-E, 4rth December 1986, EU, Vote on sports in EU and Europe for citizens, Strasbourg, 17th of February 1989, EU 2/84, 17-2-1989, see also D. Panagiotopoulos, P. Naskou-Perraki, "Sports and Physical Education" (in Greek), in Texts of International Practice, Vol. 8, A. Sakkoulas, Athens-Komotini, 1993, pp.180-315. Also see "European Sports Charter", 7th Conference of European Ministers responsible for Sport, Council of Europe: Rhodes 13-15, May 1992, in PANDEKTIS, ISLR, I:2, 1992, pp.333-336.
[19] Greek Constitution, art.5, par.1, in combination to the art.2, par.1 of the Constitution, on the basis of the recognition of the individual, as under the law, i.e., as a bearer of rights and obligations.
[20] D. Panagiotopoulos (1994), «The Right in Sports», (in Greek), Bulletin of Sports Law I, A. Sakkoulas, Athens, pp.72-73.
[21] Constitution, art.5, par.1 in combination to art.16, par.9, 1, and 12. See also I. Drosos (1991), «Sports in the Constitution» (in Greek), in the Proceedings of the One-Day Conference of EKEAD, «the New Law on Sports under the name Sports Law Code», EKEAD, 1993. See

make laws or regulations with intent to limit the right of free participation to athletic games and sports is directly against the provisions of the relevant articles of the Constitution [22](22).

1.3. The principle of free choice of one's preferred sports club

In the context of the principles of personal freedom and the development of personality there exists the right of free choice of the sports related union or association, as well. The athlete has the right of choosing the athletic union or association which he/she trusts for the appropriate cultivation of his/her bodily traits through one or several sports[23] (23). The athlete also has the right of free participation in the athletic action, for the development of his/her personality, the manifestation of his/her bodily abilities and the determination of his/her athletic education. The right to join freely an athletic union or association and the right to transfer to another are absolute rights according to the general principle of law that meeting one right cannot override one's obligation to meet another right. With this we mean that the rights of the athletes should not override the rights of the sports club in which they belong.
The right of transference is safeguarding fundamentally the basic freedoms of the athlete as a human being to the point that it is not an abuse of its rightful claims. The sports club has also the right to develop its own characteristics through the sports which it supports. For this reason it organizes or makes the appropriate facilities, it pays the fees of the coaches and trainers, it buys the appropriate equipment. From the side of the sports club sometimes there is also an abuse of its rights and many times we have athletes who are captive or in general they cannot exercise their own rights (especially the right of transference). This is obvious in the case of professional sports. In everyday social life there are needs and problems which influence athletic life and are an important reason or higher force for the

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El. Venizelos (1993), «The Constitutional Acceptance of Sports» (in Greek), in the Proceedings of the International Conference on the Institution of Olympic Games-Interscientific Approach, Olympia 3-7 September 1991, and PANDEKTIS (ISRL), 1:2, 1992, pp.212-214, also (1993), «Sports and state of law- the limits of law deregulation and the return to the Constitution» (in Greek) in Proceedings of the 1st International Congress on Sports Law, Athens, 11-13 December 1992, EKEAD, Athens, pp.125-30, see also D. Panagiotopoulos (1993), «Le Droit du Sport Selon la Constitution» in Revue Juridique et Economique du Sport, No.25:2, pp.109-116, also A. Loverdos (1993), «The protection of sports as individual and social right», (in Greek), in Proceedings of the 1st International Congress on Sports Law, Dec. 11-13, Athens 1992, H.C.R.S.L.: Athens 1992, pp.171-175, as also (in Greek) in A. Demetropoulos, (1996), Issues of Constitutional Law, Athens, and (1998), Constitutional Law, Athens, p.594.

[22] See Art.16, par.9, 4, and 1, and art.5, par.1, see also Council of State 3699/1998, with which is deemed as unconstitutional the Ministerial Decision No.C4/232/5.3.1998, which is related to the right of participation of a student at high-school in the All-Hellenic Competition of Gymnastics and his selection as a member of the representative team, see also Council of State 4914/1988, 235/1990, 2636/1990, 936/1991, see also D. Panagiotopoulos (1993), «Issues in Scientific Determination and application of Sports Law», in Proceedings of the 1st IASL Congress, EKEAD-Telethrion, Athens, pp.81-2.

[23] See Council of State 1812/1990, PANDEKTIS I.S.L.R (1993), I:3, p. 446 and Council of State 3586/1995, see St. Giakoumelos (2000), Sports Law, Athens, pp.89-94.

necessity of the athlete's transference. To avoid unnecessary conflicts and for the satisfaction of the aforementioned rights, there are limitations in the freedom of choice of a sport club or association. However, these limitations should not reach the point of nullification of the right of joining freely and transference.

1.4. The principle of the distinction between an amateur and a professional athlete

The athlete, through his Athletic Registration Card is legalized in the exercise of his rights and is deemed responsible for the consequences of his actions in the athletic environment, to his sport club and to the higher lever sports associations or federations[24] (24). According to the Greek Law and Jurisprudence, as athletes can be perceived only the ones who participate in the sports using the body and achieve in this records of significance[25] (25). Sports law is distinguishing sports in two basic categories, the team sports and the individual sports[26] (26). A team sport is the one according to which the final distinction, winning, depends on the participation and the successful teamwork of many athletes, who compete as a team[27] (27). The team sport can be included as a separate sub-category in the individual sports[28] (28).
The athletes can be distinguished in: a) the amateurs, b) the paid, who have a contract with an otherwise amateur athletic union which has a Department of Paid Athletes, and c) the professional athletes who have a contract with an Anonymous Athletic (professional) Company[29] (29).
The athletic identity of all above categories of athletes is maintained only as long as they keep with their actions in accordance to the athletic spirit[30] (30). The relations which exist between athletes and athletic unions or associations[31] (31) are regulated by particular provisions in

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[24] See Council of State 3190/1986 which cancels out the canceling decision of ASEAD on the decision of Board of Management of EPO with which a petition from a Club which requests an ID athletic card of an amateur soccer player, on the justification that between the Club and the higher Federation there is a private law relationship and thus the judge for arbitration's should be the civil courts.
[25] See Council of State No. 3046/1989 (Section C) and Law 1351/83 and 2009/92, see also D. Panagiotopoulos, Sports Code, (in Greek) 1993, p.386. See also V. Avgerinos, A. Kriemades (1999), «Amateurs and professional athletes» (in Greek) in the Proceedings of the 1st Congress on Sports Law, Ion, Athens, pp.116-123.
[26] Group Sports are soccer, basket-ball, tennis, water-polo, bridge, criket, hockey on ice, hockey on grass, base-ball, and soft-ball. The rest are considered individual sports, see art.6, par.1, of Decision 15460/24.6.1999 of the Ministry of Culture (Government Gazette 1339/B/30.6.1999).
[27] See Council of State 2636/1990 (section C) and 3251/1990 (section C). These decisions cancel out the decisions of the Committee for evaluation of Candidates TEFAA, which as athletes could not participate in group sports as groups.
[28] See Article 34, par.14c, Law 2725/1999. The sports using motorized vehicles and their branches are sports related activity, which is under the provisions of athletic law, see Article 134, par.8 in Athletic Code, Addendum, p.201.
[29] See Law 2725/1999, Article 33, par.1 and 2 with the reservation of article 85 of the same Law, par.1 and 2. See D. Panagiotopoulos, I. Anagnostopoulos, Ip. Alexiou (1998), «Athletic Contracts in Greece» (in Greek), in 5th IASL Congress, Nafplio, 10-12 July 1997, Ion, Athens, pp.123-142.
[30] See Articles 130, 132, Law 2725/99.
[31] Ibid, Article 33, par.2.

the charters or special regulations of the athletic union or association one belongs to. The competitive activity of the athletes according to the law, except in the circumstances of athletes who are paid by DPA or those who work professionally in AAC, is not an exercise of their professional athletic activity[32] (32). The financial or other benefits which are provided by the athletic unions, associations or federations to athletes, as a support to their athletic activity, are not fees[33] (33), but only means to meet the challenges put forward by the requirements of training and bodily exercise[34] (34). On the issue of financial agreements between amateur athletes and their unions[35], the same provisions that exist in European Law exist here as well[36] (35, 36).

2. The System of the transference of amateur athletes

The terms, the presuppositions and all the details of the registrations, transfers, contract engagements and dis-engagements of athletes in amateur associations and unions are controlled by special regulations which are issued by the federations of each sport. The legality of these regulations is determined by the Ministry of sports[37](37).
The transfers of athletes are distinguished in: a) Those which fulfil the terms of free transfers in team and individual sports and for which there is a reason for their dis-engagement from the union or association in which they belong after their registration in it, b) those transfers for which there has to be a consent from the sports club, and c) those for which an important reason exists. A general rule for the transfers of athletes of amateur unions and associations is that they are not allowed without the consent of the sports club the athlete belongs to. This means that the right of free transfer of the athlete from one sports club to another both in team sports as well as individual sports is determined by the consent of the sports club in the case of free transfer[38] (38) and

[32] The provisions of article 33 of Law 2725/1999, are applied to athletes who do not compete as members of the Departments of Remunerated Athletes of a Club, or a sports Company.
[33] The provisions of article 85 and 86 of the athletic law find an application only in relation to the activity of these athletes who are under their jurisdiction , and not on other athletes.
[34] According to law the regular expenses for the training of the athletes, such as travel expenses, are the object of a claim for reasons of loss of profit, while the offers of premiums cannot take the form of a salary, because this is forbidden. See Supr. Court, 921/1998.
[35] See D. Panagiotopoulos, N. Minis, D. Makri (1997), «Sports and Competition in Europe» (in Greek), Bulletin of Athletic Law, III, pp.243-247.
[36] See Article 39 (48), SynthEOK and decision DEK 15-12-1995, on the Bosman Case C-415/93.
[37] Article 27, Law 2725/1999 in combination to the article 33, par.3. In the law which existed before the related terms and conditions were delineated by the minister with the issue of Ministerial Decree, after the recommendations of Federations. In every sport of course, there are certain deviations in relation to issues of transfers, in particular as far as the ages of the athletes, time periods etc., which have no important difference. For all the sports in which the above regulations, the provisions of the decision 15460/24-6-1999 of the Ministry of Culture (Government Gazette 1339/B/30-6-1999) are still valid, with the exception of soccer and basketball.
[38] For the professional soccer players after the ruling of the European Court on the Bosman Case, and as far as the European Union athletes are concerned, the free transfer condition is valid, and is extended to the non-Federation Clubs, issue which currently is under dispute, especially when the athlete receives remuneration. See D. Panagiotopoulos (1995), The

this consent is issued after a relevant decision from the Board of Directors of the sports club. The clause of consent therefore is met only when we have a consent from the sports club to which the athlete already belongs. If there are extraordinary reasons, according to the law, then the athlete is dis-engaged from the sports club and he/she is registered in another according to his/her wish [39](39).

The transfer of the athlete is made with an agreement between the athlete and the sports club. In the conditions and the presuppositions of the transfers there are necessarily included:

a) the presuppositions of the transfer due to the consent of the union[40] (40), dis-engagement, lack of competitiveness, change of residence of the athlete with his family[41] (41) or for educational and professional reasons of the athlete or his parents[42] (42).
b) The presuppositions of the transfer due to the free transfer of the athlete bellow or above certain age. Regulations which are opposed to the right of the athlete for a free transfer are violating the constitutional principles for the free development of personality[43] (43), the protection of family and of childhood[44] (44) and the protection of the athletic exercise[45] (45), and
c) The presuppositions of the transfer due to the dissolution of the sports club or postponement of the operation of one of its departments or loss of its special recognition[46] (46). In the case of a dissolution of an athletic union, this is an adequate reason for a free transfer to another sports club[47] (47). The same holds for the case of postponement of the activity of the sports club: here the athlete has also freedom to transfer to a another sports club[48](48). In addition, issues related to the transfer of the athlete according to law have to do with the participation in sports which is protected by public institutions[49] and serve the public

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Bosman Case, A. Sakkoulas, Athens, and «The institutional autonomy and the limits and the economic freedom», in Proceedings of the 4rth IASL Congress, Barcelona 9-11, November 1995

[39] See the decision of the Council of State 2336/1990 and 3251/1990 (above group sports) article 6, par.1 and 7 of the Ministerial Decree 21451 (Government Gazette 475/1-7-1991 on the provisions for transfers.

[40] According to law, the consent of the Club for the transfer of the athlete, can be offered only after a decision of the Board of Management, and is inconceivable an a priori form of consent, according to the will of the athlete. Such a possibility would cause a great amount of insecurity in the relations between the athletes and the clubs, and it would seriously harm the protected by the Constitution amateur sports. Council of State 1379/1997.

[41] Council of State 4914/1988, PANDEKTIS I.S.L.R., I:1, 1992, p.96.

[42] Limitations of this kind as well as limitations which exist and are related to the student athletes who, because of serious reasons can not continue their athletic activity in the club of origin, are considered unconstitutional. See Council of State 2998/1994, 361/1991 and 4914/1988, PANDEKTIS/ISLR, I, 1, p.96, Council of State 2491/1986, Armenopoulos 1987, p. 969 and 1738/1986 and ASED 200/1988.

[43] Constitution Article 5, par.1.

[44] Const. Art. 21, par.1.

[45] Ibid. Art. 16, par.9.

[46] See Const. 27, par.3 of Law 2725/1999.

[47] Ibid, article 8 and 9.

[48] See related A.P. 155/1991, according to which the penalty on a club of loss of the right to a vote in a General Assembly of a Federation, means the postponement of its operation.

[49] The provisions which place limitations on the right to develop freely one's personality in transfers from one club to another, see Council of State, 4914/1988, in PANDEKTIS, ISLR,

good[50] (50). Restrictions in the transfers of athletes which are posited by law are in many occasions unnecessary, and these restrictions are a serious problem in the participation of the athlete to the sports world and with the result of hindering the free development of the personality of the athlete.
There exists also a reason for a transfer in the case of actions of a sports club resulting in the creation of a situation which makes it impossible (emotionally and psychologically) for an athlete to remain in the union for participation in sports and further development of his/her bodily abilities[51] (51). For the transfer of an adolescent or child athlete there is need for the consent of those who exercise on them parental custody. Transfers are allowed in the duration of only one period of transfers each year, with the exception of the transfers of Greek athletes from abroad for which there can be a different period of transfers[52] (52). An athlete of an amateur sports club who registers in a sports club abroad, without the prior consent of his/her home union, upon his/her return to Greece he/she is incorporated automatically to the home sports club in which he belonged in the first place[53] (53). The transfer of an athlete with financial benefits from one sports club to another is allowed with the consent of the sports club, if for the release of the Athletic Registration Card the sports club issues a receipt from its Financial Records, with the appropriate VAT tax and this transaction is recorded to the Books of Incomes and Expenses of both unions[54] (54).

Vol.I:1, pp.96-98 and Council of State 963/1991, according to which the change in one's place of residence due to studies, is a reason of paramount importance for a transfer and any provision which is against this freedom is superfluous and against the constitution, see also the Council of State 1812/1990, So ASEAD, 157/1991, and 20 and 38/1986. The change of residence due to studies in a secondary school is not related to the free transfer provisions, as well as the claims in relation to work by the athlete before his/her application for a transfer, since this indicates that the change of residence occurred with the only purpose of transfer. See ASEAD 80/2000.

[50] See Council of State 2491/1986, and 1505/82, 1532, 1533/82, 2121/84, 4914/88, 963/91, 2998 and 3876/94 bellow. Also see D. Panagiotopoulos (1993), «Issues on Scientific Determination and Application of Sports Law», op. cit., pp.80-81, and (1996), Bosman Case (in Greek), A. Sakkoulas, Athens, p.21.

[51] See Council of State 2998/1994, 3876/1994, with which the unjustified exclusion of an athlete from competition in swimming games through a decision of the Club was deemed as a valid reason for a transfer, due to the serious harm to the free development of the personality of the athlete and his psychological distress caused by his club. In the case of an insult to the personality of the under aged athlete, the limitation, i.e., the demand for a consent from the club of the athlete, is opposed to the articles 5, par.1 and 16, par.9, as well as provision 21 par.1 of the Constitution, which protects childhood and in consequence this limitation is powerless (a similar limitation existed in the provisions of 2027/1989 Ministerial Decree).

[52] See Article 27, par.3 of the Law 2725/1999. The duration of the transfer period according to these provisions should not exceed the period of thirty (30) days.

[53] See Law 2725/1999, article 33, par.10. According to the law of ASEAD 98/1997, a Greek amateur athlete who signed a contract at the age of 18 years in a professional team abroad, he did not attain the characterization of «a professional athlete» according to the Greek Law and the FIBA regulations, and after his return to Greece any transfers are deemed illegal. In opposition, it was ruled that, for an athlete of 19 years of age for whom upon his return to Greece there are no legal ties to his former club in Greece, signing a contract as a remunerated athlete of the A1 league is legal and binding.

[54] The regulations of the Federations as relates to the provisions for registrations and transfers of the athletes can not be modified, if there is not a time period of two years from the time of their approval by law. See Article 27, par.3 of the Law 2725/1999.

There can be a free transference of an athlete from one sports club to another, without the prior consent of the sports club and the consequent disengagement, only due to reasons of a special nature, which are recorded in the contract or agreement or the constitution of the union[55] (55). Is the athlete studies abroad or at another part of his/her country[56], this is as a sufficient reason for his/her free transfer to a sports club of his/her own choice.

For team sports the free transfer of an athlete[57] (57), without the consent of the sports club , can be carried out only for particular cases of law. All sports clubs for team sports have the right to transfer only up to three athletes. Any other petition for more transfers is denied and the athlete remains in the union in which he belongs, with no further procedure[58] (58).

In the presuppositions of the transfer of an athlete to amateur sports clubs in which there is no need for the consent of the sports club, there are included also cases according to which:

a) the athlete during the two previous sport terms (from the issuance of M.Dis.) does not participate in a national team. In the case of the individual sports he/she should not have won a place in the first three in panhellenic (national) games or national championships and he/she changed his/her place of residence for an important reason[59] (59).
b) He was not punished according to the provisions of the athletic law for a denial of offer of his/her athletic services[60] (60). The application of this on behalf of the unions and federations, on the cases of athletes of high records, is related to the major interests of the sports clubs. In this case the sports club, in order not to dis-engage the athlete, finds as a pretty good excuse to punish the athlete for a certain period, so that his/her right of free transfer is revoked[61] (61).

An appropriate board, which is formed from the sport federation approves or disapproves[62] (62) the application for a transfer of the

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[55] Registrations and transfers are under the regulatory regime of article 27, Law 2725/1999 and former Article 20, Law 75/75, Council of State 2488/86, ASEAD transfer of an athlete, 24, 28/1989, 58, 155/91, 8/92, 20, 38/92, 20/93, control of Doping 176/91 in PANDEKTIS, ISLR, Vol.I. According to the Council of State 2049/1981 the 95/1990, 14, 84, 92, 110/1991, 20, 38/1992. See K. Remelis (1993), «The limitations of the contractual freedom of professional athletes» (in Greek), in Proceedings 1st IASL Congress, pp.554-555.

[56] Ministerial Decree C/17290/1996, art.6 and 8.

[57] See General Secretariat of New Generation and Sports, Decision no. 21451 (Government Gazette, 475/1-7-1991 TB).

[58] Ibid, article par.2.

[59] See Ministerial Decree 15460/30-6-1999.

[60] See Law 2725/1999, article 33, par.5 and the law which was previously in force Law 75/75, Article 49

[61] See ASEAD 80/2000 with which a petition from a Judo athlete, who was a member of the national team, was rejected on the justification that he refused to participate in the panhellenic (All Greek) games representing his club, and he was punished with six months of exclusion from the games. This had as a result not to take into account for the transfer the time during which he could not compete (two years).

[62] There is a Special Committee for Transfers the decisions of which are validated by the Board of Directors of the Federation, and whose decision is controlled by the Council of Arbitration of Athletic Disputes and especially for soccer from the Judicial Committee of Appeals of the home Federation, in a 15-day time period for non-home clubs and in a time-period of 8 days for home clubs from the time that the interested party was notified in any possible way.

athlete. The federation confirms the decision of the board, which can be challenged in the Supreme Council of Solution of sports Disputes (ASEAD), the decision of which can be annulled by the Council of State [63] (63).
For the athletes who achieve exceptional records in individual and team sports there are financial benefits and allowances[64] (64). In the allowances of the athletes who are also students there are included (in addition to the usual provisions for transfers according to home law) transfers in the corresponding institutions of tertiary education of athletes who are members of national teams[65] (65). The usual problems with which the athletes have to deal in transfers are related to the constitutional provisions about equal treatment, free development of personality, and improper interpretation[66] (66) and unconstitutional character[67] (67) of many of the texts of athletic union regulations.

3. The System of transfers of remunerated and professional athletes

The first systematic interference in the area of professional sports in Greece, and exclusively in professional soccer occurred with the law N.879/1979. With the N.1958/1991 there was an attempt to intervene from the top for the formulation of specific terms and conditions of the organizations and development of professionalism in the athletic world[68] (68). In the category of athletes who are remunerated for their athletic services, is the «Remunerated Athlete» (Basketball – Tennis)[69](69). This athlete is signing a contract with an athletic union, which has a Section or Department of Remunerated Athletes (DPA) and the «professional athlete»[70] (70) signs the contract of provided remunerated services with an Anonymous Athletic Company (AAC)[71]

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[63] See Law 2725/1999, article 121, 123 till 127.
[64] See Law 2725/1999, article 34, par.4-21. Also see YAF 252.25/B6/200 (Finance and National Education) of the 4/6.4.2000. These law provisions describe the way athletes with special game distinctions can be registered as students in the tertiary education, and the freedom of transfer of student athletes in tertiary institutions, as well as the selection process for these athletes by the tertiary institutions.
[65] See article 34, par.15 of the Law 2725/1999.
[66] See Council of State 4322/1998, with which the management overruled the petition of an athlete «because it mistakenly thought as existent the program of the Olympic games which was in force at the time of the petition, in which there were no provisions for TAE-KWON-DO», while it should take into account the program which was into force at the time that the distinction came about and the above game was included as a show sport.
[67] See D. Panagiotopoulos, E. Vouzika (1994), «Regulations on the motives of the selected athletes in TEFAA» (in Greek), in Athletic Science, Theory and Practice, Vol.9: 2, pp.51-61. Also see Council of State 2586/1955, only one participation of the athlete in a group sport for 21 games is considered as non-conclusive for winning the entrance in TEFAA. The Council of State 2376/1993 and 2636/1990, as well as Council of State 2871/1994 are related. The law-abiding interest, Council of State 5757/1995, is extended till the time limit of the registration of the one who has a right of entrance in the tertiary institution.
[68] This intervention was necessary, since, already and according to the international practice, the professional sports and especially soccer is a reality. Examples of such a reality are: in Italy, Law 91/1981, in France Law 610/1984, but also of other European countries.
[69] See Law 2725/99, article 85, par.1, 3.
[70] Ibid, article 85, par. 2, 3.
[71] Ibid, article 85, 90, par.1 and 94. For the Basket-ball players who are remunerated and the professional athletes KAE, see and article 113, par. 4 and 5. Also see D. Panagiotopoulos, A.

(71). The adolescents and children athletes bellow 18 years of age are not allowed to sign a contract of remunerated services[72] (72). In the context of the contract there exist a group of terms and conditions which in essence make up the contract and can have the form of the general character of work contracts. The athlete-player remunerated, professional, is obliged according to the terms of the contract he/she signed to provide his/her athletic services. The athlete who refuses to provide his/her services to the national team without a justification, is punished with the penalty of exclusion from the championships or other official games[73] (73). A rule for all changes of residence of remunerated athletes before the termination of their contract is the consent of the union or company which the contract was signed. The details for the registrations, transfers and in general movements of athletes between DPA or AAC are regulated with special regulations which the appropriate federations, unions, or associations issue from time to time. The legality of these regulations is controlled from the appropriate Ministry of Sports and published in the Government Gazette [74](74).

There is an intense limitation of the athlete's rights, especially as regards his/her free transport among the home unions or companies (DPA or AAC), in opposition to any other worker, who is free to work in any work-provider signing his work contract on any time[75] (75). There is also the provided to the union right by law that it can unilaterally renew the athlete's contract for a total of five years[76] (76),

Tampakis, I. Anagnostopoulos (2000), Labour relations in Sports (in Greek), Athens, in which there is an extensive discussion of labour issues.

[72] See Law 2725/99, article 90, par.1. The provisions of the labour legislations and of Law 2725/99, article 85, par.4 and 5, see Panagiotopoulos, Tampakis, Anagnostopoulos, op.cit., p.15.

[73] See ASEAD 65/1993, according to which there is a penalty of exclusion on a basket-ball player from a club for denial of sports related services, in PANDEKTIS, ISLR, Vol. I: 4, pp.594-598.

[74] Article 88, Law 2725/1999.

[75] Article 90, par.5, of Law 2725/1999.

[76] Article 90, par.5 of Law 2725/1999. The legality of the right of DRA or Athletic Companies for one-sided renewal of contracts without the consent of the athlete is under serious dispute in science. In favor of the non-legality of the one-sided renewal, see D. Panagiotopoulos (1998), «Field of application and effects of the European Communiy Law on sports activities» in 5th IASL Congress Proceedings, Nafplio, July 10-12, 1997, Hellin, p.67, P. Dedes (1999), «One-sided athletic contracts» (in Greek) in D. Panagiotopoulos (ed.), The Athletic Law in the 21st century, Athletic activity according to profession, Ion, pp.367-384. According to this view, the one-sided renewal of contract is opposed to the Civil Code (art.185, 195), to the Constitution (art. 5, 22), to the Convention on the Human Rights (art.4, par.2) which was validated with the ND 53/1974, to the International Convention of UNO on the financial, social and educational rights (art.6, par.1), which was validated with the Law 1532/1985, to the similar Convention of UNO on the individual and political rights (art.8, par.3), which was validated with the Law 2462/1997, to the provisions of the European Union Treaty on free movement of workers (art. 48) which was validated with the Law 945/1979, to the decisions of the European Court (cases of Walrave 36/74, Dona 13/76, Bosman C-413/93). In opposition to this is the current law perspective in Greece. According to the Council of State 296/1994, this regulation on the one-sided renewal of contracts is not violating the financial and contractual freedom of the article 5, par.1 of the Constitution, because it seeks the facilitation of the needs of the basket-balers and it avoids the exploitation, from the financially powerful clubs, but it also does not violate the principle of equality (art.4, par.1 of the Const.). The same is noted by the majority of the Council of State 1898/1995. But it is worthwhile to note the view of the minority, according to

as long as the financial conditions of the renewal shall be beforehand (on the time of signing the contract) agreed upon and included in the contract. In this way, the athlete is obliged, even after the termination of his initial contract to provide his services to the union, as long as the union unilaterally renews the contract, and only in the case of non-renewal the athlete is free to negotiate his/her registration to a union or association of his choice. The signing up of a private agreement or initial agreement between the interested parties for the transfer of an athlete between DPA or AAC before the transfer period is forbidden[77] (77).

Particularly for the athlete who belongs to an AAE or a union which maintains DPA and he/she transfers to a team abroad, with a contract of provision of services, without the consent of DPA or AAC, before the completion of his/her 18th year of age or before the termination of the time period of engagement specified in the contract, if he is over 18 years of age, he cannot be transferred to another union, DPA or AAC in Greece, but he/she is incorporated to the union he/she belonged. He/she is also obliged, even if he has an age of 21 years or over, to fulfil his/her obligations he/she undertook during the transfer to a team abroad[78] (78). For the issue of the establishment of different time periods for transfers of national or international athletes, the European Court ruled recently[79] (79) that allowing for different time periods for transfers is opposed to the provisions regarding the free movement of people within the European Union (EU).

For Greek unions or companies, any agreement of the athlete with AAC or TAE, for provision of benefits from the athlete upon the termination of the contract or the prior agreement of offers and counter-offers upon the termination of the contract are deemed invalid[80] (80).

In the case of the remunerated or professional athlete and if his/her team is placed in the amateur category of the championships, his contract is initially terminated without any losses on both parts of the contract (the athlete and the DPA or AAC). When the contract of the athlete with the AAC or the TAE which has been demoted to an amateur status has not ended, the union is allowed to maintain the athlete in its power either till the termination of the contract, if this ends within one year from the above action. After one year the athlete

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which the law on remunerated athletes has as no direct purpose the promotion of sports, but mainly is carried out for the regulation of the financial interests of both parties, and does not see to the public interests, which is an important reason for the limitation of financial freedom, taking into consideration the principle of judicial equality. In the one-sided renewals of the contracts the athletes cannot negotiate the financial terms of the renewal.

[77] Article 91, 92 of Law 2725/1999.

[78] Ibid, Art.90. par.7. Here the case (a) of the same par.7 is related. In this case it is noted that: «a) The training soccer players for the whole duration of their training can not be registered or transferred as professional or remunerated or amateur soccer players in any club of the country or abroad, without the consent of the club in which they belong. It is forbidden to the Federation to approve such registrations or transfers and it is also forbidden to issue the required international certificate (blue card)».

[79] Decision of the 13-4-2000 in the case of the Belgian professional basket-ball player Lehtonen (C-176-96).

[80] Article 90, par.4, of Law 2725/1999.

is free to negotiate his registration without the prior consent of his union in any amateur union as well as DPA or AAC of his/her choice, in order to continue his athletic activity[81].

The Greek system of transfers, after its harmonization to the European rules and the Bosman Case and the consequent proposal and vote upon a new athletic law, was denying the right of free transfer to the athletes and in essence annulled their basic right for work and free choice of employer. In this way there were limitations which were not warranted by the Constitution and which placed restraints in the freedom of contracts.

The laws and regulations of national and international federations are under review and should be improved taking into consideration the basic freedoms and the provisions of the law on competition. It is of paramount importance to relieve the tension in the relation between the autonomy of the unions and the federations and the provisions of European Law[82] (82). The principle of proportionality is one of the fundamental applications of communal law[83] (83). For professional athletes problems exist in the system of transfers in national and European level, as well as for the athletes who come from non EU countries and can not participate in games due to their nationality[84] (84). Today, more than ever, it is known that all states have according to the International Law the exclusive right of control of entry of foreigners in their country. This exclusive right they exercise with extreme caution, especially when the non EU foreigners, who come in a country have the intention of entering the work market [85](85).

The national professional athletes of a third country (outside the EU), which has signed a treaty with the EU for non-discrimination as regards nationality and who are in a contract with one of the countries who are

[81] See Conclusions of the 1st Congress of Sports Law on the topic of «The Sports Law in the 21s century-Sports Action according to Profession, Trikala 4-6 June 1999, in Nomiko Vima, Vol.48, p.1085.

[82] See the decision of 15-12-1995 in the Bosman Case (C-415-93), of the 11-4-2000 in the Deliege Case (C-51/96 and C-191-97), as well as the decisions of the Walrave case (36/74) and Dona (13/76).

[83] Ibid, p.1087. Recently, the European Union and FIFA decided that for an athlete bellow 18 years of age no transfer should be allowed on the justification that he/she should not be exploited by the team of origin and the team with which he/she is going to sign a contract with. From the 18 till the 24 years of age, the team in which he belongs has the right for a sum of money as a compensatory profit, and the athlete over 24 is free to find another club and to have new contracts. See Vimasport, 1-9-2000.

[84] See European Commission, (Directorate-General), Consultation Document of DGX-«Bosman case-Transfer system at the end of the contract», in........., pp.1-6. In this text there are answers to the possible cases of transfers within the EU, in the countries of the countries-members of the Union and transfers of professional athletes from third countries.

[85] See Sports Arbitration Court (DDA-TAS), decision no.92/80, which is related to the dual citizenship of the athlete. For the athletic country of origin issue see A. Grammatiki-Alexiou (1999), «The importance of athletic country of origin» (in Greek) in Armenopoulos, Vol.10, pp.1397-1398. The FIFA regulations governing the national status of players, according to the writer of the above article, are posing barriers for an equilibrium in the relations of the teams, while there is a mention of the issue of nationality of basket-ball players and in the choice for the athlete of becoming a citizen or not. In addition the issue of athletes who do not have the required nationality status is discussed. Ibid, p.1398.

in the EU, can not be secluded from the team which is formed based on nationality[86] (86).

4. Protection of the athletes' personality

An essential presupposition in the personal and natural development of the athletes as human beings, is the fundamental right of self-disposition[87] (87). The ability of the person to exercise autonomously his personal rights, i.e., with no legal representative[88] (88), does not have the same validity when the person is not an adult. The athlete who has completed the 10th year of his age has a limited ability for legal actions[89] (89), he/she is able for legal acts, only if he/she has a legal profit from the transaction. This ability is extended in all transactions of the non-adult. The non-adult who has not completed the 15th year of age can be employed in artistic and related work under the condition that this work does not harm his/her bodily or psychological health[90] and his/her free development of personality[91] (91).
The legal context of the protection of the personality of the athlete is supplied mainly by the Constitution and the athletic law. Inductively we can mention the honour and prestige of the athlete[92] (92), which have to be protected from slanderous or insulting statements which are made within or outside the sports environment, the health, the protection of which is secured through a prior medical examination. Also in the cases of injury and disease of the athlete he/she is protected with restraining measures against audio-visual recording of his/her distress. The athlete also finds protection in the unhindered choice of an educational establishment with a parallel continuation of his/her athletic activities and participation in championships[93] (93). Additionally there are protections of the freedom in the choice of place of residence and the change of place of residence for professional reasons without hindering his/her athletic activities, the financial freedom, expressed among other things in the form of contracts for

[86] A similar agreement with the EU has been signed with Marocco, Tynesia, Algiers, Turkey, Poland, Hungary, Slovakia, Tchechoslovakia, Bulgaria and Romania. In reality this means that if a Turkish basket-ball player signs a contract with a Greek team he cannot be excluded from taking part in the European games due to nationality.
[87] All individual rights start with the birth, while the ability of autonomous exercise of individual rights can be gained with the completion of the 18th year of age, and provisions for this exist in the General Principles of the Civil Code. Particularly for the rights of the children in sports, and in relation to the competition, the training and the psychology of under-aged athletes, the work, the freedom in the clubs and other similar issues. See David P. (1999), «Children's Rights and sport», in Olympic Review, XXVI, pp.36-45.
[88] Council of State, 921/1995, according to which «the parents of the child, to whom the parental custody belongs, and in which the legal representation of the child in relation to his/her financial and personal matters is included, are his/her legal representatives.»
[89] See Civil Code, Article 129.
[90] Se Civil Code, article 134. If there is no special legal adjustment, this general regulation of the Civil Code is extended to all activities and legal affairs of the under-aged.
[91] See related Guidance of the Council of Europe, EU, C 84/1992, as amended in EU, C 77/1993 and re-examined in COM (94) 88.
[92] Article 5, par.2 of the Constitution.
[93] Ibid, article 16, par.2.

advertisements or sponsorships[94] (94), the working freedom[95] (95), which is expressed in the ability to sign contracts with freely negotiated terms[96] (96), and the freedom of transfer. There is also protection of the athlete's right to seek his/her interests in the Courts and Official Arbitration Boards[97] (97). Finally, the athlete is protected from actions against his/her rights[98] (98) by third parties and in general he/she is protected in the free development of his/her personality within the context of law through athletic activities[99]. (99)

While law tends to promote the interests of the athlete and especially the non-adult athlete, it limits dangerously the absolute right of free development of personality, placing the control of his/her choices upon the hands of his/her representatives and in essence naming them his/her guardians. The signing of a contract with an athletic union is an unequal legal transaction which means the acceptance of obligations of sports responsibility, an evidence of which is the Athletic Identification Card. The constant and systematic participation in athletics through the athletic union is permeated with a mixture of legal transactions with the athlete at the receiving end. Thus, the freedom of expression of the athletes' will is of paramount importance for the athlete not being turned into a hostage by managerial decisions and a victim of athletic interests. The age limits[100] (100) of the remunerated and professional athletes for their registration in the records of the home union or federation are defined in the above legal context.

The increased competitiveness of the athletic unions is placing under attack the freedoms of the athlete and his development according to his abilities. With the term of self-rule of the non-adult athlete, we mean mainly the possibility of consent and so much his/her full autonomy and is related to the decisions which are taken, and the essential effect the procedure of athletic training and development has on him/her. The obligatory acceptance of the athletic services under the weight of the achievement of records and for an unlimited physical improvement, makes the continuous provision of athletic services the only right of the athletes. Under this perspective, the athlete and indeed the non-adult is forced to identify his athletic rights with the interests of the union, to increase the hours of his/her application to his/her sport not according to his/her will, but in accordance to decisions of the management.

In the context of the development of personality, the protection of the bodily integrity of the young athlete is also included. This means that

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[94] Id, Article 5 and 33, par.4 of the Law 2725/1999.
[95] Id, article 22.
[96] Article 86, Law 2725/1999.
[97] Articles 8 and 20 of the Constitution.
[98] Ibid, Article 25, par.3.
[99] Id, article 5 and 16.
[100] In the law which pre-existed, if someone was to be registered as semi-professional or professional soccer player he/she had to complete the 16th year of age, see article 6 and 7 of the Minesterial Decree 41167/1991 (Government Gazette, 989/29-11-1991, Vol.II). For basket-ball players see Ministerial Decree 37495/1991 (Government Gazette 965/22-11-1991, Vol.II) and 31189/1992 (Govt Gazette 500/4-8-1992, Vol. II), while for tennis players see Ministerial Decree 41117/1991 (Govt Gazette 1035/19-12-1991, Vol. II).

the athlete takes upon him/herself the risk of his/her participation in the game, under the meaning of keeping within the presuppositions of the regulations of participating in the game. For any other loss or injury, there is the right for compensation and re-constitution of his/her bodily integrity, with a parallel juridical ability for compensation for the loss he/she has[101] (101).
The athlete and indeed the «non-adult», according to the Legal Code, is called upon to provide the same athletic services as an athlete who is over 18 years of age. In these cases there is an issue in relation to how much legal protection is necessary for the athlete and indeed the non-adult, as regards the choices and the decisions of the managerial bodies of the athletic unions. In addition, important related issues are a) the guarantee of the protection of the right of the development of the athlete in general in the athletic and competitive procedure, b) the free access to the athletic action, with respect to personality, c) the determination of the criteria for the entrance to the extreme competitiveness of championships[102].
Law is silent to the demands of the athlete and especially the non-adult, and in general it denies him/her the privileges of the labour laws, naming his/her services as athletic, and distinguishing them from the labour law. We have to note however, that the athlete in many occasions is dealing systematically with sports, he/she has increased obligations and offers similar to any other worker services.
The coaches many times are of doubtful education, they feel that they are employees of the union and are guided solely by union interests, through which they see the improvement of their own situation. The parents as legal representatives, many times are acting based on their own social expectations, prejudices and immeasurable ambition. There are many occasions in which parents discourage the constitutionally athletic action of their offspring, and they become an obstacle to his/her athletic development and individual achievement justifying the athletic application only to the point of non-interference to his/her other obligations (such as school). This phenomenon is a result of ignorance of athletic issues and prejudiced co-relation of athletics to various negative aspects of it (i.e., violence, doping, etc.).
The only source for the rights of the child or adolescent athlete is the Constitution, to the degree that it secures the access of the citizen to the athletic institutions. Legal support also comes from general provisions and is comprised mainly in: a) the provision of equal opportunities for the gaining of basic athletic abilities (102), b) the abolition of all forms of discriminations which are related to the participation in the athletic

[101] Whichever damage is judged according to the particularities of sports and the specific rules of the sport, see L. van De Velde (1993), «Right to Physical Integrity of the Professional Sportsman», in: Proceedings of the Olympic Congress, July 1992, Malaga-Spain and in PANDEKTIS ISLR, I:2, pp.259-265, see also the footnote 365.
[102] With the article 7, par.1, of the Law 2433/1996 the sports of the people with special needs is recognized as a particular section of sports and is protected by the State and is founded according to the Law 2725/99.

activities[103] (103), c) the guarantee for a safe, healthy athletic environment, d) the protection of the athletes from any political, commercial and economic exploitation or any other interest, and from practices which have as a target the maltreatment and debasement of the young non-adult athletes, e) the creation of ethical principles of conduct and the protection of decency and safety. The young talented athlete can be a much easier object for financial exploitation, since usually others determine his/her will and his/her progress in the athletic union, for which he/she provides services. The athletes have no control on the agreements and especially the ones with sponsors [104](104), in the terms, the meetings of the coaches, the union boards and specialists, while in many occasions they become first objects of exploitation from their parents and their coaches[105] (105). f) A very serious issue that involves legal support is the protection of the athletes and especially the young athletes from the consumption and use of doping substances[106] (106).

As a result, we have the issue of the protection of the athlete and particularly of the young athlete and a control of the hours of his/her training or the control of his/her intense application to sports[107] (107). Informing the non-adult athlete on issues of finance, disciplinary and relating to transfers, is of paramount importance so that he/she is not turned into a passive receiver and observer in the athletic transactions of the union in which he/she belongs.

The active participation of the athlete in the managerial transactions of the athletic union is non-existent even indirectly, since the athlete is the receiver of the choices of the union management. The obligations of the

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[103] Similar discriminations occur according to the sex, the race, the color, the language, the religion, the political or other conviction, the national or social origin, the relation to a national minority, the property, the birth or other special circumstance or characteristic. According to the Council of State 2480/1993, the Board of Directors of the City Gymnasium which forbids to the swimming athletes of a sports Club the use of the facilities, while it allows the use of facilities for other clubs, is against the constitutional principle of equality, according to which the use of facilities should be allowed to all with the purpose of cultivation of the sporting spirit and the development of the club sports of the area.

[104] The CAS -TAS, judged with its decision of the 91/45 of the 31-3-1992 that the athlete is free to engage in addition with other sports and he/she does not break the contractual obligations to his/her sponsor, as long as he/she lets them know prior to this engagement. In this case the sponsor cannot force the athlete not to participate in another sport. See D. Panagiotopoulos (1999), «Court of Arbitration for Sports», in Villanova Sports & Entertainment Law Journal, Vol.VI: 1, pp.49-77.

[105] D. Panagiotopoulos, «The right in sports» (in Greek), op.cit., p.76.

[106] For a long time it is maintained that such acts end in the destruction and incapacitation of the athlete, from being handicapped to loss of life. See G. Agioutantis, G. Kampouroglou, N. Tzartzanos (1968), Doping, in Athletic Medicine (in Greek), 5:7, pp.7-11. See A. Koutselinis (1986), Doping, Summarized review of the problem,(in Greek), Parisianos, Athens. See also Kl. Vieweg (1991), «Doping und Verbandsrecht», Zum Beschlus des DLV- Rechtsausschusses im Fall Breuer, Krambe, Moller, in Neue Juristische Wochenscrift (NJW), p.2539. Also see Tr. Lemmens (1994), «Sports, Doping and Clashing Values», in PANDEKTIS ISLR, II:1, pp.3-16. Related to this issue are the provisions which are contained in the Law 1646/1986, the European treaty on the problem of doping and the provisions for anti-doping of the Olympic Charter, see D. Panagiotopoulos (1998), Athletic Code, Sakkoulas, Athens, pp.153-157 and Law 2371/1996 with which the European Treaty on doping was validated, op. cit. pp.370-394. For the Charter see P. Naskou-Perraki, D. Panagiotopoulos, op. cit., pp.86-93, as well as the International Olympic Committee (2000), Olympic Charter Anti-Doping Code, pp.3-70.

[107] See Law 1837/1989, which limits the time of the engagement in work.

athlete to his/her union, the participation in games, the determination of the particular place and time related conditions of training, makes the nature of the provided services related to the labour law, with the result of the need for an appropriate legal protection, especially when the athlete comes without his/her will in an area if intense competitiveness.
Particular provision for the non-adults exists in the UNO's Treaty for the protection of children's rights[108] (108). With this treaty opportunities for the child are offered so that the child is capable to overcome the difficulties of his sport in a healthy manner and under conditions of freedom and decency[109] (109). With the Geneva Convention[110] (110), which has been confirmed with a law in Greece[111] (111), the age limits for professional work have been determined for the protection of health, life, safety and spiritual development of the non-adults in their professional work[112] (112).
In the conditions of championships, the free development of the personality of the non-adult athlete is dangerously limited and the non-adult is just a simple carrier of athletic discriminations for the union, an piece of an impersonal athletic machine. It is necessary to provide all possible opportunities, for the application of his/her own self according to his/her own will.
For the development of the personality of the athletes, as a basic philosophy in the organization of sports, the right for complete information in the athletic processes is necessary. Especially when this relates to young athletes and children of 5-12 years of age, we have to be particularly careful. The work of training needs to be placed under scientific control, due to the developmental situation of the athletes and their constitution as human beings, as this is supported by scientists in the medical and biological and social sciences[113] (113). The consumption of substances without the prior knowledge and agreement of the athlete, the increase of the time of training and the subsequent restriction of other obligations, the exhausting techniques of training with the risk of serious damage to the bodily integrity and health, and the abuse of parental custody, are unjustified treatment of the non-adult athlete and are not supported by any law.

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[108] See Law 2101/1992, with which the international treaty for the rights of the children was validated, see P. Pararas (1996), Constitution and the European Treaty of the Rights of Man, Sakkoulas, Athens, pp.490-522.

[109] P.J. Galaso, «The Rights of Children in Organized Sport», op. cit., see D. Panagiotopoulos (ed.), Country sports and scientific support, Lamia 1997, ADV, Athens 1997, Davis P. (1999), «The Rights of Children…», op. cit., pp.37-40.

[110] This Treaty has been validated in our country from 138/1973, «On the lower age limit for work»

[111] Law 1182/1981. See also Law 1837/1989 «On the protection of minors during work and other provisions».

[112] For the protection of the under-aged during work and other provisions, see Law 1182/1981. See also the Law 1837/1989. Related is the guidance of the European Council for the protection of the youth in work, EE, C84/92, 4.4.92, which was amended in EU, C77/93, 18-3-1993 and re-examined in COM (94)88. See European Committee (1994), The consequences of the EU in sports, No F09318/2414, p.57.

[113] See in relation to this issue the findings of the 1st Scientific Symposium, Lamia 1997, in the newspaper Ta Nea, 12th of April 1997, p.12; see also Proceedings, edv Group, Athens 1997, pp.13-123.

Conclusion

A. The free participation in the sports activities is a fundamental right of the citizen's education and culture. The exercise of the right of participation in the athletic activity is related to the personal freedom and the free participation in the athletic activity. Limitations are allowable only when there are no infringements on others' rights, the social, athletic and competitive morals and they are not unnecessary, so that they do not place uncalled for restrictions on athletic life. In the context of the principles of personal freedom and the development of personality exists also the right of free choice of the athletic union. Special regulations control the presuppositions and every detail for the registrations, the transfers, the dis-engagements and in general the movements of athletes in amateur unions.

B. For the remunerated and professional athletes a group of terms comprise the contract of provision of athletic services and dissolution of the contract. The non-adults under 18 years of age are not allowed to sign a contract of provision of services. The principle of proportionality is one of the cornerstones of the application of communal law on professional athletics. Especially for the non-adult students there is a great problem in the rights of participation in the athletic action with many extensions in issues of equal treatment. Dominant rights for children thus are the self-rule, the right of information regarding the training procedure and the program of training, the protection from abuse, the choice of team, self-respect and respect from others.

Proposals

1. We propose the adoption of a Code for Training Methodology, which among other things can provide strong measures for the protection of the athletes and especially the non-adults. It would also provide great service to the work of athletic scientists and it can be a shield of protection for the rights of children athletes.
2. We also propose the creation of a special Committee for Non-Adult Athletes, comprised by a jurist, an athletic scientist, and a psychologist or a social worker[114] (114), which can help in the safeguarding of the rights of non-adult athletes.
3. Alternatively, there should be an institution such as the Legal Defence of the Athlete[115] (115).

[114] In the circumstance of violation of the rights of an under-aged athlete the Committee makes a recommendation to the Minister of Sports. If there are legal wrong-doings against the under-aged athletes, then the Committee makes a lawsuit in the Public Attorney's Office. See D. Panagiotopoulos, N. Michalinos (1997), «The protection of the personality of the under-aged athletes» (in Greek) in Review of Athletic Law, III, Athens, I. Anagnostopoulos (1997), «The personality of the sport children and its protection» in Review of Athletic Law, Athens.

[115] See St. Kolokotronis (1998), «Justice in the Sport Activity» (in Greek), in Sports Law and European Community Law, 5th IASL Congress, op. cit., p.247.

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JURISPRUDENCE - CASE LAW

A. EUROPEAN COURT OF JUSTICE

1. ORDER OF THE COURT

8 July 1998

(Reference for a preliminary ruling - Inadmissibility)

In Case **C-9/98**,

REFERENCE to the Court under Article 177 of the EC Treaty by the Tribunal de Premiθre Instance de Namur (Belgium) for a preliminary ruling in the proceedings pending before that court between

Ermanno Agostini,

Emanuele Agostini,

and

Ligue Francophone de Judo et Disciplines Associιes ASBL,

Ligue Belge de Judo ASBL,

on the interpretation of Articles 6, 48 and 59 of the EC Treaty, Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968(II), p. 475) and Council Directive 73/148/EEC of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services (OJ 1973 L 172, p. 14),

THE COURT,

composed of: G.C. Rodrνguez Iglesias, President, C. Gulmann, H. Ragnemalm, M. Wathelet and R. Schintgen (Presidents of Chambers), G.F. Mancini (Rapporteur), J.C. Moitinho de Almeida, P.J.G. Kapteyn, J.L. Murray, D.A.O. Edward, J.-P. Puissochet, G. Hirsch, P. Jann, L. Sevσn and K.M. Ioannou, Judges,

Advocate General: G. Cosmas,

Registrar: R. Grass,

after hearing the Opinion of the Advocate General,

makes the following

Order

1. By order of 5 January 1998, received at the Court on 15 January 1998, the Tribunal de Premiθre Instance (Court of First Instance), Namur, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty several questions on the interpretation of Articles 6, 48 and 59 of that Treaty, Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968(II), p. 475) and Council Directive 73/148/EEC of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services (OJ 1973 L 172, p. 14).

2. That order was made in proceedings between Ermanno and Emanuele Agostini and the Ligue Francophone de Judo et Disciplines Associιes ASBL and the Ligue Belge de Judo ASBL.

3. Since it considered that the dispute before it raised questions of interpretation of a number of Community provisions, the national court referred the following questions to the Court for a preliminary ruling:

> 'Is it consistent or not with the Treaty of Rome, in particular Articles 6, 48 and 59 et seq. thereof, and with Regulation No 1612/68 and Council Directive 73/148 to prohibit a national of a Member State of the European Union from taking part in a sporting competition, whether as a professional, semi-professional or amateur, on the ground that the person in question does not possess the nationality of the Member State on whose territory the competition is organised, where it is known that that person is the child of workers who are established in that Member State and has himself acquired the status of worker on the territory of that Member State?
>
> Must the answer to that question be different in the case of taking part in a competition to find the national champion of the Member State concerned?
>
> Further, may the person in question claim the right to be treated in the same way as nationals of that State with respect to the teams selected by the national sports federation of the Member State concerned for participation in major international tournaments and competitions such as the European or World Championships or the Olympic Games, or may the national federations reserve such selection for their nationals exclusively?

4. It must be observed at the outset that in order to reach an interpretation of Community law which will be of use to the national court, it is essential that the national court define the factual and legislative context of the questions it is asking or, at the very least, explain the assumptions of fact on which those questions are based (see, in particular, Joined Cases C-320/90 to C-322/90 *Telemarsicabruzzo and Others* v *Circostel and Others* [1993] ECR I-393, paragraph 6, and the orders in Case C-157/92 *Banchero* [1993] ECR I-1085, paragraph 4; Case C-66/97 *Banco de Fomento e Exterior* v *Pechim and Others* [1997] ECR I-3757, paragraph 7; and Joined Cases C-128/97 and C-137/97 *Testa and Modesti* [1998] ECR I-2181, paragraph 5).

5. It should be pointed out that the information provided in orders for reference not only enables the Court usefully to reply but also gives the Governments of the Member States and other interested parties the opportunity to submit observations pursuant to Article 20 of the EC Statute of the Court (order in *Banco de Fomento e Exterior*, paragraph 8).

6. In the present case, the order for reference does not contain sufficient information to meet those requirements. The national court merely asks the questions without giving any information whatever on their basis. It does not describe the factual context of the dispute or the assumptions of fact on which it is based, nor does itexplain the national legislative context, nor the precise reasons which have prompted it to consider the interpretation of Community law and deem it necessary to refer questions to the Court for a preliminary ruling.

7. On the contrary, the court expressly states that it is 'not addressing the facts at present, nor indeed the law.

8. In those circumstances the Court is unable to give a ruling, in the absence of any information at all on the applicants' professional, semi-professional or amateur status, the nature of the competitions which are the subject of the main proceedings, the rules of selection for and participation in those competitions, or the applicable national legislation.

9. Thus the information in the order for reference, by not referring precisely enough to the factual and legal situations addressed by the national court, does not enable the Court to give a useful interpretation of Community law.

10. In those circumstances it must be held, pursuant to Articles 92 and 103(1) of the Rules of Procedure, that the questions referred to the Court for a preliminary ruling are manifestly inadmissible.

Costs

11. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT

hereby orders:

The request for a preliminary ruling submitted by the Tribunal de Premiθre Instance de Namur by order of 5 January 1998 is inadmissible.

Luxembourg, 8 July 1998.

R. Grass G.C. Rodrvguez Iglesias

Registrar President

B. **COURT OF ARBITRATION FOR SPORT (CAS, Summaries)**

91/53, G./ International Equestrian Federation (FEI), award of January 15, 1992.
(Horse doping) Right to be heard
Neglligence by the rider
A rider must have the opportunity to provide explanations or written evidence for his defence and to seek a personal hearing after learning the result of a confirmatory.
Pursuant to its regulations, it is for the FEI to establish the burden of proof of a presumption of intent or a presumption of negligence. Any rider who, taking possession of the loose-boxes for his horses on the occasion of an event, does not clean out the litter sufficiently and does not remove the fodder and feedstuffs in the manger may be deemed negligent.

91/56, S. /International Equestrian Federation (FEI), award of June 25, 1992.
Horse doping (promazine)
Poorly sealed urine samples
Principle of the benefit of the doubt
The FEI Regulations institute a system of legal presumption. The burden of proof, which is normally incumbent upon the person alleging the guilt of a third party, is reversed: for the person responsible to have a penalty imposed upon him or her, it is sufficient that the analyses performed reveal the presence of a prohibited substance.
The same FEI Regulations do not mention the possibility for the person responsible to produce conclusive evidence. However, taking into account the seriousness of the measures which may be pronounced against him or her and which are, moreover, akin to penalties, there is no doubt that, in application of a general principle of law, the person responsible has the right to clear himself or herself though counter-evidence.

92/73, N./ International Equestrian Federation (FEI), award of September 10, 1992.
Horse doping
Negligence of the rider
Medical treatment of the horse with a prohibited substance
Obligation to draw attention to such a treatment.
It rests with the person responsible to ensure that the substance administrated to his horse is not a prohibited substance.
Pursuant to the FEI Regulations, the person responsible is obliged to inform the competition veterinary of the treatment administered to his horse. This obligation is the prerogative of the person responsible, even in the case of legitimate treatment of the horse.

91/45, March 31, 1992

Subject: Sponsor Agreement - Definition - Term - Absence of Legal Grounds for Termination by the Sponsor - Athlete's Joint Responsibility - Athlete's right to Practise a Supplementary Sport.

"As results from the aforesaid facts, as a whole, the parties have entered a sui generis agreement, comprising certain aspects of the licence agreement, the mandate agreement and the agency agreement; this kind of agreement is frequently used in the sport practice and is generally known as "the Procurement Agreement"...... "As a matter of fact, such a procurement agreement is subject to a certain time-limit between the conclusion and the implementation of the contract". ..... "Consequently, the fact that the athlete has granted his name and his good reputation to the sponsor for promotional reasons, refers to certain aspects of the licence agreement"...... "In particular, the qualification given to this agreement is in conformity with the prevailing legal theory, which actually considers the various kinds of sponsor agreements, including the procurement agreements, as sui generis contracts, comprising certain aspects of other contracts, either named or not (...) ...... In this case, the Court judged that the athlete was actually in breach of the contract, since he failed to inform S of the fact that he (the athlete) intended to practise a supplementary sport and that he was, therefore, obliged to slightly reduce his activities in the field of his principal sport."...... "Notwithstanding the obligation of previous notice to the sponsor, the Court is hereby pointing out that the plaintiff, namely an athlete practising the aforesaid sport, was free to practise also a supplementary sport. In fact, the sponsor was not justified to prevent the athlete from practising another supplementary sport, provided that this practice was not prejudicial to the sponsor."

92/80, March 25, 1993

Subject: Basketball Player's Double Nationality - Simgle Sports Nationality - Applicable Law: non-application of the Swiss, German and European

Community Law - Applicable Federation Law - Time limit in case of not arbitrary change of the sports nationality.

"The basketball player B has, by birth, both the American and Belge nationalities. He played as a foreigner with a Swiss team, during the season 1990-1991 and with a French team during the following season. In the process, he was engaged by a Belge team, for the period starting on August 1, 1992 and ending on July 31, 1995. On August 20, 1992, the International Basketball Federation (FIBA) let the Royal Basketball Federation of Belgium know that, according to its Regulations governing the national status of the players, B had the American basketball nationality in the European games of the teams and that he was entitled to request the change of his basketball nationality, provided that a three-year period has passed before he is given the opportunity to play under the Belge basketball nationality.

Both B and the FIBA referred the case to the CAS. The basketball player requested that this Arbitration Court declare that, since the player is a

Belge citizen by birth, he is entitled to participate with his team in the games, which are going to be held within the framework of the European Cup and of the National Belge Championship, as a professional player having the Belge nationality. He pointed out, in particular, the right of free movement for workers within the European Union, which is especially prescribed by Article 48 of the Rome Treaty, also maintaining that the application of the FIBA rules actually submits this freedom to certain restraints."

"As is prescribed by Article 187, paragraph 1 LIDP, the Court of Arbitration gives its awards, according to the legal provisions chosen by the parties, or in absence of such an option, according to the provisions of law, to which the case on trial is more related. In this case, the Court of Arbitration judged that, in absence of option by the parties, the only relation the dispute has with Switzerland is that the latter happens to be the country where the arbitration is held; nevertheless, this fact cannot possibly establish the application of the Swiss Law in substance. The CAS, therefore, excluded the application of this law.

Thus, the CAS judged that, where B's financial activities are concerned - and not his participation in the European games of the teams, which is irrelevant to this field of activity - his engagement as American or Belge basketball player by the Belge team has nothing to do with another member state. Consequently, it seems that no mention can be made to the freedom of movement for workers within the European Union, in accordance with Article 48 of the Rome Treaty and, therefore, the Court excluded any such application of the European Community Law in this case."

"In the event that the parties have not designated any national law as applicable in the case on trial, then the case is governed by the FIBA Statutes and Regulations (....) The Federal Law, governing the said Federation, happens to be a series of private law provisions with international force, which must be applied within the framework of the Basketball regulations. Thus, for the settlement of the dispute on trial, the Court of Arbitration actually applied this Federal Law, without having recourse to any national law whatsoever in substance. On the other hand, the provisions of the said Federal Law have been interpreted, in conformity with the general principles of law".

"In substance, the CAS overruled B's petition, mentioning at the same time the confusion, which actually exists between the notion of a player's "legal nationality" and his "basketball nationality", according to the terms of Articles 1.6 and 1.7 of the FIBA Regulations.

In particular, the CAS estimates that there are two different notions: the first refers to the player's personal status, resulting from the nationality of one or more countries, while the other is a purely sport sense, determining the criteria for the qualification of athletes and for their participation in the international sports events. This means that there are two different legal orders - one governed by public law and another governed by private law - which neither coincide nor conflict with each other. Thus, the provisions of the FIBA Regulations governing the Basketball player's single sports nationality are not contrary to the

sovereignty of States, especially as regards the nationality and their relative competence.
The CAS estimates that the FIBA Regulations, based on the unity of sports nationality for basketball players, cannot be arbitrary. The said Regulations must respond to this International Federation's legal requirement to obstruct any change of basketball nationality, which does not result from the player's free will or interest, and to preserve, therefore, the player's right and opportunity to chose another sports nationality. Furthermore, the CAS points out that, during the three-year waiting period, which is especially prescribed to this effect, the player B has not been prevented in any way whatsoever from practising his professional activities, since he had always the right to play with his team as a foreigner. On the other hand, participation in the European games does not merely depend on the player's personal qualification, but also on his team's qualification. In the CAS's opinion, the said waiting period does not appear disproportionate.

94/129, USA Shooting & Q. / International Shooting Union (UIT), award of May 23,1995.
Doping of a shooter
Disqualification and suspension for 3 months
Absence of strict liability rule in the UIT Antidoping Regulations
Need to establish the guilty intent of the shooter to sanction him
Right to be heard and due process
If the strict liability standard is to be applied, this face must be clearly stated. The fact that the Court of Arbitration for Sport has sympathy for the principle of a strict liability rule obviously does not allow the CAS to create such a rule where it does not exist.
The fight against doping is arduous and it may require strict rules. But the rule-makers and the rule appliers must begin by being strict with themselves. Regulations that may affect the careers of dedicated athletes must be predictable. They must emanate from duly authorized bodies. They must be adopted in constitutionally proper ways. They should not be the product of an obscure process of accretion. Athletes and officials should not be confronted with a thicket of mutually qualifying or even contradictory rules that can be understood only on the basis of the *de facto* practice over the course of many years of a small group of insiders.

94/132, Puerto Rico Amateur Baseball Federation (PRABF)/USA Baseball (USAB), award of March 15, 1996.

Dual nationality of a baseball player. *«Political» citizenships* and *«sports» citizenship.* Single sporting nationality (application of the Olympic Charter).
Each country to determine its own rules as to the nationality. No other country may dispute such right. The Olympic Charter recognizes that individuals may possess two or more nationalities.

In the circumstances of having dual nationality, the choice of the NOC for which an athlete wishes to complete is a matter for election by the athlete, subject to certain variations when an election has been made, either overtly, or by implication, through participation in certain defined competitions. In the event that the athlete has not completed in either such competitions for any of the two countries, he remains free therefore to elect for which of the two countries he wishes to play.

C. GREEK JURISPRUDENCE - CASE LAW (Summaries)

(Εδώ οι αποφάσεις των ελλ. Δικαστηρίων)

IASL News

I. 7TH IASL CONGRESS ON SPORTS LAW, PARIS Nov. 3O - Dec. 2, 2000

RE: HUMAN RIGHTS AND SPORTS, DOPING – VIOLENCE

FINDINGS*

By:

Dr. DIMITRIS PANAGIOTOPOULOS

Assistant Professor of Sports Law in the University of Athens – Lawyer,
General Secretary of the International Association of Sports Law

Sports and exercise of Human Rights

There is the questioning why the athletes break the records aiming to their instant public satisfaction, since for many years of their private life, they have worked hard to succeed that record. It is time for sports, for people and life. It should be looked into, whether sports as an action, an activity is a human right. Sports activity presents nowadays sides, which have got away from the kind contest, the education, and it has taken purely the form of labour and human rights with a global character.

* The Findings were elaborated, with the co-operation of I. Anagnostopoulos, Advocate, candidate Dr. in the University of Athens and Treasurer of IASL.

The human rights can be classified into three generations: a) the first is identical with the Declaration of human rights, b) the second one with the social and economical character of human rights as a states' obligation and c) the third one with men's rights, the international character of a fair trial, environment, peace and the difference of the cultural inheritance of mankind. The positive law sets in a general way the entirety of the human rights, but also a reversibility formed as prohibition and limitation of freedom a) in the name of the ideological articulation, at first and b) in the name of the freedom itself.

The exercise of human rights concerns the organised athletics. The threat of their infringement comes from the social structure. The discipline and the limitation of rights in sports must respect a series of rules and rights, such as, for example, every person's right to exercise, to the labour and contracts law, the freedom of expression, the participation in athletics, the fair trial, the right of defence, the presumption of the defendant's innocence, the freedom in private life and personal life. There is a distinction between sporting activities or organisations of a public or private nature and the limitation of rights is analogous, since in the case where the athlete belongs to an organisation (federation), which performs a public purpose or exercises public interest, then the limitation of his rights is allowed. Therefore the question is asked what the limits of the athlete's personal freedom are.

The human rights have an important position in the issue of discrimination against women. In USA 100% of women who went to the Courts won the trial based on the Constitution and no state can take a decision against the principles of equality between men and women. This law has serious implications on the issues of occupation, the coaches' fees, whether a man or a woman, and the Court judges using the same criteria based on the provision of equal treatment.

Sports constitute a special way of contribution in children's development. The young athlete's right in safety, health and the avoidance of sexual harassment enjoys analogous protection (article 33 of the Chart of Civil Rights) as well as the right of free expression (article 1 of the Chart) of one's opinion, the right of dignity of the human existence, while strict rules are provided for the discriminations and private life. Issues which impose the protection of the juvenile athletes are in addition to the above, the removal from the family during the games, the equal school education, the trading of children and especially their exploitation by the agents during the transfers. The competitiveness and the need for a good score and a record may lead to the young athletes' doping.

The athlete's fame limits his private life. The issues of the athlete's publicity as well as their defamation, which may be done by the journalists and the mass media, are among the biggest problems. The well – intentioned will of the journalist upon his review on an athlete is a reason for the dismissal from a possible accusation of libel, if, in addition, the journalist adduces enough evidence for whatever he has published. For an example, the picture of an athlete holding the

national flag of his country is allowed to be published without his permission, because in this case, the justified public interest for information regarding an important (major) athletic event is superior. The most important commodities are the athlete's physical integrity and his physical health, especially those of the minors, as a counterbalance to the issues of extreme competition, the athletes' injuries and the possibility of their indemnification. The problem of the ethics of the athlete's image and its distortion is regulated by the European Chart of Sports (see relevant decision of the European Parliament of 1996 regarding sports). The creation of a model Sponsoring and a Code of Coach Ethics is proposed.

Free participation in the games – Public order

From the differentiation of the sports of each kind various practices are born, which increase the spectrum of the dangers during athletics. As far as the games played outside in the fields are concerned, physical integrity is not greatly protected. People are attracted by the new sporting activities and as result, a questioning is created regarding the taking of protection measures. The French law concerning sports (1984) sets a rule and a right to exercise sports freely. The free exercise of a sport is an exercise of a human right.

Every one has to be on alert for the protection of the environment. The French Law recognises two types of rules: the suppressive ones (intervention a posteriori) and the preventive ones (previous granting of licence for action, statement etc.)

The right to exercise sports freely is subject to limitations by the public order. The competent organs for the observance of the public order in France are the police force and the municipal authorities. Limitations in personal rights are usually imposed directly by the law. The French judge forces the police to respect personal freedom. The French State Council (1992) annulled a municipal authority' s decision regarding the creation of a ski refuge, because it judged that only the legislator could do it.

Equally fundamental rights in French law are public order and health. The police force and the municipal authorities can take preventive measures for the protection of the aforementioned rights. Public freedom is also the exercise of sports activity. The Judge looks into the special circumstances of the enactment of the rules and the prohibitions. For an example, he judges the legality of a decision taken by a municipal authority, which prohibits the use of a ski slope, examining the special circumstances (hours and days the ski slope is open, its suitability and dangerousness etc.).

The environment is the greatest commodity and it imposes limitations even on the sports activities in favour of its protection. A French Court decided that a community decision regarding the prohibition of partial use of areas, which belonged to its jurisdiction, for the exercise of sports activities of climbing and walking, for reasons of protection of the environment and especially for the protection of a special race of a harrier eagle, was legal. It is true that the mountain and the sea are not

governed by laws and decrees. The rules for the protection of the rights are laid down, taking into consideration all the beneficiaries of the rights.

Doping and Sports

The general prohibition of doping is not a proper solution, since something that generally prevails, such as doping, cannot be wholly prohibited. It is a major question, whether one is free, if he pleases, to destroy his body. The intensiveness in the rate of practice consists a kind of doping and it is against human dignity. The athletes are subject to conventionalities in their personal life in comparison with their team one. The need to protect athletes' human rights is born by the high scores and the records, especially regarding the issues of discrimination by sex or age, competition, the refusal of the women's rights, the equality of fees, the physical performance and the right in health etc. The issues of control of the intense practice are set next to doping, while anti-doping [sets] the right and the safeguarding of dignity. Men cannot be the puppets of sports. Athletics constitutes a factor in the development of the personality. We cannot stay silent when we know that the athletes take substances within the bounds of the wild competition, and they do this in favour of athletics.

While doping spreads there is a general doubt regarding the accuracy of the game results and the performances. Therefore the problem of prevention and suppression is set as a major one. The athletic movement owes to carry out a great preventive action, consisted in the recommended medical treatment and the checking of results and performances. The athlete, according to the French legislator, is not generally punished because the authorities are afraid of the suppression. There is a confusion of powers in the athletic movement and the IOC with its today's form constitutes a multinational enterprise.

The athletic movement cannot by itself regulate the issue of doping. The harmonisation of provisions for the suppression of doping in a national and international level is required, since there are great differences in all the sectors. There are big differences in the national laws, the international rules and the regulations of national federations. From the comparison of 54 federations in Germany (by the Institute Erlangen) a difference and a multiformity of rules in connection with matters of liability, proof, penalties was ensued. That is why their harmonisation is considered as necessary for the more successful fighting of doping. The setting of new and safer method for the control of doping, such as maybe the checking of the bodily elements before and after the game (hair, voice etc.) is necessary.

There is no complete and unified way to control doping, because there is no clear and exact list of the substances. The distinction between intention and unintentional use is necessary for the imposition of penalties. Punishment requires a composed crime of doping, approaching of the possibility of guilt, proved intention and possibility of counter-evidence, in order to fortify a fair trial. The intentioned

taking of substances of doping defines the extent of the penalty as well as the imposition of a fine, either big or small.
The presence of endogenous substances cannot constitute a proved use of doping, unless there is an excess of the defined in advance quantity.

Violence

The sporting action is pursuant to the Chart of UNESCO a special limited human right and we ought to protect it from the arbitrariness of the state and the athletic organisations. The federations' right is a necessary counterbalance. The International Convention of human rights and the enacted measures on behalf of the states operate as a guarantee for their protection. The right in sports is not respected nowadays by all the states.
The basis of the protection of every right may be its incorporation in one of the aforementioned categories, in (a), (b) or (c) generation of human rights. The right of solidarity is incorporated in the third generation, which creates the moral environment of sports. The right in the environment constitutes a basic element for peace, which is professed by sports. But the consequence of violence is the disorder of the environment. The sports' development owes as a counterbalance to help the developing states with an international fund of assistance, the Olympic solidarity, the national inventory of co-operation etc.
The principle of analogy in the setting of limitations and the principle of assistance have grounds and suit the sports activity.
The sense of Fair Play has lost the moral core of its meaning with the internationalisation of sports. The character of the media and the spectators has changed. UNESCO is worried and troubled by the issues of: violence, doping, discriminations, competition, protection of moral values in sports. There is a difficulty in harmonisation of the regulations and the observance of the values. It is needed to return to traditional forms of sports and to get away from the wild competition.
The Convention regarding the violence in athletic fields and the recommendations published have to be applied in connection with the human rights. The limitations have to safeguard the spectator's rights and protect him from racism and xenophobia.
Measures for the fighting of hooligans in international games (see European Rules UEFA, 11th ed. Apr. 2000) must constitute the important changes in the specifications of the international games fields, the prohibition of tickets selling, as well as the measures of every kind inside and outside the fields, without harming the basic right of a person to freely circulate. It is possible to impose possible limitations in favour of the public order, if they are necessary, even on a personal level but not on a team level and jointly. In the states, which haven't ratified the convention of Segen nothing is mentioned regarding human rights and control is not provided. The convention sets a limitation in favour of the public order.
By virtue of EURO 2000, as far as the circulation and the public order are concerned, there is a need for harmonisation of the national rules, for common politics, expansion of the co-operation in the issue of

entrance – exit out of athletic fields, tickets control, the politics of selling and harmonisation of the rules of competition.

Based on a pre-trial question (EE 177) regarding the principle of guilt and the manner of proof of innocence, the Constitutional court of Portugal ruled that an athletic union may be disqualified as objectively liable for incidents of violence in a field, because precautions and measures were not taken for the fighting of violence.

V. Athletically unfair action – Disciplinary power – Imposition of penalties

No athlete may move without limitations. Regarding the issue of imposition of penalty in every offence or breach, three things should preoccupy us: a) whether the breach is limited in the athletic system only, b) whether the breach overcomes the athletic system and enters into the common penal system (therefore a co-ordination of both the systems is needed for the punishment) and c) whether there are contradictory/inconsistent provisions or decisions regarding the imposition of penalty between the two aforementioned systems (i.e. conviction pursuant to the athletic system and acquittal by virtue of the penal one or vice versa)

Based on the above, the infringer should either be impeached only to the penal judge or a combination of civil and penal provisions should be made for the imposition of a penalty, indemnification etc.

In all the cases of penal offences in athletic activity the victim's consent plays a basic role for the imputation of liability. The consent and the will of the athlete to participate in dangerous sports (i.e. boxing) should always be looked into, since nowadays it is more and more required by the athlete to take more risks during the exercise of the sporting activity.

As far as the penal offences in athletic games are concerned, the intervention by the state of the penal judge in English Law is limited, contrary to USA. In Italy the matter of danger is taken into serious consideration for the same issue. Recent decision of an Italian Court, reverting the precedent so far, ruled that an athlete has penal liability if he injured his opponent breaching the enacted rules of the relevant sport. Namely, the causal connection between the injury and the observance of rules is examined nowadays, in order to impute liability to a contesting athlete, which in earlier years never was an object of judicial control.

The disciplinary organisations ought to examine in depth the merits of the case, with a specific procedure and an expansion of relevant decisions. The athlete's defence before the organisations of every kind, presupposes the right of hearing. The characteristics of the defence are the knowledge of the accusation, the kind of penalty he faces, and the existence of a specific offence. International principles with a unified manner of encounter are needed, substantially as well as procedurally. According to the American Professor J. Nafziger, the European way of encounter is becoming more and more legal and it overcomes the phase of the dispute. The international character of these principles impose

the taking of a decision by Arbitration. The Arbitrators ought to restore justice and the nature of the judge should be defined. The character of the automatic imposition of penalty has been called into question and a way of ratifying the decisions is required.

In accordance with the human rights and the international law, the international control of the international federations for trustworthiness and safeguarding of the international athletic legal order by the internationally organised as a state society with an international athletic organisation, an athletic UN, is necessary[116]. The jurisdiction and the procedure is not a privilege of the executive power. The Court of Arbitration for Sport (CAS) is a Court with «elite» prosecutors but it constitutes a global Corpus.

It was the first time that the themes of doping, violence and human rights were globally discussed.

Athens, 15.12.2000

II. New Board of Directors of INTERNATIONAL ASSOCIATION OF SPORTS LAW (I.A.S.L)

- The 7th IASL Congress has successfully taken place in Paris (Maison du Barreau) from November 30th till December 1st, 2000, dealt with the general topic: **"Sports and Human Rights - Assault - Doping".**
- During the General Assembly of IASL, which took place in Paris (Hotel IBIS Bastille) on December 2nd, 2000, a new IASL Board of Directors was elected and composed in a body as follows:

President	**Gerard AUNEAU,** Professor, University of Toulouse, France
vice-president A'	**James NAFZIGER,** Professor, Willamette University, USA
vice-president B'	**Eugeni Gay MONTALVO,** President of Spanish Bar Associations, Spain
vice-president C'	**Klaus VIEWEG,** Professor, University of Erlangen, Germany
Secretary General	**Dimitrios PANAGIOTOPOULOS,** Asst. Professor, University of Athens, Greece
Special Secretary	**Robert DAVIS,** Professor, University of Mississippi, USA
Treasurer	**Ioannis ANAGNOSTOPOULOS,** Advocate, Ph.D. candidate University of Athens, Greece
Honorary vice-president	**Antonio SPALLINO,** Advocate, past-President of Panathlon International, Italy

[116] This position was stated at first in the International Convention of Olympia which was organised by the Hellenic Center of Research of Sports Law September 3-7, 1991 re: The Institution of the Olympic Games – Scientific Approach (Homonymous Volume, Telethrion 1993)

Honorary vice-president	**Patrick JACQ,** Judge at the Administrative Tribunal of Nice, France
Honorary vice-president	**Nakis MICHAELIDES,** Lawyer, Cypriot Sports Organization, Cyprus
Rest Members	**Jorge ZAS FERNANDEZ,** Advocate, Uruguay **Kevin Kuo-I CHEN,** Chinese Taipei Olympic Committee, Taiwan **Hossein AGHAIE NIA,** Professor, University of Tehran, Iran **Eduardo VITTAR SMITH,** Lawyer, Secretariat of Sports, Argentina **Simon GARDINER,** Director of Sports Law Center, Anglia Polytechnic University, Great Britain

- Resolved that the 8th IASL International Congress of Sports Law take place in **Montevideo, Uruguay**, on November or December 2001, dealing with the general topic: *"Professional Sports"*.
- Resolved that an IASL International Congress of Sports Law take place in the year **2003** in **USA**, on a date and at a location to be defined in the future.
- Finally, resolved that an IASL Olympic International Congress of Sports Law take place in the year **2004** in **Athens,** on the opportunity of Athens Olympic Games 2004.

The President	The Secretary General
Gerard Auneau *Professor, University of Toulouse*	**Dimitrios Panagiotopoulos** *Asst. Professor, University of Athens*

III. 8TH INTERNATIONAL CONGRESS OF IASL

The 8th IASL Congress will take place in Montevideo, Uruguay on

November 28-30, 2001 with the following topics:
-Different organizational forms of sport entities
-Arbitration as a device for the settlement of disputes in sport
-Sports management
-Sportsmen and rights (sports and children rights, transfers and the right to work, the image right).
The relevant **information** is listed below:
Date: November 28-30, 2001
Place: Sheraton Hotel of Montevideo
Accommodations: single room: $ 87 (daily) double room: $96, including breakfast and spa.

The Organizing Committee and sponsors will pay for the welcome cocktail on November 27th and the Dinners of 28th, 29th, and 30th. The Organizing Committee will organize a trip to the city of Punta del Este on Saturday the 1st of December. This trip will be free of charge. The lunch of the 1st of December is also included into the invitation.
The registration fee is $40 before the 31st of October and $60 after this date. In the following days you will receive the information in order to do the bank transfers.
Reservations must be made directly with the hotel, mentioning attendance to the 8th International Congress of Sports Law.
Hotel Information:
Sheraton Montevideo: Victor Solino 349
CP 11.300
Tel# 598-271-22160
Fax# 598-271-21262
e-mail: businesscenter@sheraton.com.uv
Please inform the person who coordinates the Congress, Jorge Zas if you are going to attend the congress and make the reservations accordingly. Jorge Zas e-mail address is: jorgezas@adinet.com.uy

International Sports Law Review
PANDEKTIS
(I.S.L.R. PANDEKTIS)

Articles and studies -based on sports law- are published into the *International Sports Law Review PANDEKTIS*. Articles regarding the Sports relations (in the national and international level), and the sports organisations (their legal status and the law that governs their function), are also published in this volume. Studies about the labour relations in athletics and articles concerning the law of the Olympic Games are included into this volume of the International Sports Law Review «Pandektis», as well.

The published papers concern the field of academic research on the above sectors of knowledge, as well as the actual practice of sports, with wiew to contribute to the evolution of the science of sports law and the relevant subjects and also to assist the resolution of the practical problems of the national and international sports community. In order to achieve this goal it exposes the various systems of the national sports laws and the international sports legislation and cites the relative jurispredence.

The I.S.L.R.:PANDEKTIS., on the grounds of the wider horizon of the confrontation of the scientific problems of the Sports Law publishes papers that concern related fields, like that of sports administration and sports economy, as long as they have an impact on the sports law and they present practical interest.

The I.S.L.R.:PANDEKTIS., as on official organ of the International Association of Sports Law publishes news of the Association and its activities.

The I.S.L.R.: PANDEKTIS supports new and cretive ideas and approaches to the generation and dissemination of knowledge about the broad field of Sports Law. Proposals for Special Issues that focus on a particular topic of relevance to the field may be submitted to the Editor. All articles that are submitted for a Special Issue will be subject to the same review process as regular articles and Guest Editors will be required to work closely with the Editor.

The International Sports Law Review PANDEKTIS is published by the International Sports Law Association with the contribution of the Hellenic Sports Law Research Center two times a year in Fall and Spring. This publication in indexed in SPORT Database and SPORT Discus.

Submision of Manuscripts

Individuals wishing to publish an article in the International Sports Law Review should submit four (4) hard copies of the article to the Editor D. Panagiotopoulos Olgas 41 street, Dafne Athens 17237, GR,

or send an electronic version of their manuscript to *info@iasl.org* or *dpanagio@cc.uoa.gr.* In preparing manuscripts authors may follow the guidelines in the *Publication Manual of the American Psychological Association* (4th edition) or the format followed by the Marquette Sports law Journal.

All articles should be submitted in English and should contain a cover page which shows the name of the author(s), their institutional affiliation and any possible correspondance person, that should be sent (including full mailing address, E-mail address, telephone and FAX number). The second page should contain the title of the article and an abstract of not more than 150 words. Apart from the first page any clues as to the identity of the author(s) should be eliminated from the text. Manuscripts should be doubled spaced, including references and block quotations and must be typed. They should not exceed 30 pages in length (excluding references). All diagrams, tables, figures and graphs should be submitted in original form on a separate page and must be clean and crisp in appearance. Footnotes should be limited in number and not exceed 15 lines. References which appear in the text must be accurate concerning dates of publication, spelling of authors names, periodical titles etc, and they must cross check with those citations which appear in the reference list. Authors should ensure they retain a copy of their manuscript in case of loss in the mail. Copies of manuscripts will not be returned to authors.

Manuscripts will be evaluated in a blind review, in most cases by three reviewers (usually at least two of these will be members of the editorial board). Authors will be sent a copy of the reviewer's comments together with a decision on publication. Manuscripts must not be submitted to another journal before and during the *International Sports Law Review: Pandektis* (I.S.L.R.: PANDEKTIS) publication. Authors of manuscripts accepted for publication must transfer copyright to editor I.S.L.R.: PANDEKTIS. If accepted a disc copy of the manuscript must be submitted in Word format (version '95 - 2000).