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**SYMPOSIUM: INTERNATIONAL SPORTS LAW & BUSINESS IN
THE 21ST CENTURY**

**INTERNATIONAL SPORTS RULES'
IMPLEMENTATION - DECISIONS'
EXECUTABILITY: THE BLIAMOU CASE**

DIMITRIOS PANAGIOTOPOULOS*

INTRODUCTION

The differences that arise in relation to sporting activity¹ concern private contracts; issues of an economic, administrative, or disciplinary nature; or protection of fair play.² Rules of sports law, as well as rules of ordinary law, apply to resolution of such sports disputes.³

Applying international sports rules in parallel forces national sports federations and athletes to follow the resolution of disputes in accordance with national law.⁴ International sports judicial bodies are opposed to this, which causes a number of judicial complications.

In the Bliamou case concerning doping, a problem arose about the structure of the sports judicial system internationally that highlights its weak

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1. On the concept of dispute as used in procedural law, see K. BEYS, CIVIL PROCEDURE: ARBITRATION 56 (1994).

2. See Dimitrios Panagiotopoulos, *Judicial Competence in Sport*, in 9 DIOIKITIKI DIKI 1, 9 (2001); K. Remelis, *The Legal Nature of Disciplinary Sports Disputes*, in ARMENOPOULOS 101, 101-07 (1994); K. Remelis, *The Concept and Nature of Disciplinary Sports Disputes*, in THE SCIENCE OF SPORTS LAW - NATIONAL AND INTERNATIONAL SPORTS - SPORT JUSTICE, PROCEEDINGS OF THE 1ST INTERNATIONAL SPORTS LAW CONGRESS 325-37 (1993).

3. See Dimitrios Panagiotopoulos, *Sports Law*, in VADE MECUM, DIRECTORY OF SPORTS SCIENCE 213-28 (2d ed. 2000); DIMITRIOS PANAGIOTOPOULOS, SPORTS RELATIONSHIPS 102 (2001).

4. See DIMITRIOS PANAGIOTOPOULOS, SPORTS LAW 103 (2001); Dimitrios Panagiotopoulos, *Judicial Competence in Sport*, 9 ADMIN. TRIAL 5 (2001).

points. This paper examines the questions of: a) locating the competent sports judicial body to decide on sports disputes arising in international games; b) jurisdiction of national and international sports judicial bodies or courts to resolve sports disputes in international sporting events; c) parallel jurisdiction; d) extent and limits of the enforcement of decisions; e) conflicts of jurisdiction between national and international sports courts or tribunals; and f) rights of the affected party following such decisions.

The conflict between national sports rules of law and international sports regulations in the national and non-national sporting legal order⁵ is now clear. Competent judicial bodies at national and international sporting levels release decisions; the effects and enforcement limits of them are not clearly defined. The question is what the prevailing law is when the athlete is obliged to abide by the law of his country and the rules of the relevant sports federation while, at the same time, he or she is also obliged to abide by the rules of the international sports federation to which his or her national sports federations belongs.

SPORTS JUDICIAL SYSTEM

The Judicial System at the International Sports Level

International sporting activity emerged beyond the bounds of states and developed internationally a sui generis sporting legal order⁶ that is followed by national federations and is thus imposed within a country⁷ by integrating it into domestic sports law. Hence, it is implemented without further formalities and prevails over national law. International sports federations are private legal bodies governed by the law of their seat.⁸ International federations regulate the sports for which they are responsible and the relations among individuals or events that take place across the borders of more than one state. At the peak of this pyramid is the International Olympic Committee (IOC).

5. See Dimitrios Panagiotopoulos, *Sports Legal Order and International Sporting Life*, 4 INT'L SPORTS L. REV. PANDEKTIS 227, 227-42 (2002).

6. See *id.* at 232-39 (analyzing the theory of *Lex Mercatoria* and the corresponding theory of *Lex Sportiva*).

7. See *Belgian Court Decision, No. 14295*, BELG. GOV'T GAZETTE, Apr. 30, 1977; see also JAMES NAFZIGER, INTERNATIONAL SPORTS LAW 6-7 (1988); DIMITRIOS PANAGIOTOPOULOS, LAW OF THE OLYMPIC GAMES 200 (1991) [hereinafter PANAGIOTOPOULOS, LAW]; DIMITRIOS PANAGIOTOPOULOS, THE INSTITUTION OF THE OLYMPIC GAMES: A MULTIDISCIPLINARY APPROACH 311-17 (1993).

8. In relation to the legal nature of international organizations and how they are established, see Julio A. Barberis, *Nouvelles Questions Concernant la Personnalité Juridique Internationale*, 179 RCADI 213 (1983).

Olympic recognition of international sports federations and National Olympic Committees is the key that unlocks the implementation of the legal rules contained in the Olympic Charter. This recognition is given under certain conditions and has certain legitimizing results.⁹ The same applies to international sports federations that wish to have their sports recognized as Olympic sports.¹⁰

Through their statutes, international sports federations regulate internal administration and function¹¹ and establish normative and disciplinary competence beyond the context of their technical rules in order to organize international sporting events within their field of responsibility. These rules are applied by their members and prevail over any contrary provisions.¹² Disciplinary authority applies to athletes, federation managers, coaches, or any other person related to the activities of the federation.¹³

Internationally, the sports legal order - its nature being in doubt - is limited to contractual freedom. The sources and processes for generating this order do not coincide with traditional sources and processes of law¹⁴ where the dominant element is the state. In order to surpass the difficulties raised by the doubtful nature and effect of the law generated within the context of the sports system, the Court of Arbitration for Sport (CAS), which constitutes a private sector arbitration panel, has been established and operates within the context of the system. The CAS has its seat in Lausanne, Switzerland, and is governed by the Swiss Act on Private International Law (LDIP) and, in particular, by

9. Parties involved in the Olympic Games are obliged to accept the rules contained in the Olympic Charter. According to the Charter, the National Olympic Committees represent the people of each country before the IOC, and via it, athletes participate in the Olympic Games while the national committee is the IOC's sporting ambassador in that country. See Dimitrios Panagiotopoulos et al., *Legal Nature and Signification of Olympic Recognition*, in THE INSTITUTION OF THE OLYMPIC GAMES: A MULTIDISCIPLINARY APPROACH 311-17 (1991). See also PANAGIOTOPOULOS, *supra* note 4, at 74-80; Panagiotopoulos, *supra* note 5, at 234-39; Dimitrios Panagiotopoulos, *Sports Legal Order in National and International Sporting Life*, in SPORTS LEGAL ORDER 50-54 (2003).

10. At which time all responsibility for issues concerning how the sport is conducted and relating to the Olympic Games apart from technical issues falls to the IOC. For more information on the *Olympic Charter*, the line-up of the IOC, its nature, legal personality and relations with the international sports movement, see INTERNATIONAL OLYMPIC COMMITTEE, OLYMPIC CHARTER (2004); PANAGIOTOPOULOS, LAW, *supra* note 7, at 137-92; DIMITRIOS PANAGIOTOPOULOS, THE RULES OF THE OLYMPIC CHARTER VIS-À-VIS NATIONAL RULES 303-17 (1993).

11. See Riviere-Baumann, *Le Management du Droit Dans le Mouvement Sportif International, Conflits, Contradictions et Stratégies*, in MASTER EUROPEEN DE MANAGEMENT DES ORGANISATIONS SPORTIVES 13.

12. See, e.g., FINA CONST. art. C, § 7.2.

13. See FRANCOIS ALAPHILIPPE-JEAN PIERRE KARAKILLO, Dictionnaire Juridique du Sport 186 (1990).

14. See Christopher C. Joyner & Oscar Schlachter, *The United Nations Legal Order*, 1 ASIL 56 (1995); Francesco Capotorti, *Cours Général de Droit International Public*, IV RCADI 111 (1994).

Chapter Twelve, which regulates international arbitration.¹⁵

All disputes arising between athletes and their federations are referred to this arbitration panel 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 that are their members to include a clause that the CAS is the sole body competent to resolve sports disputes which may arise regardless of provisions to the contrary in national sports law or provisions in the rules of national federations.

The Sports Judicial System in Greece

Within the context of the Greek Constitution and its special laws relating to sports, certain sports judicial bodies have been established to resolve disputes arising from the implementation of sports rules, normative decisions of management, and special legal provisions relating to sport. These bodies are: a) financial disputes resolution committees¹⁶ that handle matters at first instance and on appeal, established by special rules of the relevant sports federations as standing arbitration bodies;¹⁷ b) tribunals¹⁸ of disciplinary nature for team sports - whether professional or amateur sports - consisting of one or three members¹⁹ commonly known as "sports judges";²⁰ and c) the Supreme Sports Disputes Resolution Council (ASEAD), which resolves disputes among natural or legal persons on appeal.²¹ ASEAD is an administrative body with disciplinary authority. Decisions of ASEAD are only reviewed as to their

15. See THE INTERNATIONAL COUNCIL OF ARBITRATION FOR SPORT, COURT OF ARBITRATION FOR SPORT: GUIDE TO ARBITRATION, Appendix III, available at <http://www.tas-cas.org/en/pdf/guide.pdf> (last visited Nov. 6, 2004).

16. Law 2725/1999, art. 95, §§ 1-2 (Greece). Their task is to resolve contract-based disputes between athletes or coaches and sports clubs or associations who engage remunerated athletes. Their decisions have force of precedent and are enforceable pursuant to HELLENIC CODE OF CIVIL PROCEDURE art. 904, § 6 (Greece) in accordance with Law 2725/1999, art. 95, § 6.

17. According to Article 8 of the Hellenic Constitution, no one may be deprived without his consent of the judge appointed by law. GREECE CONST. art. 8. According to the Hellenic Code of Civil Procedure, subjection of private disputes to arbitration is done with the consent of the parties involved while such subjection is a contract between those parties in line with Article 185 of the Hellenic Civil Code. The arbitration agreement is the basis from which the arbitrators draw their jurisdiction. See BEYS, *supra* note 1, at 96-97.

18. Law 2725/1999, art. 119, § 3 (Greece).

19. In the case of football, see Law 2725/1999, art. 120 (Greece).

20. This name was used in an earlier law. See Law 1646/1986 (Greece). On the issue of the nature of the sports judge as a judicial organ and not a judge, see Op. State Legal Council, No. 756/1998 (Greece); S. Dionysatos & K. Drys, *The Legal Nature of the Sports Judge*, in THE SCIENCE OF SPORTS LAW, *supra* note 2, at 376-83 (1993).

21. Law 2725/1999, art. 124 (Greece).

legitimacy by the supreme administrative court, the Hellenic Council of State.²² Decisions of these bodies, which are of an administrative nature,²³ relating to the sports disciplinary procedure, are directly enforceable. Failure to enforce them by the administrative bodies of sports associations can result in claims of compensation for moral harm by the athlete since his or her personality and good reputation are directly affected in this manner.

THE BLIAMOU CASE

Facts of the Case

During the Mediterranean Games in Tunisia, on September 6, 2001, following a doping control, Greek swimmer Katerina Bliamou was found to have the prohibited substance 19-Norandrosterone in her body.²⁴ The Hellenic Swimming Federation, implementing the international rules of the Federation Internationale de Natation (FINA), imposed on Bliamou²⁵ the penalty of "suspension from sporting activity for four years and cancellation of all results achieved at swimming sporting events."²⁶ The athlete lodged an appeal before ASEAD against this decision,²⁷ pursuant to the provisions of Greek sports law.²⁸ The Hellenic Federation appeared in this matter as the counterparty, and ASEAD issued decision No. 53/2002, which accepted the athlete's appeal,

22. According to case law, this body acts exclusively in the public interest. See *Hellenic Council of State Decision*, No. 5101/1983, 1984 ARMENOPOULOS 1019 (Greece). Apart from those disputes, which arise from poor implementation of the terms of sporting event announcements and relate to contract and the competent body to judge them, are the civil courts. Hellenic Council of State Decision, No. 1853/1998, 1999 EDDDD 175 (Greece); Hellenic Council of State Decision, No. 4171/1998, 2000 DIOIKITIKI DIKI 561 (Greece); Hellenic Council of State Decision, No. 3545/1994 (Greece). A dispute concerning a request to have an amateur footballer ID card issued can be resolved by the ASEAD, whose decision cannot be challenged before the Hellenic Council of State. See *Hellenic Council of State Decision*, No. 3190/1986, 1992 Y.B. SPORTS LAW 102 (Greece); *Hellenic Council of State Decision*, No. 1738/1986, 1 INT'L SPORTS L. REV. PANDEKTIS 98 (Greece). Moreover, it has also been mentioned that a dispute which relates to how the proceeds of a football match are to be distributed - in other words, relating to the interpretation and implementation of provisions issued by the football federation (which is a legal person governed by private law) - is a private law issue subject to the civil courts and not the Hellenic Council of State. See *Hellenic Council of State Decision*, No. 619/1983, 1985 LEGAL TRIB. 1592 (Greece).

23. Remelis, *The Legal Nature*. . . , *supra* note 2, at 101-07; Remelis, *The Concept*. . . , *supra* note 2, at 325-37.

24. FINA Doping Panel Decision, No. 3 (Sept. 27, 2002).

25. A swimmer of the Aris Salonica Sports Club.

26. Hellenic Swimming Federation Board Decision, No. 16 (Dec. 10, 2001).

27. See ASEAD Decision No. 53/2002 (Greece).

28. Law 2725/1999, art. 124.

overturned the decision of the Hellenic Federation, and vindicated her.²⁹

The legitimacy of ASEAD's decision was not challenged by the Hellenic Swimming Federation using the procedure stipulated by Greek law³⁰ before the Hellenic Council of State, nor by FINA (the international swimming federation); consequently, the decision became final and irrevocable.

Despite this, FINA dispatched a document to the athlete via the Hellenic Federation informing her that following the issue and publication of ASEAD's decision, the Executive Board of FINA, in implementation of international rules, was temporarily suspending her from competitive activity on the grounds that ASEAD had not properly implemented its rules; this suspension would be applied until the issue could be re-examined by the relevant body of FINA, namely the Doping Panel.³¹ The Hellenic Federation ignored the aforementioned decision of ASEAD and once again implemented the suspension imposed by FINA, excluding the athlete from all national and international swimming competitions. Following this, the athlete sought recourse in the Greek civil courts,³² requesting injunctive relief be issued so as to temporarily regulate the situation and permit her to participate in Greek and international swimming competitions. Moreover, she lodged an action for compensation, seeking financial satisfaction for moral harm. It is noteworthy that the FINA Doping Panel once again imposed the penalty of suspension (exclusion) of the athlete for four years from all competitive activity.³³ As was only natural, the swimmer sought recourse from the CAS against the international sports federation in order to protect herself and obtain justice.

ASEAD Decision No. 53/2002

The Bliamou case was decided on appeal by ASEAD, a disciplinary body³⁴ acting exclusively in the public interest,³⁵ on the basis of provisions

29. See ASEAD Decision No. 53/2002 (Greece).

30. In other words, by lodging a petition for invalidation before the Council of State.

31. FINA Doping Panel Decision, No. 3 (Sept. 27, 2002).

32. Monomeles Protodikeio: Athens Single-member Court of First Instance.

33. FINA Doping Panel Decision, No. 3 (Sept. 27, 2002).

34. Law 2725/1999, art. 128, § 2 (Greece).

35. *Hellenic Council of State Decision*, No. 5101/1983, 1984 ARMENOPOULOS 1019 (Greece). According to another view that is based on dogma and may be incorrect, when the Secretary General for Sports decides to impose penalties on clubs as part of the competences assigned to him by a sports federation's rules, he is not acting as an agent of public power or as an officer of central government, but as an organ of a legal person governed by private law since his power to impose fines on coaches and clubs does not derive from the way in which the state is organized, but from the will of the members of the federation. Athens Multi-member Court of First Instance Decision, No. 488/1985 (Greece).

contained in the Greek sports laws and the FINA rules on doping. This decision overturned the penalty of exclusion from competitions that the Hellenic Swimming Federation - based on FINA rules - had imposed on Katerina Bliamou. The merits of ASEAD's decision is not within the scope of this paper.

According to Greek sports law, the decision of ASEAD is immediately enforceable,³⁶ and the deadline for challenging it before the competent court (the Council of State) does not suspend enforcement.³⁷ Consequently, all natural or legal persons are obliged to implement such decisions within the Greek state and anywhere else it is declared to be effective by the court. Furthermore, since the Hellenic Federation did not challenge the decision issued by ASEAD before the Council of State as stipulated by law, it was obliged to (and should have) respected that decision at least in relation to the level of national swimming competitions (the Panhellenic Championships, etc.). It was obliged to accept the participation of Greek swimmer Bliamou, at least in games that took place in Greece. Instead of this, the Hellenic Swimming Federation implemented the penalty imposed on the athlete following the Executive Board of FINA's recommendation that the issue should be re-examined before the special Doping Panel. This resulted in the same penalty being imposed again - a penalty that had already been overturned legitimately by the competent Greek judicial body (ASEAD).

Lastly, in not doing what they ought to have done (in other words, the Hellenic Federation and FINA seeking recourse against the decision of ASEAD before the Greek Council of State), they obliged the athlete to seek recourse to the CAS from a position of strength, claiming at the same time that only the law of the more powerful is fair and the athlete is the "nexus" pursuant to the principal of Roman law of *nexum se dare*.³⁸ In other words, the athlete was obliged to follow the process of sports arbitration.³⁹ It is supposed that the litigant parties are not obliged, but freely select this method of amicable settlement and determine the terms under which it will be conducted.⁴⁰ The award of an arbitration body is primarily of normative nature

36. See Law 2725/1999, art. 126, § 2 (Greece).

37. See Law 2725/1999, art. 126, § 4 (Greece).

38. *Nexum se dare*, "the debtor who paid of his debt with his body," is a principle also found in ancient Greek law from Gortyna. See S. FIORAKI & E. PERAKI, THE MAJOR GORTYNA INSCRIPTION 74 (1973). See also Dimitrios Panagiotopoulos, *The Modern Athlete: Agreement - Disagreement - Equality Before the Law - Common Interest*, in THE PROCEEDINGS OF THE 12TH INTERNATIONAL PHILOSOPHY CONFERENCE (forthcoming).

39. The arbitration agreement is regulated by the *lex fori* and, in particular, by the procedural law of the country of the court that otherwise would have jurisdiction to try the matter. See BEYS, *supra* note 1, at 13.

40. DIMITRIOS PANAGIOTOPOULOS, THE LAW OF INTERNATIONAL SPORTS RELATIONS AND

and is not reviewed as to its correctness when the arbitrator acts within the limits of its powers.⁴¹ Consequently, this appeal to the CAS is directly related to the nature of "sports arbitration,"⁴² and there is an issue of whether recourse was made freely by the parties or whether, in effect, this is a case of compulsory arbitration.

This issue is of importance because the statutes of sports bodies expressly dictate that resolution of sports differences is to be conducted exclusively by the CAS. Moreover, there is a question about whether this clause is compatible with national law and whether it generates further legal or constitutional problems.⁴³ For example, Greek case law has accepted that in resolving disputes that have arisen between natural persons or legal entities participating in any manner in football games, the exclusive jurisdiction of arbitrators may be established by the law,⁴⁴ as long as the parties have agreed to this beforehand, which is constitutionally permissible.⁴⁵ The State Legal Council⁴⁶ has accepted that the rules of international federations do not constitute international law and, consequently, do not prevail over the corresponding rules of the relevant Hellenic Federation⁴⁷ because they have not been incorporated into the Greek legal order by means of a law voted for by the plenum of the Hellenic Parliament, nor do they constitute generally accepted rules of customary international law.⁴⁸

Recognition of international rules of law as generally accepted must be substantiated by the administrative body in a clear and full manner while

INSTITUTIONS 193 (1995); DIMITRIOS PANAGIOTOPOULOS, SPORTS JURISDICTION 123-43 (1997); Dimitrios Panagiotopoulos, *Court of Arbitration for Sports*, 6 VILL. SPORTS & ENT. L.J. 49, 51 (1999).

41. See Athens Single-member Court of First Instance Decision, No. 3802/1995, 1995 DEN 1324 (Greece). The erroneous interpretation and implementation of law, as well as poor assessment of facts by arbitrators, are not grounds for invalidating an arbitration award. See *Athens Court of Appeal Decision*, No. 2948/1994, 42 LEGAL TRIB. 1179 (Greece). Inadequate reasoning of an arbitration award is not contrary to public order and a foreign award which is to be enforced in Greece is not contrary to public order if simply by following some evidentiary procedure, a decision different from one that would have been issued taking into account national legal rules is issued; the same happens in case that the substantive provisions implemented were different from those of domestic substantive law which may relate to domestic public order and are rules of compulsory law. See Piraeus Single-member First Instance Administrative Court Decision, No. 264/1987, 1987 END 403 (Greece).

42. M.D. PAPALUCAS, ARBITRATION IN SPORTS JUDICIAL BODIES 1190-97 (1998).

43. Panagiotopoulos, *supra* note 3, at 107; A. Tambakis, *Providing Sports Services, Legal Regulation, Enshrinement*, in SPORTS LAW IN THE 21ST CENTURY - PROFESSIONAL SPORTS ACTIVITY 436-38 (Dimitrios Panagiotopoulos ed., 1999).

44. At that time, Law 2433/1996 (Greece) applied.

45. See Athens Court of Appeal Decision, No. 8827/1997, ELLINIKI DIKAIOSYNI 459 (Greece).

46. See Op. State Legal Council, No. 756/1998 (Greece).

47. In this case, the Hellenic Hockey Federation.

48. See GREECE CONST. art. 28, §§ 1-2.

ratification of international treaties cannot be a subject of legislative authorization to other bodies. Moreover, the appellate judicial body of the Hellenic Football Federation, which is equivalent to ASEAD, has decided that in preparing the rules of sports federations, applicable international rules should be regarded; however, the obligation to bring national sports legislation in line with the regulations of the Federation Internationale de Football Association (FIFA) does not mean that the rules of FIFA, before their inclusion in domestic sports law, constitute domestic provisions that override other provisions of national law in such a way that they can be implemented without further ado and prevail over national (domestic) law that enacts provisions to the contrary, as is clear from Article 28, Section One of the Hellenic Constitution.⁴⁹ In any effect, this is the meaning of the FIFA rules, according to which "principles which have been determined, inter alia, in article 12 of the rules are binding at national level also."⁵⁰ These rules do not require immediate implementation in national (domestic) law, but require the competent bodies in Greece to harmonize national law with the provisions of the FIFA rules.⁵¹ The ASEAD has decided that the regulations of the Federation Internationale de Basketball (FIBA) also apply in Greece since the Hellenic Basketball Federation is a member⁵² and that the general rules of FIBA constitute provisions that are generally accepted by European and, therefore, by Greek sports clubs.⁵³

In the Bliamou case being examined here, the FINA Doping Panel directly ascertained an entanglement between international sports rules and rules of national law - in other words, an entanglement between the jurisdiction of international and national sports judicial bodies. It accepted that the Hellenic Swimming Federation, as a member of FINA, on the one hand, was obliged to impose the penalty on the swimmer based on the FINA Rules; on the other hand, it could not implement this decision since, due to the decision of ASEAD, the athlete was not considered as having committed a doping offense, and the penalty imposed on her would have to be cancelled. However, in order to become involved in this case, the FINA Doping Panel relied on a

49. Id. § 1.

50. FEDERATION INTERNATIONALE DE FOOTBALL ASSOCIATION, *FIFA STATUTES* (2003), available at http://www.fifa.com/fifa/statutes/statutesdocs/FIFA_statutes_08_2004_E.pdf (last visited Nov. 6, 2004).

51. See Hellenic Football Federation Appeals Committee Decision, No. 178/2000 (Greece).

52. In relation to international transfer rules, ASEAD stressed that there is repeated reference to these in the statutes of the Hellenic Federation, and at least in relation to international transfers, these rules prevail. See ASEAD Decision No. 25/1999 (Greece); ASEAD Decision, No. 9/1999 (Greece).

53. See ASEAD Decision, No. 86/1997 (Greece); ASEAD Decision, No. 24/1997 (Greece).

decision of the CAS⁵⁴ that stated that an international sports federation is competent to impose a penalty regardless of the results of the penalty imposition procedure at the national level. This is because the objective of the relevant FINA rules, according to the CAS, is to ensure consistent implementation of anti-doping regulations at the global level, and its competence in this respect is legitimate and not excessive.

Likewise, the CAS decision,⁵⁵ which was taken into account by the Doping Panel, stipulates that an international federation cannot be bound by decisions of civil courts and national arbitration panels that arise from proceedings in which the federation has not participated. Furthermore, by implementing the doping control rules, FINA accepted, *inter alia*, that all its members and, therefore, the Hellenic Swimming Federation are obliged to follow those rules and impose penalties on any athlete who has committed a doping offense located within its jurisdiction.

Lastly, the Doping Panel reached the paradoxical conclusion that as the penalty imposed on the swimmer by the Hellenic Federation was overturned by the ASEAD, this would mean that no penalty had or would be imposed on the swimmer, and for this reason, she had to be punished again by FINA. In other words, she was presumed necessarily and *a priori* guilty.

From the above, it is clear that in addition to the jurisdiction that national sports bodies or courts have established by national legislation in relation to sports disputes arising during international sports competitions, a parallel jurisdiction by the bodies of international sports federations can also be encountered deriving from their statutes.

Theory and practice are concerned primarily with the fate of such a decision of the national body and the degree to which it is effective and secondarily with the issue of enforcement of the decision both by national and international bodies, such as decisions of the CAS. The Greek courts' case law, interpreting the relevant provisions of the Hellenic Code of Civil Procedure, has accepted that the decision of foreign administrative panels or courts, or even an interim order, is not recognized by law as enforceable in Greece if it is not declared enforceable within that country using the procedure stipulated in the Hellenic Code of Civil Procedure.⁵⁶

Consequently, according to this opinion, if the decision taken by the FINA Doping Panel and the expected decision of the CAS, to which the

54. See *Foschi v. FINA*, CAS 1996/156, at 38 (1997).

55. See *Bray v. FINA*, CAS 2001/A/337, at 115 (2002).

56. In other words, see the procedure in the HELLENIC CODE OF CIVIL PROCEDURE, art. 904 § 2(f)-(g), and the HELLENIC CODE OF CIVIL PROCEDURE, art. 905 §§ 1-2. See also *Piraeus Court of Appeal Judgement*, No. 19/1995, 1995 COM. LAW REV. 93 (Greece).

aforementioned athlete sought recourse, are considered arbitration awards, in order to have acknowledged effect and be enforced within the territory of the Greek state, they must have been declared enforceable in Greece by the competent Greek civil court.⁵⁷ The same also applies for any other country implementing a decision of the CAS. It must be first acknowledged by the court at the seat of the CAS in Switzerland in order to be declared enforceable in another country.

It does not appear that the elements of a proper and fair trial⁵⁸ relating to sporting activities are guaranteed in the international sports judicial system - elements such as: a) a rudimentary guarantee of the rights of athletes and participants in sporting life in general; b) a valid judicial structure in order to guarantee the fundamental rights of judicial protection and judicial decisions being made in sporting disputes on the merits of the case; and c) a special sporting procedural system for dispensing justice and ensuring that the law is applied with its full certainty.

Labyrinthine judicial proceedings, such as those in the Bliamou case mentioned above, often harm sport in general and in particular the personality of the athlete and his or her individual rights. These issues could be avoided if there was a defined jurisdiction for national and international sporting bodies based on rules of public international sports law and a clearly defined way of enforcing decisions taken by the relevant sports judicial bodies.

CONCLUSION

Greek swimmer Bliamou faces an unheard of entanglement of national and international sports judicial procedures where: a) a decision overturning the penalty imposed on her has been issued by the competent judicial body pursuant to Greek Law having followed all the proper legal procedural channels; b) FINA, eight months after having learned the results of the decision, reopened the case and imposed the same penalty on the same athlete once more; and c) the Hellenic Swimming Federation finds itself trapped since, on the one hand, it is obliged pursuant to Greek Law to implement the decision of ASEAD - which in practice does not implement decisions - and, on the other hand, is called upon to implement the decision of FINA without having challenged the decision of ASEAD in the courts. Thus, the Hellenic Federation is left exposed to the Greek state, whose law governs its organizational structure and function, and of course to the swimmer, who is a member of the national team. Lastly, d) a major court battle has commenced

57. The Court of First Instance, which tries such matters using *ex parte* proceedings.

58. Panagiotopoulos, *supra* note 2, at 13-14 (containing references to the bibliography).

for Bliamou.⁵⁹

Research needs to be carried out about the extent to which the decision of the national judicial body can be recognized in another country by an affected athlete and to what extent the sports federation can be obliged by a court or tribunal to permit participation in sporting events taking place in that country.

It is clear that the existing international sports judicial system does not guarantee legal certainty in relation to satisfaction of legal claims and the rights of athletes and does not contribute to the problem-free development of sports or the promotion of sporting values.

International sports authorities do not come into a direct conflict with states and, thus, avoid substantive control because if this happens, the necessity, highlighted long ago, for the establishment of a Sporting United Nations will become clear.⁶⁰ Such an organization, acting in the name of states, could manage international sports and any problems and could offer a secure judicial structure providing fair trials for issues arising in international sports life.

What is being attempted today internationally is indirect validation of the arbitrary and non-national power of international sports federations. This power guarantees international prestige to these federations and autonomy for national federations with the aim of limiting the role of central government and the role of international society, which is organized around the nation-state. Consequently, a non-national sports legal order has been established for sporting life, which constitutes a barrier to establishing a sense of justice in sporting events.

Perhaps it is time to think about reintroducing the ancient concept of *nexum se dare* as means of restoring justice to sporting life.

59. The purpose of the lawsuit is to regulate the situation, claim compensation from the swimming federation, and attribute civil liability to its management for harm caused due to her removal from games, moral harm, damage to her good reputation, and insult to her personality. See Dimitrios Panagiotopoulos, *Legal Aspects of the Personality of Underage Athletes in Sports Activities*, 4 INT'L SPORTS L. REV. PANDEKTIS 25, 25-37 (2001).

60. PANAGIOTOPOULOS, *supra* note 4, at 103-06.