

Sports Governance and Access to Justice

Westermarck, Henrik and Curran, John

Swiss Institute of Comparative Law, Switzerland

Henrik.Westermarck@isdcd-fjfp.unil.ch

Aim

To legally assess the concept of sports governance, with particular focus on the relationship between the rules and practices of international sports federations and the relevant systems of local, national, and international law. A specific focus will be on the mechanisms of athletes' and other stakeholders' access to justice.

Theoretical Background and Literature Review

The study of governance, examining uses of power, is one that can be – and has been - approached from many angles. For lawyers, the questions related to governance originate in the rules shaping such uses of power. We can look at the scope of the rules, their applicability, and their precision as well as the procedures through which they are created, interpreted, applied, and enforced. Examining these aspects of sport federation laws are all part of our project. Yet, it is not the main focus of our interest. Rather, we want to assess and evaluate how the rules of the sports federations interact with other legal systems: how, where, and to what extent do the rules of sports federations leave room for the legal systems of the communities and nations in which they are located to determine questions relating purely to sport and questions relating to sport in part. The same will be asked for the rules and principles of international law.

With reference to established key indicators identified by organisations such as Play the Game and IDHEAP, we have begun a mapping exercise of sport governance for international sport federations in a variety of sports extending beyond traditional Olympic disciplines. Particular attention is being given to access to justice and recourse to internal, national and international judicial systems as indicators of good governance relevant to the maintenance of the rule of law.

This topic is theoretically based on a combination of a number of discussions currently generating a substantial amount of legal attention: allegations of the fragmentation of international law; the legal obligations proposed by the global principles of business and human rights; characterizations of the role of non-state actors in the legal system, as well as traditional inquiries into conflicts of law rules.

Research Design and Data Analysis

Our project has started with a mapping exercise of sporting federations, by reference to key sports governance indicators such as: World Rugby, FIFA, International Cricket Council, the International Equestrian Federation, the International Federation of Basketball, the IOC, the International Cycling Union and the International Swimming Federation. We will support the textually-based information gathering by reviewing the jurisprudence addressing disputes between stakeholders found not only in the body of Court of Arbitration in Sport (CAS) opinions, but also in national and local courts to determine where non-federation rules are decisive in disputes between a federation and an athlete or other stakeholder. Finally, taking advantage of our geographical location in Lausanne, Switzerland, we hope to test our assessments of the federations' written rules by meeting directly with management and/or the

legal officers' of different federations to discover how internal policies and codes are followed and implemented in practice.

Results and Discussion

Disparities exist among the internal rules systems of various federations in the extent to which CAS proceedings can/must be invoked. In addition there are differences in the applicable law and in the extent of the federations' jurisdictional competences. This has significant impacts on the access to justice for athletes as well as stakeholders outside system who may be affected by federations' actions or decisions.

Conclusion and Implications

This presentation will form a foundational component of a larger project examining the legal aspects of sport governance. Recognizing others' on-going efforts to establish universal good governance indicators for sport, our research will help identify where the law can support the realization of the basic principles of accountability, participation, and transparency.

References

- Baber, W. F. & Bartlet, R. V., (2011) The Role of International Law in Global Governance. In: *The Oxford Handbook of Climate Change and Society* (Edited by John S. Dryzek, Richard B. Norgaard, and David Schlosberg).
- Chappelet, J., & Mrkonjic, M. (2013). Basic Indicators for Better Governance in International Sport (BIBGIS): An assessment tool for international sport governing bodies. Institut de hautes études en administration publique (IDHEAP) Working Paper, 1/2013.
- Geeraert, A., Alm, J., & Groll, M. (2014). Good governance in international sports organisations: an analysis of the 35 Olympic sport governing bodies. *International Journal of Sport Policy and Politics*, Vol. 6 (No. 3), 281-306.
- Kehrli, K. (2014). The Unspecified Specificity of Sport: a Proposed Solution to the European Court of Justice's Treatment of the Specificity of Sport, *Brooklyn Journal of International Law*, Vol. 39 (No.1), 403-441.
- Łukomski, J. (2013). Arbitration Clauses in Sport Governing Bodies' Statutes: Consent or Constraint?: Analysis from the Perspectives of Article 6(1) of the European Convention on Human Rights, *The International Sports Law Journal*, No. 1-2, 60-70.
- Maisonneuve, M., (2017). Le Tribunal arbitral du sport et les droits fondamentaux des athlètes, *La revue libanaise de l'arbitrage arabe et international*, Vol. 77, 21-36.