SPORTS SELF-GOVERNANCE

Marios Papaloukas, *University of Peloponnese*
SPORTS SELF-GOVERNANCE

Presented at the 17th International Sports Law Congress in Moscow
27-30 September 2011

Marios Papaloukas

Attorney at Law
Associate Professor of Sports Law, Univ. of Peloponnese
Address: 14, Moschonission Str., 11252 – Athens
Tel.: 0030 210 8212133, 0030 6944540350
Email: mpapalouka@gmail.com

Autonomy is the attribute on which the whole Olympic establishment was based. In the IOC’s view its members do not represent their countries and therefore are not politically dependent from their respective national governments. Instead they act in their capacity as representatives of their countries’ Olympic Ideas. But autonomy is not the only privilege enjoyed by the athletic establishment. This multi-billion dollar enterprise is also self-governed and in that sense the athletic community forms an entity outside national boundaries, governing itself with rules set by itself and Courts appointed by itself. This however does not mean that there have not been cases where this autonomy and self-governance has been challenged by State authorities. The athletic establishment has won many battles, even decisive ones but this is expected to be a long lasting war.
I. The Global Sports Model (IOC-Autonomy)

According to Pierre de Coubertin’s view on the Olympic Games, sport is or should be treated as a religion, the so called “Religio Athletae”. The athlete just like the sculpturer of a statue is working on his body. It was in that sense that the reconstruction of the Olympic Games were connected with a religious feeling from the day they were reborn. Nowadays the IOC considers that IOC members represent not their respective countries but rather the Olympic Movement within their country and therefore they are independent of their governments.

However IOC members have evolved as not only politically autonomous but also financially independent. Since its members are autonomous, therefore the IOC itself in turn is independent of political institutions. And since it receives no subsidies its is also financially independent from any political authority. In present times IOC’s idea of autonomy is that it is a necessity for the Olympic and sports movement, since autonomy guarantees the preservation of the values of sport, the integrity of competitions, the motivation and participation of volunteers, the education of young people and their contribution to the well-being of all, women, men and children, thereby contributing to its credibility and legitimacy. According to the IOC, only an autonomous movement, namely one that is self-regulated and self-managed without any interference, can guarantee the fundamental principle of Olympism as expressed by Pierre de Coubertin.

Although autonomy as a notion was always implied, the actual term autonomy first appeared in the text of the 1949 Olympic Charter (rule 25), and with regard not to members of the IOC but to the national Olympic committees. According to this provision in order for a National Olympic Committee to be recognised it had to be independent and autonomous. In view of the fact that the IOC first used the terms when it started discussions to recognise National Olympic Committees of Countries belonging in Eastern Europe’s Communist bloc, it is obvious that the terms intended to safeguard the Olympic movement mainly from communist government

interventions. In 1955 this provision was further strengthened by stating that “National Olympic Committees must be completely independent and autonomous and entirely removed from political, religious or commercial influence.” And in 1958 it was added that National Committees which failed to comply with this rule would forfeit their recognition and lose the right to send participants to the Olympic Games. The effort to maintain the autonomy of the movement is apparent in all the amendments of the Charter until today. ⁴

In the same way as the IOC acknowledges the autonomy of International Sports Federations, they in turn acknowledge the autonomy of their respective national federations.

II. The European Sports Model ⁵

In the European athletic society there are certain values that prevail as far as the model of sports governance is concerned. Sports are seen as a practice originating from ancient Greece which inherited the ancient Greek values of democracy. These values are reflected in the Olympic Movement today. The European Sports Model therefore is a democratic model ensuring that sport remains open to everyone. This Model forms a pyramid structure, where clubs constitute the base of the pyramid and offer maximum scope for local participation. The next level includes the national federations. Their task is to organise national championships and to act as regulatory bodies for all matters concerning their sport at national level. At the top of the pyramid we find the European federations, organised on the basis of one member per national association. It is their task to organise European competitions and to perform regulatory functions at a European level. ⁶

In a more detailed examination very important features of the European Sports Model are Solidarity, Promotion and Relegation of clubs. These features distinguish the European from the American Sports Model where there is no possibility of

---

relegation to a lower league and very little financial redistribution to smaller clubs or to the amateur or grassroots level.\(^7\)

Promotion and relegation have the effect of maintaining a hierarchy of leagues and divisions, according to the relative strength of their teams. They also maintain the importance of games played by many low-ranked teams near the end of the season, which may be at risk of relegation. In contrast, a low-ranked U.S./Canadian team's final games serve little purpose, and in fact losing may be beneficial to such teams, yielding a better position in the next year's draft. The downside of relegation, however, is the potential of severe economic hardship or bankruptcy for demoted clubs. Some leagues (most notably English football's Premier League) offer "parachute payments" to its relegated teams for the following year. The sums are often higher than the prize money received by some non-relegated teams, in order to protect the relegated teams from bankruptcy. Owners of promoted clubs gain a financial bonus.\(^8\)

### III. Autonomy in Europe through Freedom of Association

In Europe, as from the end of the 19th century, thanks to national legislation guaranteeing freedom of association, sports authorities took the form of non-profit-making associations. In this capacity, they enjoyed considerable autonomy from government in most European countries. For most of the 20th century, the majority of European States allowed sports organisations to develop fully independent of the public authorities. For many years, they operated in complete independence of local and national government and therefore they were self-regulated bodies.

### IV. Autonomy Challenged in the European Union

However as sport was becoming an increasingly important socio-cultural and economic sector during the 1970s the Council of Europe became the first European (inter)governmental organisation to take a real interest in this sector and to work with the sports movement by adopting in 1976 the European Sport for All Charter, which


\(^8\) See wikipedia on promotion and relegation [http://en.wikipedia.org/wiki/Promotion_and_relegation](http://en.wikipedia.org/wiki/Promotion_and_relegation)
was replaced by the European Sport Charter in 1992. It concerned itself with issues such as doping and spectator violence.\(^9\)

According to the Nice Declaration\(^10\) sport has a specific nature that sets it apart from any other field of business activity. Sport has important social, educational, cultural and humanitarian functions and that these features must be taken into account when European Community law is applied. The Nice Declaration also recognises that solidarity between different levels in sport and in particular, between professional and amateur sports is a fundamental aspect thereof. Because of its special features (specificity) the independent nature of sports bodies is protected and their autonomy is recognised. The sports federation is the basis of the sporting organisation providing a guarantee of cohesion and participatory democracy. Self-regulation of the sports sector is viewed as an aspect of the principle of freedom of association, recognised and protected as a fundamental element of personal liberty in all EU member states’ Constitutions and in the European Convention on Human Rights. The self-organisation and self-regulation of the sports world is an important cultural tradition of European civil society existing from the end of the 19th century. It is not Governmental but private authorities which are entrusted with the regulatory powers for historical and cultural reasons. This has helped to reduce the risk of political influence in sports matters. As a result international sports bodies enjoy a substantive amount of discretion to perform their duties.\(^11\)

Sport is perhaps the only economic sector where private bodies enjoy such a regulatory power. However, this scope for autonomous regulatory activity is by no means unlimited. From the point of view of European Law it is becoming difficult for the sports authorities to know when they are acting legally or not. Both the European Commission and national courts in the EU many times have struggled to find appropriate solutions to cases involving sports matters. Also since the 1970s the European Court of Justice has applied EU Treaty rules binding EU member states. In the Walrave and Koch case, the Dona Mantero case but most of all in the famous Bosman ruling, the Court ruled that the athletic regulations do not escape the application of EU Treaty in particular, regarding free movement of workers and the

---

\(^10\) See Nice Declaration [http://www.sports.gouv.fr/IMG/pdf/MSS09Internet_4b_Declaration_de_Nice-2-2.pdf](http://www.sports.gouv.fr/IMG/pdf/MSS09Internet_4b_Declaration_de_Nice-2-2.pdf)
freedom to provide services. As a result there has been an explosion of sports related cases in recent years. So far the European Commission has adopted a “reactive” approach to the legal issues posed by sport and acts in response to actions filed. Also the European Court of Justice follows a “case-by-case” approach when dealing with a sports case.\textsuperscript{12}

It is recognised however that in order to achieve legal certainty there needs to be a clearer delineation as to exactly in which matters sports authorities may act autonomously and enjoy a wide margin of discretion, without fear of their decisions being undermined by the application of European Community law. This is because certain matters, such as pure sports regulatory matters are best left to the relevant sports authorities which possess the expertise to best deal with these issues.\textsuperscript{13}

The subject of sports autonomy especially in Europe has been discussed so much that specificity is forgotten. The term sports autonomy is used as to include independence and self-regulation in the sports movement.\textsuperscript{14}

\textbf{V. Autonomy Challenged by Governments}\textsuperscript{15}

The sports authorities have always reacted to any attempts challenging their autonomy.

- Most common cases of international federations reactions to governmental interference are the following:

In 2006 FIFA briefly suspends the national federation of Greece because of a law that was about to be introduced reinforcing state control on sport in order to prevent match fixing.

In 2008 FIFA suspends the national football federations of Albania and Madagascar.

In 2008 FIFA threatens the Spanish national football federation with suspension in view of the fact that the Spanish government pressed for early elections. In the end the government backed down to avoid suspension of the national team from the Euro 2008.


- Most common cases of **IOC reactions to governmental interference** are the following:

In the early days, that is in the 1980 Moscow Olympics there were pressures from the USA government to western European countries National Olympic Committees to boycott the games. Many European National Committees resisted the pressures thus proving their autonomy.

As a result of this in the 1984 Los Angeles Olympics the USSR put pressure on eastern European governments to boycott the games.

In 1999 the IOC suspends Afghanistan’s National Olympic Committee because of the Taliban’s government decision to exclude women from participating.

In 2003 the IOC suspends Iraq’s National Olympic Committee because one of the president’s (Sadam Houssein) son was held responsible for the torture of athletes.

In 2007 the IOC suspends Panama’s National Olympic Committee because of government interference to its elections.

In 2008 the IOC suspends Iraq’s National Olympic Committee because of government interference to its elections.

In 2008 the IOC supervises Kuwait’s National Olympic Committee’s elections and threatens to suspend it in 2009.

In 2009 the IOC refuses to recognise Albania’s National Olympic Committee’s new elected leaders.

**VI. Autonomy in Football**

It is over one hundred years since FIFA, the Football International Federation the Federation, was established in Paris (1904). Since then the game has increased in popularity, to become the sporting phenomenon it is today. It is often said that if horse racing is the sport of kings, then football is the king of sports! There is no doubt that international football is a mammoth business. From tickets to broadcasting rights and sponsorships sport has arisen as an economic colossus.16

It is very interesting therefore to examine how football authorities handle the matter of autonomy. According to art. 64 of the FIFA regulations:

1. The Confederations, Members and Leagues shall agree to recognise CAS as an independent judicial authority and to ensure that their members, affiliated Players and

Officials comply with the decisions passed by CAS. The same obligation shall apply to licensed match and players’ agents.

2. Recourse to ordinary courts of law is prohibited unless specifically provided for in the FIFA regulations.

3. The Associations shall insert a clause in their statutes or regulations, stipulating that it is prohibited to take disputes in the Association or disputes affecting Leagues, members of Leagues, clubs, members of clubs, Players, Officials and other Association Officials to ordinary courts of law, unless the FIFA regulations or binding legal provisions specifically provide for or stipulate recourse to ordinary courts of law. Instead of recourse to ordinary courts of law, provision shall be made for arbitration. Such disputes shall be taken to an independent and duly constituted arbitration tribunal recognised under the rules of the Association or Confederation or to CAS.

The Associations shall also ensure that this stipulation is implemented in the Association, if necessary by imposing a binding obligation on its members. The Associations shall impose sanctions on any party that fails to respect this obligation and ensure that any appeal against such sanctions shall likewise be strictly submitted to arbitration, and not to ordinary courts of law.17

VII. Limitations to Sports Autonomy

IOC authorities consider that the recognition of specificity in the Lisbon Treaty is not enough and also a reference to the autonomy of sport should be included in the EU Treaty.18

It is certain that sports authorities have always considered their autonomy as a matter of pivotal importance. At some time however the limitations of this autonomy should be outlined. It is certain that government interference to sport is “welcome in matters of security, the fight against drugs, stadiums, corruption and violence”,19 as these matters should be ruled by laws deriving from the competent State authorities. It should also be noted that from all the above we see that IOC and FIFA have been very

19 This is the view expressed by the president of IOC Jacques Rogue http://www.fifa.com/aboutfifa/organisation/president/news/newsid=611299/
strict on the matter of interference by government authorities to the sports bodies elections. Therefore sports autonomy should mean that sports bodies are most of all self-organised and self-managed. They should be free to organise the games and introduce all relevant regulations to that end. Their competence however should end where State competence starts. State competence to regulate -in democratic Western countries at least- is outlined in their Constitutional provisions.

In a more latent view of the matter sports authorities to regulate cannot go as far as to infringe Constitutional fundamental freedoms. However in a more strict view it could also be said that sports authorities competence to act should end where public interest starts. According to all Constitutions the State authorities act to preserve public interest, therefore when public interest is at stake, it is these authorities that should rule and not sports authorities. This view however is very general. There are some areas traditionally of sports competence that affect also public interest issues.

**VIII. State and Sports Competence**

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 private entities.

The worldwide athletic legal order is characterized by:

- 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 is considered not subject to governmental control, 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 either the State or the sports authorities exclusively. The most characteristic cases are the following:23 24

- 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.

Finally there are also areas, which are regulated by the State and the sports authorities acting together:

- The most common example is the organization and operation of sports associations, which is 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:25

- The athletic regulations contain an estimate of facts different from that given in the State regulations for the same facts (e.g. a punch 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 that 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).

**IX. Conclusion**

The athletic movement today enjoys a special status which is often called “autonomy”. This status actually means that sports authorities at least at international level:

1. Are independent of any political interference
2. Organise the sport themselves.
3. Manage their affairs (i.e. matters concerning the sport)
4. Regulate all matters related to the sport (much more than the rules of the game) as much as the rules introduced do not touch matters of public interest.

From all the above it is obvious, that the athletic establishment enjoys the privilege of self regulation but when it comes to autonomy, its power is limited to areas regarding sports matters and not all sports related areas since there are also certain sports related areas where there is also a public interest, or even an obligation by the State to intervene and regulate such as in doping cases or in fraud cases. This feature combined with the relatively unlimited power to manage its own affairs, constitutes what is called “sports self governance”.

However even from this limited power to regulate a new 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 be called "the 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. So every time the State intervenes in sports matters, the legislator faces great difficulties in applying to sports the legal rules common to other areas of law. These difficulties appear not only when the State tries to interfere in clearly sports matters
but also when the legislator tries to legislate within the area of the so called sports economic activity. 26

In conclusion, although the athletic establishment worldwide is organised as a self-governed, self-regulated, politically autonomous system, this system however needs also the necessary funds if it wants to remain that way. In order to collect these funds the athletic establishment had to enter the market. In fact it did enter the show business market and much more it created its own market, the sports show market which in a monopoly environment thrived over the years. But the State intervenes in the market by introducing competition rules. 27 28 Does the rule of self-governance include also the self-regulation of the sports market or perhaps sports self-governance ends where the market rules start?