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SPECIAL FEATURE

THE INSTITUTIONAL PROBLEM OF THE GREEK SPORT FEDERATION: STRUCTURE, ORGANIZATION, LEGAL NATURE AND FUNCTION*

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I. INTRODUCTION

Sports and gymnastics are social activities. A significant contribution to the social, cultural and financial life of the country is achieved through individual and collective participation in sports.¹

The training of young people aiming at the creation of a complete personality is achieved through sports within the educational system as a basic mission of the state.² This training is accomplished through physical education which steals the soul of youth, stimulates self-confidence and self-control in the participant, and contributes to the creation of individual and national consciousness within the citizen. Our concern here is sports and in particular the league pyramid which includes the Sports Federation.

* The author does not speak English as his first language. In the editors' judgement it was necessary to rewrite portions of this work in order to improve the readability of this Special Feature for the benefit of our subscribers. The Harvard Citator was used to place the footnotes in their proper form to the extent possible.

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1. See HELLENIC CONST., art. V, para. 1 & art. XVI, para. 9. See also Dimitrios Panagiotopoulos, *Sports Law: Concept and Implementation*, in PROCEEDINGS OF THE 1ST INTERNATIONAL CONGRESS OF SPORTS LAW 11-13 (Hellenic Center of Research on Sports Law (hereinafter H.C.R.S.L.) December 1992); Dimitrios Panagiotopoulos, *Issues on Scientific Determination and Application of Sport Law*, in PROCEEDINGS OF THE 1ST INTERNATIONAL CONGRESS OF SPORTS LAW 77-88 (H.C.R.S.L. 1993).

2. HELLENIC CONST., art. XVI, para. 2; see also Dimitrios Panagiotopoulos, *Physical Education = Law of Administration*, TELETHRION 70-74 (1992); A. Loverdos, *The Protection Of Sports As A Social Right*, in PROCEEDINGS OF THE 1ST INTERNATIONAL CONGRESS OF SPORTS LAW 171-175 (H.C.R.S.L. 1993).

II. THE INSTITUTIONAL PROBLEM

Sport institutions and the matters concerning them are regulated by rules stemming from the Greek law, or the administration, and by rules emanating from the legislation of autonomous sport agencies such as leagues. These agencies are based upon individual initiative, the grass-roots of sports league organization.³

The institutional nature of sports is generally characterized by:

- a) direct State intervention; when the state regulates by law the sport activities on each level (e.g. sport in former Eastern European countries),
- b) indirect State intervention; when a large part of a sport institution is regulated by state laws and league regulations such as in the Greek sport system, and,
- c) a liberal organization system; in the case when the law allows the leagues to make all regulations.

III. THE CONSTITUTION AND SPORTS

The Greek Constitution declares athletic activity to be an institution by placing it under the protection and highest surveillance of the State. Constitutional regulation constitutes an institutional guarantee of the right to the free development of sport activities. It also suggests to the legislator an intensive intervention with the intention of regulating organized sport and competitive activities aimed at the following: free development of personality; free individual or collective sport action; and through these, the establishment of sport education, and contribution to the social, cultural, financial and political life of the country.⁴ Therefore, being active in sport comprises a constitutional right consisting of both free individual and collective athletic activity.

As a special tendency towards cooperation, the establishment of sport leagues, unions and federations shows the institutional autonomy of the sport institution.⁵ State protection can be materialized only by satisfying its right to receive allowances, making the free development of

3. DIMITRIOS PANAGIOTOPOULOS, *SPORTS LAW THEORY* 135-180 (A. Sakkoulas, Athens 1990).

4. See E. Venizelos, *Hellenic Constitution and Sports*, in *PROCEEDINGS OF THE INTERNATIONAL CONGRESS: THE INSTITUTION OF THE OLYMPIC GAMES = A MULTIDISCIPLINARY APPROACH* 169-171 (H.C.R.S.L. 1993); E. Venizelos *The Institutional Character of Sports*, in *PROCEEDINGS OF THE 1ST INTERNATIONAL CONGRESS OF SPORTS LAW* 125-130 (H.C.R.S.L. 1993).

5. See HELLENIC CONST., art. XII; see also *The Institutional Character of Sports*, *supra* note 4, at 125-130; Loverdos, *supra* note 2, at 172-174.

personality in sport and sport action a social right. In order to reassure the above, and to satisfy the purpose of these rights, the legislator is required to exert control over sport activities. The institutional autonomy involved in sport action can in no way be equated with the rules of civil law which deal with private relations and other similar matters.⁶ Sport rules exist to satisfy rights, and to regulate relations and solve differences within both the public and private sport world.

IV. FEDERATION STRUCTURE AND ORGANIZATION

There is only one recognized federation for each field of sport.⁷ Each union is subscribed under the Federations's jurisdiction. If there is no Federation the unions with similar sports can be subscribed into another Federation. If this is not possible, then according to a ministerial ruling, they come under a Federation which deals with other relevant sports.

Of course, if the unions which deal with specific sports desire to become independent by creating another Federation, then they can do so, provided they observe the legal requirements.⁸

According to the Constitution, private initiatives are free to establish sport unions. The Federation however, although having a predominant position, is controlled by the State as ordained by law. State funds offered to the Federations should agree with the objectives of the athletic unions regarding every aspect of sport.⁹

The Federations have a dual nature under the established law. On the one hand, private initiative contributes significantly to the development of sport on a lower level; whereas on the other hand, it functions under the supervision and control of the state on a higher level. First, this can be explained in the sense that in a way the unity of action can be achieved on the higher level which according to the law is the one prevailing athletic union, the sport union. Moreover, this action serves another constitutional objective - sport means civilization. Finally, the hierarchical structure of private sporting organizations serves and as-

6. Dimitrios Panagiotopoulos, *The Sports Law - A Scientific Approach*, in PROCEEDINGS OF THE 1ST INTERNATIONAL CONGRESS OF SPORTS LAW (1992), also in 1 INT'L SPORTS L. REV. 28 (1993); see also E. RESCHKE, RECHTSWISSENSCHAFT UND SPORT - SPORT RECHT, THEORY UND THEMENFELDER DER SPORTWISSENSCHAFT 160-173, T.4 (Hofman: schorndorf).

7. See HELLENIC LAW No 75, art. XII & XIV, para. 1 (1975); see also D. PANAGIOTOPOULOS, CODE OF SPORTS LAW (1993); PANAGIOTOPOULOS, *supra* note 1, at 82-87.

8. PANAGIOTOPOULOS, *supra* note 1, at 83; see also Dimitrios Panagiotopoulos, *The Establishment of a New Federation of a Sport Which Belongs to Another Federation*, in 1 DIOIKTIKI DIKI 25-28 (1991).

9. See HELLENIC CONST., art. XVI, para. 9, at 2.

sure the granting of funds. The law (which can be quite strict) says that when funds are used for reasons other than those connected with the function of unions, then this action is considered as a penal offense which can be prosecuted *ex-officio*.¹⁰

V. THE NATURE OF THE FEDERATION

The Sport Federation in Greece is considered to be neither purely private, nor purely public, because the criteria which would lead us to such a distinction are missing.

The private nature of the Sport Federation can be determined by the fact that:

- a) it is formed by an incorporation of private individuals and it expresses private power,
- b) it deals with the financial affairs of individuals, and,
- c) it serves private sport interests and the development of free physical cultivation of individuals.

The Federation rules as a unique body for each sport according to the law.¹¹ It deals not only with union sports but also with sports on a national level. It also forms national groups of athletes which, although deriving from the unions, do not function merely for them. These athletes take part in international meetings with the approval of the respective Minister. They also represent the sports of the country through the Federation, which is the only sport agent on that level, both within and outside the state borders.

Therefore, the National Sport Federation is responsible for national and state sports. The Federation functions, or has to function in that way to serve the public interest. Consequently, according to the Constitution, the state ought to offer protection to the Federation by financing it, checking its legality and expediency, and helping it to survive. In this way the Federation becomes an organ with public authority. It exercises its power over sports issues by defending the public interest in national sports activity with the financial aid of the state and making sure that the funds are used for national sports. Therefore, the above mentioned criteria give the Federation public characteristics.¹²

The Federation is a private agency in both its internal administration and the relationships it forms with others. One aim of the Sport Federa-

10. See HELLENIC LAW No. 75, art. XXIV; see also CODE OF SPORTS LAW, *supra* note 7, at 76.

11. HELLENIC LAW No. 75, art. XIV.

12. PANAGIOTOPOULOS, *supra* note 3, at 49-56.

tion is the development of national sport in an exclusive way acting in favor of the national and public interests. This aim is then controlled and supervised by the state. This means that the state has public power and it administers National sports.

In the peculiar legal conditions governing the Greek Sport Federation, one has to deal with certain matters.

A. *The exercise of disciplinary power within the Federation.*

This exercise concerns the Federation's members and athletes, or those related to its activities. The Federation issues regulations which come into power after the Minister's approval, and which control the organization of sport, the relationships amongst its members, the exertion of disciplinary control, penalty imposition, and the manner and supervision of sport activity. The Federation, apart from being an administrative organ, is a disciplinary one as well.¹³

One has to wonder if objective juridical function is possible in light of this confusion of powers, or whether special sports disciplinary organs should be established. Should disciplinary powers be exercised according to the rules of a Federation, or should there be a common sports law for all Federations so as to avoid possible high-handed actions, as well as subjectivity? Could not the relationships within the heart of sport proceedings be finally determined, those which form the Federation with common sport rules on the basis of national rules, International Federations, the International Olympic Council, the Council of Europe, the fair-play rules, the Greek laws concerning sportsmanship and the European Code of Ethics?¹⁴

The present confusion of powers between the administrative and disciplinary function of a Federation forces it to break the law sometimes, to function above the law and create problems when justice has to be

13. *Id.* at 19; see also Dimitrios Panagiotopoulos, *Sports Laws as the Law of the Organization and Administration of Sports*, in 1 *DIOIKITIKI DIKI* 20 (1991); K. Remelis, *Concept And Nature Of Disciplinary Sport Disputes*, in *PROCEEDINGS OF THE 1ST INTERNATIONAL CONGRESS OF SPORTS LAW*, 325-336 (1993).

14. RHODES: COUNCIL OF EUROPE (1992). See S. Kostakos, *Fair Play In The Field Of Football And Disciplinary Control Of Offenses Against Same*, in *PROCEEDINGS OF THE 1ST INTERNATIONAL CONGRESS OF SPORTS LAW* 460-465 (1993); see also DIMITRIOS PANAGIOTOPoulos, *FILATHLOS IDIOTITA* (1990); *CODE OF SPORTS LAW*, *supra* note 7, at 27-80 & 40-265; DIMITRIOS PANAGIOTOPoulos & P. NASKOU-FERRAKIS, *SPORTS: TEXTS OF INTERNATIONAL PRACTICE* (1993); see also D. Gargalianos, *Remarks upon the New European Sports Charter*, in *PROCEEDINGS OF THE 1ST INTERNATIONAL CONGRESS OF SPORTS LAW* 273-276 (1993); also see Luc Silance, *Les ordres juridiques Nationaux et le Sport*, in 1 *INT'L SPORTS L. REV.* 3 (1993).

awarded.¹⁵ Legislative intervention through sports law and in its special juridical structure is aimed at the confinement of the Federation to an administrative body, and seems to be the most ideal way of assuring objectivity in the action of sport organs.

B. The nature of business relations among the personnel when it is subsidized by the central administration constitutes an important problem.

The position of the personnel after a recommendation of the Federation's Board of Directors is determined by the General Sports Administration (hereinafter G.S.A.), whereas, no expenditures are recognized for paying wages to the personnel regarding positions not determined by the G.S.A. The Court of Appeal in Patras has classified the Sport Federations under private law according to Law 1504, 1984.¹⁶ This means that the personnel appointed by the G.S.A. are considered to be subject to the rules applying to employees of public services while the rest of the personnel are subject to the rules of the contract.¹⁷

C. Issues such as transfer and motives within the Sport Federation are two contradictory problems.

The transfer of an athlete aims at an unobstructed development of his sport action. This means that any possible restrictions on the part of the Sport Federation impede the athlete's right to keep on practicing and playing.¹⁸ However, the motives offered to athletes should aim at giving them a reason to continue with their sport activities.

It must be emphasized that athletes have both rights and obligations. An athlete enjoys the right to freely develop his personality. The athlete

15. HELLENIC COUNCIL OF THE STATE, No. 2426 (1986) & ASEAD 2112 (1984), 200 (1988), 188 (1991); see also *Issues on Scientific Determination and Application of Sport Law*, supra note 1, at 77-78.

16. Court of Appeal of Patras, No. 1137 (1991); COUNCIL OF THE STATE No 369 (1990) (the hiring of the staff as legal persons of public law in the gyms demands the approval of the General Secretariat of Sports).

17. See *Issues on Scientific Determination and Application of Sport Law*, supra note 1, at 77-78; see also A. Tambakis, *Trial of Labour Sport Disputes*, in PROCEEDINGS OF THE 1ST INTERNATIONAL CONGRESS OF SPORTS LAW 358-370 (H.C.R.S.L., 1993); A.D. Papaioannou, *Relations Between A Professional Athlete And His Sport Club According To The Greek Law 1958/91: Labour Contract Or Service Contract?*, in PROCEEDINGS OF THE 1ST INTERNATIONAL CONGRESS OF SPORTS LAW 388-399 (H.C.R.S.L., 1993).

18. See *Issues on Scientific Determination and Application of Sport Law*, supra note 1, at 77-88; see also *Institutional Character of Sports*, supra note 4, at 126-128 & Loverdos, supra note 2, at 172-174; see also Dimitrios Panagiotopoulos, *Le droit au Sport selon la loi grecque*, in 1 REVUE JURIDIQUE ET ECONOMIQUE DU SPORT 109-116 (C.D.E.S.: Limoses, 1993).

can freely choose the union that he prefers to engage in for his physical activity and culture.¹⁹ He also has the right to enroll in any union he likes and to change unions at any time unless reasonable restrictions are imposed so as not to discourage athletes; especially under-age athletes such as swimmers who want to change teams for family reasons. Such restrictions also should not impede an athletes' personality development, as can happen to student athletes. Such restrictions are already considered to be anti-constitutional in Greece.²⁰

The right to the free development of athletic activity, while serving the public interest through national sport, must be supported with the incentives and assurances of prospects given to athletes. The only incentive in Greece is that athletes can enter Universities and Polytechnics. This can also function as an anti-incentive because of the conditions imposed by the law: a) assurance of a future profession, and his zeal for his new occupation make him abandon his sports activities; and, b) there have been quite a few cases of athletes who face legal problems when they enter Universities because there are no clear and exact regulations. Athletes who participate in team sports face problems such as; which sports are considered to be team sports, and which are not. As a result, some athletes are able to enter Universities and others are not.²¹ It remains unclear as to who is considered an athlete by the law in order to be able to use the privilege of entering universities. The Counsel of State accepts only union sports.²²

Female athletes also face problems concerning sports which are not included in the Olympic Programme, such as female weightlifting.²³

All of these athletes have recourse to the courts in order to ensure their entrance to an institution. Athletes usually appeal to the Department of Physical Education, which constitutes a sacred road to them. Thus a lot of problems were created by student athletes, and troubled members of Parliament from all parties, as well as judges, for a long time.

An incentive to move in the right direction was the annulment of the provision of the Greek Law 1771, 1988 concerning specialized coaches.²⁴ After entering the Department of Physical Education without taking a test, the athletes had to continue their training, practicing for a specific

19. Luc Silance, *The Legal Aspects of the Transfer*, 1 INT'L SPORTS L. REV. 201 (1992).

20. C.S. 2491 (1986).

21. C.S. 3251, 2636 (1990).

22. C.S. 3046 (1990).

23. C.S. 2009, art. XIV (1992).

24. GREEK LAW 1771 (1988).

sport. After graduation they had to exercise only the profession of the coach of their chosen sport. This rule demands a modernized sport science which does not yet exist, producing a sport scientist - a) a trainer as an exclusive occupation; b) a physical education specialist; or c) a sports administration specialist.

VI. CONCLUSION

There is a clear necessity in marking out the limits in the status of a Sport Federation in order to clarify the scope of its authority, power, and control over sport activities. At the same time, the independence of Sport Federations from jurisdictional responsibilities and their confinement solely to responsibilities of administrative nature must be recognized.

Sport is going through a general crisis as an idea. And as a part of our civilization, it will be necessary to offer athletes, apart from material rewards, a future assurance that high performance will lead to high moral distinctions, such as prizes from the President of the Republic, or from the Parliament. These distinctions should be known in advance and explicitly mentioned.

Finally, it is important to discuss the legislative regulation of underage athletes. This concerns the free development of their personalities and the safeguarding of their free will so that they are protected as individuals who are unable to protect themselves. In this way the training procedure of underage athletes will be controlled and will include their participation. Sports law as a science is lately intensely preoccupied with this issue. Moreover, it is clear that in modern sports society it is necessary to have full legislative regulations with a simple comprehensive law so as to acquire *Corpus Juris Athletici* in our country, i.e., the Sports Code, in order to fulfill our dreams.