

**SPORTS LAW AND SPORTS MARKET**

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## Abstract

Sports were always considered to perform a State function amongst other functions. When sports authorities were emancipated from the State they started behaving like a common business. Nowadays sports have evolved from a social activity to an economic activity but its umbilical cord with the State has not been cut since it is still performing a State function. However sport law is recognized today as an independent legal order that evolves in parallel to the State legal order. Also it is considered as a new market, in which competition rules should apply. Is it true however that it is really a market? Is there really competition in the legal sense between sports clubs in a championship? Is it possible to have competition in a legal sense when there is only one sport federation and only one championship for each sport?

### 1. Introduction

The worldwide athletic legal order was shaped during the 20th century. In the previous years sport emerged as a form of social activity, exercised as a privilege of the nobility. With the resurgence of the Olympic Games, athletic activity became popular amongst the masses. This resulted in the need to establish certain written rules to regulate the organization of athletic activities.

Sport is unique in that it performs at least five functions (D-G X, Commission Staff Working Paper. Brussels, 29.9.1998):

- *An educational function: Active participation in sport is an excellent way of ensuring balanced personal development for all age groups and encourages people to adopt moral values of fair play, fair competition, team spirit.*
- *A public health function: Physical activity offers an opportunity to improve people's health (M. Papaloukas, p. 33-48. 1995).*
- *A social function: Sport is a suitable tool for promoting a more inclusive society and for combating social exclusion, intolerance, racism, violence, alcohol and drug abuse.*
- *A cultural function: Sport gives people an additional opportunity to put down roots, to get to know an area better, to integrate better.*
- *A recreational function: Sporting activity is an important leisure occupation and provides personal and collective entertainment.*

States usually recognize the great importance of sport for the people in a sense that no other activity can perform all these functions. Nowadays sport is emancipated from the State but still performs these functions «assigned» to it by the State. In that sense the State still has a great interest in the good performance of its functions but financially sport (sports federations) was left alone in a competitive, commercial environment, where the law of the survival of the fittest applies, a market. Under a subtle protection by the State that did not allow other competitors (competing sports federations) to enter this market, it seems that sport has done more than well and found the means not only to survive but also to prosper. As it aimed at profits, its commercialization began. It is unlikely that the State predicted the excessive commercialization of sport and the vast amounts of money that would be made in this market but when it became obvious that this was the case, the State started confronting sport as just another economic activity. In order to be it

more effective commercially sport started organizing itself in the way companies were organized. After a while the public functions of sport were forgotten and in the mind of everyone sport was officially "just another economic activity" ( M. Papaloukas, p. 69-83. 1996). Thus taxation rules and company law regulations were applied. It was only a matter of time before State authorities would press for the application of competition rules in the area of sport (M. Papaloukas, p. 683-687. 2003; Study by Coopers and Lybrand for DG X of the European Commission. 1995; Ruling of the European Court of Justice in the Case C-415/93 ). However, will sport be able to perform its functions if it is handled this way? Is sport really just another economic activity?

Sport has certain unique characteristics, which must be safeguarded if it is not to be transformed into something very different. The difficulty lies into clarifying how the law can be applied to economic aspects of sport taking account of its uniqueness and character. State authorities, legislators, judges, lawyers, market analysts, should start considering the area of sports as a special area in every aspect. All legal or financial rules applying to other economic activities are to be thoroughly examined before applied to sports. In order to regulate sports activities legal provisions and economic rules sometimes have to be reformed and sometimes they have to be rejected.

## 2. The Particularities of Sport Law

Sport law contains all provisions, introduced by the State or by athletic authorities, that concern sport and athletic activities in general and regulates the relations that are developed in the frame of athletic activity.

Today the rules of athletic legal order have the peculiarity, that its provisions are not introduced by the executive power of each state but by legal persons. The worldwide athletic legal order is characterized by (M. Papaloukas, p. 58-60. 2005):

- *its self-reliant foundation,*
- *its independence from other legal orders,*
- *as a rule, its non submission to governmental control.*

However even if the worldwide athletic legal order can be characterized as primary, it is very difficult to say that the same also applies for the national athletic legal orders. At a national level it is the State that will determine the power of every provision that emanates from any other institution apart from the State legislative body. Consequently any autonomy enjoyed by sport at national level is due to the tolerance of State. Since the various sports bodies originate from the State and function in the territorial frame in which the State "acts", it is necessary that there will be State interventions. Usually this intervention is expressed in a latent way with collaboration between the State and athletic institutions for establishing a regulation. There are however areas of sport activity which are traditionally regulated solely by the State or solely by the sports authorities. There are also other areas, which are traditionally regulated by the State and sports authorities working together. The most characteristic cases are the following (M. Papaloukas, p. 58-60. 2005):

- *The sector of taxation of athletes and sport companies is regulated exclusively by the State.*
- *The sector of regulations pertaining to the rating of teams and athletes in athletic events, is regulated exclusively by the sports authorities.*
- *The organization and operation of sports associations, are regulated by the*

*State and sports authorities together.*

It is of course obvious that in the areas where there is collaboration of State and sports authorities, the State regulations may be in conflict with regulations emanating from the sports authorities. Such conflicts are present when (M. Papaloukas, p. 58-60. 2005):

- *The athletic regulations contain an estimate of facts different from that given in the State regulations for the same facts (e.g. a hit in the face may be considered as an illegal activity that falls within the scope of criminal law by State regulations, while the same action during a boxing match is considered legitimate and is even encouraged).*
- *The athletic and State regulations recognize the same facts in the same way, but provide different legal consequences for them (e.g. for an act of doping the State introduces regulations provide for imprisonment, while sports regulations provide for exclusions from participation in athletic events).*
- *The sports and State regulations evaluate the facts in the same way, set out the same legal consequences, but establish different means for the protection of rights (e.g. the establishment of sports courts by sports authorities).*

It is characteristic in any case, that until today although the problem of the conflict of these rules has been identified, measures have still not been taken towards finding a way of resolving these conflicts, as has happened in the case of conflict of legal rules in other areas of law (rules of private international law).

From all the above it is obvious, that today a legal order has emerged, that evolves in parallel to the State legal order and has been recognized as independent internationally, containing particular rules, procedure and characteristics, which can henceforth be called "athletic legal order", and constitutes a self-existent source of law and self-existent sector of legal science.

This particularity characterizing sports goes however far beyond the legal framework that regulates sports. Sports present a particularity as a social activity, as a leisure activity, as a legal framework, as an economic activity and even more as a market. This is why the legislator faces great difficulties when applying to sports the legal rules common to other areas of law. These difficulties are even more obvious when the legislator tries to legislate within the area of economic activity (M. Papaloukas, p. 8-15. 1996-1997).

Athletic activities are related to the laws of the E.U. and especially to E.U. competition rules by the simple fact that according to the European Court of Justice, sports companies are exercising an economic activity and therefore, like every other economic activity, they fall inside the scope of EU competition policy and its rules (M. Papaloukas , p. 6-12. 2000-1; M. Papaloukas , 1997).

### 3. The Particularities of the "Sport Market"

When we say sports companies, we need to understand exactly what kind of businesses we are referring to. There are some sports related enterprises, which sell products like every other industry i.e. a sport shoes industry. However, there are also some enterprises, which create the sport product, the spectacle which

is organized, sponsored and broadcasted by other sports related industries. These businesses, nowadays organized as ordinary companies are the clubs, the athletes belong to which will henceforth be referred to as sports businesses. What do these companies sell? They sell a very special product, a spectacle. The company (a club) selling the best spectacle is likely to make more money than the others. So far there is no difference between these sports businesses and a theatre business. Just like sport businesses theatre businesses struggle to produce the best spectacle in order to attract more customers and profit from tickets, broadcasting, sponsorship etc. One might think that sport businesses and theatres are similar economic activities like any other economic activities where competition rules apply and consequently the same competition rules should apply to them too. If we examine the sports business product we will find that there are many differences from other products. It is also very interesting to see who creates the product. If we also examine the sports business market we will find a completely different kind of market.

All companies operating within a certain market try to sell more than other companies competing in the same market. It is in their best interest if they manage to push all other competing businesses out of the market, in order to remain the sole viable producer. In fact every country introduces competition rules in order to avoid this effect, thus sending a message to all competing businesses that there is a limit to what they can do in order to claim more clients and to avoid monopolies. In any case in an ordinary market before a company introduces a new product to the market there is great uncertainty about its acceptance by the consumers. This uncertainty is a great challenge for these businesses and this is why a lot of money is spent in market analysis, in an effort to avoid poor sales results. Sports businesses on the other hand do not wish the other sport business companies to withdraw from the market. On the contrary they try to attract more competing businesses to their market because this is in their best interest

(P. Sloane, p. 16. 1980; Conclusions of Advocate General Lenz in the Case C-415/93 point 227. 1993).

Sports businesses may wish to make more money than their competitors but in no way do they wish to exist great financial differences between them and their competitors.

Furthermore sports businesses from a financial point of view do not feel uneasy about the effect of a new product on the consumers, nor even do they fear the uncertainty in the outcome of their efforts. On the contrary, the uncertainty of the result of the spectacle produced, adds to the commercial value of the product. The more surprises in the spectacle, the higher the commercial value of the product (K. Van Miert , 1997).

Thus the differences that characterize the sports market and differentiates it from any other market are the following:

- 1.** *The sports business market is the only market where the fate of the competing businesses are in such a way interdependent.*
- 2.** *The competition between the competing companies is not an aspect of the market but an inherent part of the product.*
- 3.** *There are some competition rules, which are introduced not by the State but by sports authorities and concern the way the game is played. These rules are*

*also an inherent part of the product. Therefore it is worth considering whether there is room for additional competition rules.*

In conclusion the sports business market is the only market where the notion of the product is so expanded as to include all the production by all sports businesses, all sports businesses, all competition rules, the whole notion of the market and sometimes even the authorities that oversee the market. In the legal sense and from the point of view of competition law it is easy to say that there is no such a thing as a sports market yet.

These differences may help us to explain why it is so difficult to legislate in the field of sports (M. Papaloukas, p.679-685.1998). The legislator usually sets competition rules in order to balance the competitive elements of the market. In the case of the sports market the rules that the legislator may introduce will not affect the market but the product itself. So the legislator in this case is not a ruler of the market but rather he is transformed in a tool in the production line or a part of the product.

The crux of the problem is that in the sports market there is no competition in the legal sense. The reason why there is no competition is because there are no competing businesses, as there is usually only one championship in every sport. The truth is not that there is no market but that there is necessarily a monopoly in the market. The market with its competing businesses and its competition rules will most certainly arise when competing championships for each sport arise and competing sports federations arise.

#### 4. Conclusion

Sport authorities are not exactly private authorities since they are performing State functions or functions assigned to them by the State. Thus the legal system in the sport sector contains many differences than other legal systems. Also sport authorities should not be considered as common businesses, the sport activity should not be considered as a common economic activity and the sport market should not be considered a competitive market yet. As long as there exists only one sport federation for each sport and only one championship, common competition rules cannot be applied.

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