

SPORTING JURISDICTIONAL ORDER AND ARBITRATION

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Sports law, by its nature, moves beyond the boundaries of various states as “non-national law” and can be expressed by the term Lex Sportiva as a law parallel to international law which incorporates elements of supra-national legal orders such as the European Community and elements of domestic law. In this field, Sport is organized at international level into a community which has developed its own margins and has its own specific institutions and rules which shape and regulate relationships that develop solely and strictly within the context of the Lex Sportiva. The concept of sporting jurisdiction respectively, viewed in that light and as recognized in law, includes the organs competent for dispensing justice in relation to sporting activities. These organs are either established in the context of the rules of Lex Sportiva internationally or within the domestic system in the context of the rules of sports law enacted by the national legislator. Those organs constitute the dimensions of sporting jurisdictional order.

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INTRODUCTION

Sport today at international level, just like the Olympic Games, is organised within a community which outside of and beyond the state-organised community under its supervision which has developed specific

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institutions that operate under its own rules¹. These rules shape and regulate relationships which emerge solely and exclusively within the context of the sporting legal order internationally, the *Lex Sportiva*².

I. SPORTING JURISDICTION

A. *Concept*

Implementation of rules of law to sporting issues to resolve disputes is a recent occurrence because sports law is a new discipline, which found a *raison d'être* after the development of professional sport and the important financial gains it offers to all those operating in the economically-driven market³. These relationships are exclusively contractual and in addition to their transnational dimension, cross the boundaries of various states where the people involved in sporting activities are located⁴. The use of the term “transnational” Sports Law, in the author’s view, primarily seeks to emphasise the nature of sports law as a form of law which moves beyond the boundaries of various states and not in the sense that sports law is international⁵. In effect this law is non-national and can be expressed by the

¹ Some of the texts in this paper have been previously published in DIMITRIOS P. PANAGIOTOPOULOS, *SPORTS LAW: LEX SPORTIVA AND LEX OLYMPICA* 445-494 (Ant. Sakkoulas 2011); GREEK, SPORTS LAW II, *SPORTING JURISDICTION* 47-91 (Athens, Nomiki Vivliothiki Press 2007) [hereinafter DP, SL II], *ibid.*

² See DIMITRIOS P. PANAGIOTOPOULOS, *INTERNATIONAL SPORTING AND OLYMPIC INSTITUTIONS, INTERNATIONAL SPORTS LAW* 153 (Athens, Nomiki Vivliothiki Press 2007) [hereinafter DP, ISOI]; PANAGIOTOPOULOS, *SPORTS LAW (LEX SPORTIVA) IN THE WORLD* (Athens, Ant. N. Sakkoulas 2004); PanagiTOPoulos, *Sports Law a Special Academic Discipline, in PROFESSIONAL SPORTING ACTIVITY* 38-52 (proceedings of 1st International Sports Law Conference) (Athens, Ellin Press 1999); PANAGIOTOPOULOS, *SPORTS LAW A EUROPEAN DIMENSION* 16-27 (Athens, Ant. N. Sakkoulas 2003); *PROFESSIONAL SPORT IN THE EU REGULATION AND RE-REGULATION* (Gaiger A. & Gardiner S. eds., Hague, T.M.C. Asser Press 2001); Nafziger J., *Lex Sportiva*, *THE INTERNATIONAL SPORTS LAW JOURNAL* 37-44 (2004), ½, et seq.

³ See Andrea Pinna, *The Trials and Tribulations of the Court of Arbitration for Sport, Contribution to the Study of the Arbitration of Disputes concerning Disciplinary Sanctions*, *INTERNATIONAL SPORTS LAW JOURNAL* 8 (2005:1/2).

⁴ See DIMITRIOS P. PANAGIOTOPOULOS, *SPORTS LAW* I 87-109 (Athens, Nomiki Vivliothiki Press 2005) [hereinafter DP SL I]. In the case of sports law theory calls into doubt this characterisation of law. The traditional theory of law characterises law as public international law when generated by traditional methods of international law. Traditional legal theoreticians consider that the state is supreme in generating law. The main proponent of this view is Kelsen, *Das Problem der Souveranität* (Theorie des Völkerrechts, Tubigen 1920), 13 et seq. Those who support the view that sports law is real law include LUC SILANCE, *FORMATION DE LA REGLE DE DROIT DANS LE DOMAINE SPORTIF* 293 (Bruylant 1970); Jean-Pierre Karakuillo, *Les Normes des Communautés Sportives et le Droit Etatique*, *ACTES DU DIX-HUITIEME COLLOQUE DE DROIT EUROPEEN* 51-52 (Maastricht, Oct. 12-14, 1988); ANNE LEROY, *LE DROIT PENAL ET LE SPORT* 5 (Memoire, Universite de Bruxelles 1980).

⁵ As at special session of the 11th IASL Congress in Johannesburg (Nov. 29, 2005) there was extensive discussion on this matter between the author following a paper presented on *International*

term *Lex Sportiva*⁶ as a law parallel to international law which incorporates elements of supra-national legal orders, such as the European Community and elements of domestic law⁷. This sui generis sporting legal order, the *Lex Sportiva*, in the context of other legal orders, not only has jurisdictional organs among its constituent elements but at national level also has self-regulatory mechanism which seeks to ensure that it is fully implemented⁸. In this context the Court of Arbitration for Sport (CAS) has acquired considerable power within the sporting legal order. As it is well known, CAS was established by an international body, the International Olympic Committee⁹, whose Olympic Charter as the *Lex Olympica* is the along with the *Lex Sportiva* the sporting legal order internationally. It operates independently¹⁰ as the most valid jurisdictional organ for resolving sporting disputes for the international sporting community¹¹. In the domestic setting, the sporting jurisdictional organs take form in the context of the relevant legal order either as public bodies appointed by the state (see the Supreme Sports Disputes Resolution Tribunal), or private law bodies operated by sporting legal entities¹².

B. Definition

The term jurisdiction indicates the power granted by law to dispense justice in the context of a legal order and is ultimately bound up with justice

Law and Lex Sportiva, op. cit., and the supporter of the opposite view, L. Silance, that this law is “International Sports Law”.

⁶ In the relevant chapter of Sports Law I this is a detailed presentation of the key elements of the international legal situation in sport and in particular the non-national sporting legal order internationally by analogy with the *lex mercatoria*, see [DP SL I, p. 96-104]. See also D. P. PANAGIOTOPOULOS, SPORTS LAW A EUROPEAN DIMENSION 16-19 (2003), op.cit; D. PANAGIOTOPOULOS, SPORTS LAW A SPECIAL ACADEMIC DISCIPLINE 41-45 (1999), op. cit; and the view that the foundation of international sporting legal order is pluralism, see Ch. Pamboukis, *Lex Sportiva: Concept and Operation of a Spontaneous International Legal Order*, LEX SPORTIVA 3 (HCRSL journal) (vol. 6, 2007) et seq.

⁷ See [DP SL I, p. 87et seq.]; Panagiotopoulos [DP SLI, p. 153 et seq.].

⁸ See Santi Romano (1979).

⁹ See K. Mbaye, *Sport and the Law*, OLYMPIC REVIEW 13 (XXVI, 17, 1997); K. Mbaye, *The Court of Arbitration for Sport*, in PRACTICE GUIDE 3 (1987); K. Mbaye, *The Court of Arbitration for Sport (CAS) 1-3* (6th Special Congress of the Members and Officers of the Union of Olympic Committees (UOC) and the International Organisation (IOC) in International Organisation of Sports, Jun. 25-Jul. 3); *Informative Report Union of Olympic Games, IOC Congress*, OLYMPIC REVIEW 20 (n. 25-26, 1983).

¹⁰ See [DP SL II, p. 155 et seq.].

¹¹ According to A. Pina, *Where Arbitrators Were Called to Decide on the Validity of Decisions of Disciplinary Tribunals of Federations, Unions or Other Clubs* 9, op. cit.

¹² See [DP SL I, p. 243 et seq.].

as a concept¹³. Justice is dispensed by the constitutionally enshrined and recognised courts¹⁴ as well as corresponding courts which do not include a court for sport. Outside the context of justice, the sporting jurisdictional order is a system for resolving sporting disputes via specific organs which are charged by law with trying sporting disputes as defined by the sporting legislator or in the context of the *Lex Sportiva*. The concept of sporting jurisdiction, viewed in that light and as recognised in law, includes the organs competent for dispensing justice in relation to sporting activities. These organs are either established in the context of the rules of *Lex Sportiva* internationally or within the domestic system in the context of the rules of sports law enacted by the national legislator. In other words, these organs constitute the sporting jurisdictional order¹⁵. Consequently, the sports judge and the relevant sporting jurisdictional organs exercise jurisdictional duties outside the limits of the courts appointed in the constitution¹⁶.

II. INTERIM JUDICIAL PROTECTION

The intervention of a judge is permissible and necessary to ensure problem-free sporting life¹⁷. As stated above¹⁸, legal protection relates to the obligation of the organs in the jurisdictional order to rule on the admissibility of applications submitted to the court and, where the conditions permit, to rule on whether the applications are well-founded¹⁹. One form of the constitutionally enshrined right to legal protection in both the case law and legal theory is interim judicial protection²⁰.

¹³ On the concept of jurisdiction in the sense of the competence of the courts and the distinction between disputes, see KERAMEFFS, KONDYLIS & NIKAS, *INTERPRETATION OF THE HELLENIC CODE OF CIVIL PROCEDURE VOL. I* 3-17 (Athens, Sakkoulas Press 2000).

¹⁴ See Article 87(1) of the Constitution and Article 93(1).

¹⁵ On how disputes are handled in Italy, see G. Bausone, *Resolution of Sport Dispute Conflicts of Sports Jurisdiction*, in *SPORTS LAW, IMPLEMENTATION AND THE OLYMPIC GAMES* 302-314 (D. Panagiotopoulos ed., Athens, Ant Sakkoulas 2005).

¹⁶ See Article 93-96 of the Constitution, the ECHR Article 34 (individual recourse) and Article 35 (admissibility conditions).

¹⁷ See D. Panagiotopoulos, *Judicial Competence* 1-15, *PANDEKTIS* 243-258 (vol. 5: 3, 13: 1, 2001), op. cit.

¹⁸ See also K. Beys, *The Constitutional Foundations of Judicial Protection*, *DIKITIKI DIKI LAW REVIEW* 658 (vol. 13); see G. Dionysatos, op. cit., p. 86.

¹⁹ See Articles 34 and 35 ECHR op. cit.

²⁰ See V. Papangelopoulou, *Interim Judicial Protection in Sporting Contests*, in *LEX SPORTIVA* 4, 50-58 (D. Panagiotopoulos ed., Athens, A.N. Sakkoulas Press 2005). For more on interim judicial protection and the legislative regime in France and Germany before the ECJ see V. SKOURIS, *INTERIM JUDICIAL PROTECTION IN ADMINISTRATIVE DISPUTES* 33 (Athens, A.N. Sakkoulas Press 2001), et seq. On interim regulation of the situation, see N. Papaspyrou, *Interim Regulation of the Situation in*

Ensuring that there is a system of legal protection at national and international level to the extent that it relates to relationships governed by European Community law is required by European Union (EU) law²¹. A similar mechanism for providing interim judicial protection is to be found in the provisions of the European Convention on Human Rights²². Interim legal protection in the context of sports law, given the special nature of the disputes which arise in the field of sport and in particular how sporting contests are organised is of major interest from a research perspective. It is also an important factor in protecting sports law itself; given the need for sporting disputes which arise to be heard rapidly, particularly when many acts or omissions in the implementation of sporting rules during games are of limited temporal effect²³. This form of protection can be provided to all parties involved in any way (natural persons or legal entities involved in sport, associations and sports clubs and athletes), who are members of school championship teams governed by public law²⁴ by taking all reasonable measures.

III. INTERNATIONAL ARBITRAL JURISDICTION

The international institution of arbitration has certain special features which make it stand out in terms of substance and form from its national counterparty. International arbitration can be defined as the method used by the parties developed by a third party, whom parties have submitted their dispute to²⁵. This wide-ranging definition of international arbitration includes all jurisdictional phenomena not within the jurisdiction of the

Administrative Procedural Law, Foundation and Principles, in PUBLIC LAW LIBRARY 5-47 (Spiliotopoulos ed., Athens, A.N. Sakkoulas Press 2005), who poses the question of whether the judge in the interim regulation case is the determiner of the case (p. 211 et seq.) or the person who actively shapes the social reality when he has extensive power to seek the most suitable injunction; see K. Kerameffs, *General Note on Injunctions*, DIKI LAW REVIEW 677-678 (vol. 34), without this meaning that one solution will always be more in accordance with the relevant principles and also lawful; Kerameffs p. 213, where he agreed with the reservations of K. Beys, *Modern Concerns in Interim Judicial Protection*, DIKI LAW REVIEW 148-151, 743 (vol. 34, 2003), et seq.

²¹ See [DP SL II, p. 59-60].

²² See Article 39 of the ECHR; V. Papangelopoulou 53 (2005), op. cit.

²³ See Athens Administrative Court of Appeal Judgement No. 329/2002; Athens Administrative Court of Appeal Judgement No. 2439/2002, where regardless of the grounds raised by the applicants on their non-participation in an international championship where those games were held and the application for annulment of the decision was submitted after the games were held, the decision on participation and its enforcement and the petition was dismissed as inadmissible.

²⁴ See Athens Administrative Court of Appeal Judgement No. 93/2000, which suspended enforcement of the decision declaring the winning team in the panhellenic schools tennis games and ordered that the final be held again.

²⁵ On the concept of international arbitration, see Kousoulis 148-154 (2004), op. cit.

international courts or national courts and is marked by the freedom of choice of the jurisdictional organ by the parties.

As an institution, arbitration should be distinguished from court settlement. The fundamental criterion distinguishing the two phenomena is that in arbitration the line-up, organisation and operation of the jurisdictional organ is determined by the parties. Even in the case of the institutional arbitration, in which the parties follow the already existing procedural (and other) rules, they have the authority to choose the said institutional arbitration and therefore the relevant rules. On the contrary, in court settlement the parties are before a pre-existing organisational and procedural structure which they can only slightly influence²⁶.

International arbitration presupposes that the following elements exist:

a) An agreement between the parties that disputes will be resolved by a jurisdictional organ in accordance with the above, whose line-up is determined by the parties. The freedom to choose the arbitration body is accompanied by freedom to choose the procedure.

b) The dispute should be resolved in the basis of respect for law; a condition distinguishing arbitration from other, non-law methods of amicable settlement.

c) The decision is binding and generates precedent and

d) Arbitration rests on a special agreement in which the parties choose the method of settlement and lay down the terms and conditions of arbitration.

IV. ARBITRATION IN SPORT

A. *The International Sporting Jurisdictional System*

Sport is organised at international level into a community, which outside of state supervision has develop its own margins and has its own specific institutions and rules which shape and regulate relationships that develop solely and strictly within the context of the *Lex Sportiva*²⁷. These rules are implemented by its members and take precedence over any arrangements to the contrary²⁸. Disciplinary jurisdiction is exercised by organs from the *Lex Sportiva* on athletes, managers, coaches, or any person

²⁶ See K. Ioannou-S. Perrakis, *Intro. to Intl Justice* 24, 123-124 (1984), in CH. ROUSSEU: DROIT INTERNATIONAL PUBLIC 304-393 (TV Paris 1983), op. cit.

²⁷ See [DP SL F, p. 153]; PANAGIOTOPOULOS, *SPORTS LAW (LEX SPORTIVA) IN THE WORLD* (Athens, Ant. N. Sakkoulas 2004); PROFESSIONAL SPORT IN THE EU REGULATION AND RE-REGULATION (Gaiger A. & Gardiner S. eds., Hague, T.M.C. Asser Press 2001); Nafziger J., *Lex Sportiva*, THE INTERNATIONAL SPORTS LAW JOURNAL 37-44 (1/2, 2004) et seq.

²⁸ See The Statutes of FINA, Article C 7.2; see also J. R. NAFZIGER, *INTERNATIONAL SPORTS LAW*, TRANSNATIONAL PUBLISHERS 55-159 (N. York 2004) and the cases of athletes cited.

involved in sport²⁹. Therefore, we need to examine how Lex Sportiva is implemented at international level, its organs and how they operate within the general legal order.

One of the advantages of arbitration is that it is the only way to guarantee a uniform interpretation of the rules in international sport³⁰. All disputes arising between athletes and their federations are referred to arbitration panels on the basis of the statutes of international federations, and this constitutes a safety valve, ensuring implementation of law in sports disputes in general. In this way international federations indirectly but clearly oblige national federations, who are their members, to include a clause that the Court of Arbitration for Sport (CAS/TAS) is the sole body the competent to resolve sports disputes may arise; regardless of provisions to the contrary in national sports law, or provisions in the rules of national federations. The CAS³¹ has, therefore, been examined in this context as a jurisdictional organ of the international sporting community.

According to the statutes of Fédération Internationale de Football Association (FIFA)³², since the beginning of this millennium,³³ recourse to the ordinary courts is prohibited unless specifically provided for in the FIFA regulations. Furthermore, in the beginning of the millennium³⁴, FIFA decided to create an independent arbitration tribunal, the Arbitral Tribunal for Football (TAF), and its administrative body, the International Chamber for Football Arbitration (CIAF)³⁵.

International associations, national federations and football clubs acknowledged the Football Arbitration Tribunal as the supreme jurisdictional authority³⁶. In other words, they agreed to take all measures to ensure that their members, footballers and other actors respect the arbitration procedure before that Tribunal. The same obligation also applied to official athlete intermediaries.

²⁹ See FRANCOIS ALAPHILIPPE-JEAN PIERRE KARAKUILLO, *DICIONNAIRE JURIDIQUE DU SPORT* 186 (Daloz 1990); see fn 94 above.

³⁰ See A. Pina (2005), op. cit. p.9.

³¹ See *Court of Arbitration for Sport, Arbitration Rules of the Olympic Games*, in D. P. PANAGIOTOPOULOS, *GREEK SPORTS CODE II* 394 (Athens, Nomiki Vivliothiki Press 2005) et seq.

³² See Article 64 (2) of the FIFA Statutes, Edition 2008.

³³ See Article 63 (6) of the FIFA Statutes Amended in Buenos Aires 7-7-2001; A. Malatos, *Sporting Justice* 73 (2005), op. cit.

³⁴ On 7 July 2001, during the extraordinary FIFA Congress held in Buenos Aires.

³⁵ A relevant provision was actually incorporated in art. 63 of the 2001 Statutes providing for CIAF to “establish and maintain the Arbitral Tribunal for Football”.

³⁶ The Football Arbitration Tribunal will operate under the aegis of the International Football Arbitration Tribunal, financed by the FIFA Executive Committee, see article 63 FIFA. See also T.M.ASSER Institute, *FIFA Establishes Independent Football Arbitration Tribunal*, THE INTERNATIONAL SPORTS LAW JOURNAL 31-32 (Issue 1, 2001).

FIFA, however, could not afford to create TAF and CIAF³⁷, but still believed in the importance of an independent arbitration tribunal. The solution could be the, already existing, Court of Arbitration for Sport (CAS). And indeed, after deliberations with the International Council of Arbitration for Sport (ICAS), FIFA decided to entrust CAS as the “*tribunal of last instance*” for decisions passed after 11 November 2002. As stated in its, henceforth, Statutes³⁸, FIFA i. recognizes CAS “*to resolve disputes between FIFA, Members, Confederations, Leagues, clubs, Players, Officials and licensed match agents and players; agents*” and ii. accepts that the proceedings will be governed by the “*provisions of CAS Code of Sports—Related Arbitration*” and that additionally to the various regulations of FIFA, which is to be applied “*primarily*”, CAS will apply Swiss Law; i.e. the Law of its seat.

The decision of an arbitration body is normative in nature and cannot be reviewed as to its correctness where the arbitrator acts within his powers³⁹. Thus, recourse to the CAS is related to the nature of sporting arbitration and there is an issue of whether the parties have freedom in this matter or it is in effective mandatory arbitration⁴⁰. This is because the statutes of sporting bodies expressly require that resolution of sporting disputes exclusively by the CAS. There is also a question of whether this clause is compatible with national law or it creates further legal problems and challenges the constitutional order⁴¹. Greek case law, for example, has

³⁷ See Circular no. 827/10 December 2002, by which FIFA acknowledged that “it soon became apparent to FIFA that the finances made available to found the International Chamber for Football Arbitration (CIAF) were far from sufficient to fulfil its objectives of establishing and maintaining an independent arbitration chamber for football. Furthermore, it was acknowledged that the measures required to set up such an independent project have proved to be too time-consuming in view of the time constraints imposed by the necessity of implementing the new juridical system in accordance with the FIFA Statutes”.

³⁸ See art. 59 of Statutes 2004, art. 60 of Statutes 2007, art. 62 of Statutes 2008 and 2009.

³⁹ See *Athens Single-Member CFI Judgement No. 3802/1995*, DEN LAW REVIEW 1324 (1995). The erroneous interpretation and implementation of the DG and the poor weighting up of the evidence by the arbitrators were not grounds for annulling the arbitration award, see *Athens Court of Appeal Judgement No. 2948/1994*, NOMIKO VIMA LAW REVIEW 1179 (vol. 42). The inadequate reasoning of the arbitration award was not contrary to the public interest and the foreign decision to be declared enforceable in Greece was not held to be contrary to the public interest if, by simply requiring some evidentiary procedure, a decision is issued which is different to that which would have been issued taking into account national legal rules or implementing substantive provision of law different from those of domestic substantive law which may relate to domestic order and constitute rules of compulsory law, see *Piraeus Single-Member Administrative Court of First Instance Judg. No. 264/1987*, END LAW REVIEW 403 (vol. 7).

⁴⁰ On Greek Supreme Sports Disputes Tribunal decision No. 53/2002, see DP SL I, *The M Case*, NOMIKO VIMA LAW REVIEW 1198 (2005), op. cit., et seq.; PANAGIOTOPOULOS, MARQUETTE SPORTS LAW REVIEW 1-12 (5:1, 2004); COMMENT IN ISLR/PAND 304-307 (vol. 5:4).

⁴¹ See [DP SL p. 107]; A. Tambakis, *The Provision of Sporting Services, Legislative Provisions and Enshrinement*, in SPORTS LAW IN THE 21ST CENTURY—PROFESSIONAL SPORTING ACTIVITY 436-438 (DP SL I ed., Athens, ION Press 1999).

in the past accepted that in the resolution of disputes arising between natural persons or legal entities which participated in any way in football games; the law⁴² establishes the exclusive jurisdiction of arbitrators on condition that the parties had agreed to this beforehand and that this was constitutionally permissible⁴³.

B. The Principle of Excluding Recourse to the National Courts

Internationally, the sporting legal order, whose nature is in doubt, is limited to bounds of contractual freedom. The sources and procedures for generating this legal order do not coincide with the traditional sources and procedures for generating law⁴⁴, where the dominant element is the state. In order to bypass difficulties raised by the contested nature and effect of the law generated within the bounds of the sporting system, CAS has been established in the context of the system as a private arbitration institution. This is because arbitration at national and international level is an integral part of the institutional mechanism which governs national and international sport⁴⁵. That is the reason why in implementing the *Lex Sportiva* it is obliged to use *stare decisis* which is based on the principles of the effectiveness of the legal proceedings, impartiality and equal treatment of similar situations so that the arbitration procedure is valid, otherwise there is a risk of CAS being like a national court with all the consequences and problems that this would entail⁴⁶.

Implementation of sports law as international *Lex Sportiva* is not automatically ensured by the national courts within national legal orders. The provisions of each national sports law and the rules of the relevant federations may contain a different interpretation and implementation; having as a result that the international objectives of international sports federation and the International Olympic Committee (IOC) to become fragmented and ineffective. International sporting bodies do not have much room for manoeuvre and do not have the necessary mechanisms so that the law they generate has the force needed to supplant national provisions and thus, impose it on the national bodies that are their members⁴⁷. In order for

⁴² At that time law 2433/1996 was in effect.

⁴³ See *Athens Court of Appeal Judg. No. 8827/1997*, ELLINIKI DIKEOSINI LAW REVIEW 459 (2001).

⁴⁴ See Christopher C. & Joyner-Oscar Schlachter, *The United Nations Legal Order*, ASIL 56 (vol. 1, 1995), et seq.; Francesco Capotorti, *Course General de Droit International Public*, RCADIIV 111 (1994); see also DP SL I, ON THE LEX SPORTIVA AND TRADITIONAL LAW.

⁴⁵ See Christopher Vedder, *The IAAF Heritage* 17 (2005), op. cit.

⁴⁶ J. A. R. Nafziger, *Lex Sportiva*, INTERNATIONAL SPORTS LAW JOURNAL 3-4 (4:1/2, 2004).

⁴⁷ On the problem of the validity of the rules of the *Lex Sportiva* and national law see [D.P., SL F, p. 191 et seq.].

the international sporting community to exert power in the sporting world internationally all national federations, which are members of international federations or National Olympic Committee (NOC) members of the IOC or all athletes, are exhorted to obey their rules and regulations. Wherever this is not done, the parties involved in international sport activity, as subjects bound by national law in which they obey, will adopt different conduct from that required by the *Lex Sportiva*. Thus, the basic function of the international sporting community, which seeks to harmonise the rules on the practice of each sport⁴⁸ or participation in international or Olympic Games, would be lacking in content and the community would be without power. Therefore it is of vital importance for the international sporting community to consolidate its position and its power.

As above mentioned, in order to ensure obedience to its rules, the practice of the international sporting community and the *Lex Sportiva*, is to have absolute discipline of the national federations and the athletes; comprising them a tactic used by their international sporting community bodies, which removes them from direct conflict with each and every national legal order⁴⁹. This tactic involves international federations and the IOC including provisions in their statutes which prohibit recourse to the civil courts which grants jurisdictional power to the *Lex Sportiva* organs, creating a uniform practice at international and national level⁵⁰. This ensures implementation of their rules, the *Lex Sportiva*, which they regulate as the competent international sporting bodies. The provisions of the *Lex Sportiva* become mandatory for national federations which are their members and they are obliged to introduce terms into national sporting practice and in the context of the contractual regulations consisting national sporting life⁵¹. It

⁴⁸ See K. Vieweg, *The Harmonisation of Anti-Doping Rules and Regulations—Different Approaches on the Basis of a Cybernetic Model*, INTERNATIONAL SPORTS LAW REVIEW PANDEKTIS 343-351 (ISLR/Pand, vol. 4:4, 2002), in SPORTING LEGAL ORDER 202-213 (Proceedings 2nd International Sports Law Conference) (Panagiotopoulos D. P. ed., Athens, A.N. Sakkoulas Press 2003), in SPORTS LAW (LEX SPORTIVA) IN THE WORLD 412-421 (D. Panagiotopoulos ed., Athens, Ant. N. Sakkoulas 2004).

⁴⁹ See [D. P. 103-106 (2001), SL, op. cit.]; Panagiotopoulos [SL I., p. 116-142]; in the chapter on Lex Sportiva and traditional legal orders, see T. Theoharis, *The Legal Nature of the Law of International Sports Federations and the IOC and Its Application in Legal Orders* 106 (Athens 1999).

⁵⁰ This was a view expressed by E. Moustaira, *Sporting Legal Order and Civil Liability: Comparative Law Comments*, in SPORTS LAW IMPLEMENTATION AND THE OLYMPIC GAMES 46-56 (Yearbook of Sports Law HCRSL) (D. Panagiotopoulos ed., Athens, A. N. Sakkoulas 2005). This is in fact the abstinence by law of the courts and wherever this is provided for by the rules of law of the domestic Lex Sportiva.

⁵¹ It has also been ruled that the regulations of Fédération Internationale de Basketball Association (FIBA) apply in Greece since the Greek basketball federation is a member, see Greek Supreme Sports Disputes Tribunal decision No. 25/1999 and 9/1999 (unpublished).

has also been accepted that the rules of international federations in general are provisions, which are generally acceptable by European sports associations.

In international and domestic sport fields, is developing an organic justice (justice organique) next to and outside of the constitutionally inscribed justice, which is dispensed by the organic courts (tribunaux organiques)⁵² as a special jurisdictional order for sports jurisdictional organs. This jurisdiction includes jurisdictional rulings of the organs of sporting legal entities within the domestic legal order and for the jurisdiction of the CAS similar rulings of the international federations and/or national sports jurisdictional organs. Recently however the view has been expressed that the national courts have the ability to decide on the validity of the decisions of federations relating to their athletes on both domestic and international issues⁵³.

CONCLUSION

To summarize the aspects of this paper, there's a necessity for international sports activity in the field of *Lex Sportiva* and its institutional autonomy by international sports federations, to be set under the responsibility of an international sports body (based on the model of United Nations).

Sporting jurisdictional order has to be structured in a way to ensure the function of an International Sports Court under institutional guarantee conferred by nations pursuant to the separation of powers and respect for democratic process.

Accordingly, nations should establish an International Sports Chapter in an international framework of *Lex Sportiva*, which identifies the constitutional limits of international sports entities and the legality and regularity of the sports transactions.

To this direction, the foundation of an International Institute of Sports Law could efficiently contribute to the studies, research and utilisation of international legislation, regulatory act and relevant case-law concerning sports activity. This institute can also be operated as an advisor for sports entities and international judicial bodies.

⁵² See Gerald Simon, *Le Conflit Sportif un Conflit de Normes?*, in DROITET SPORT 103-105 (Piermarco Zen-Ruffinen ed., Staempfli editions, Berne, SA); Simon Gerald, *Reflexions sur l' Arbitrage Juridique en Matiere*, PANDEKTIS: INTERNATIONAL SPORTS LAW REVIEW 385-389 (vol. 3/4, 1995); see also T. THEOHARIS, THE LEGAL NATURE OF INTERNATIONAL SPORTS FEDERATIONS AND THE IOC AND ITS APPLICATION TO CONFLICTS OF LEGAL ORDERS 108 (Athens 1999).

⁵³ See A. Pina 9-10 (2005), op. cit.; T. Theoharis 108 (1999), op. cit.