# The Appeal of Sports Law*

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*This is an extended and updated version of the author's essay “Zur Einführung – Sport und Recht” (“Sports and the Law – An Introduction”), Jus 1983, pp. 825 et seqq. The first version was completed on the 09.08.2007. This second version is current as of 01.09.2010. The author would like to thank Christoph Röhl and Paul Staschik for their assistance as well as Saskia Lettenmaier, Anne Müller, Victoria Redmond and Mairead Boland for the translation.
I. Introduction

Sport has become a mass phenomenon. It moves and fascinates people. But why sports law? Should the “the world's most enjoyable trifle” not remain outside the reach of lawyers? Don’t fun and games go out the window where justice enters at the door? For some decades this opinion prevailed.¹ But real life calls for the law² to solve, defuse, and avoid conflicts. The process of commercialisation and a growing professionalism (combined with a growing media presence) have made sports more likely to spark off conflicts — conflicts, moreover, that tend to affect people beyond those actively involved. The commercialisation of sport has also led to conflicts of all shapes and sizes becoming increasingly likely to be battled out in the public eye.³ There is hardly another area of life or law that has become as transparent to interested members of the public as the area of sports.

From a student’s point of view, sports and the law constitute an interesting field of study. The discipline furthers an understanding of the many intersections between life and the law; gives an initial motivating point of access to other areas of law; familiarises the student with the many points of contact between the different areas (leading to an “aha-experience”) and sharpens his or her skills in comparative judgment. Sports law is a cross-sectional matter and as such it fascinates. Compared to other disciplines, cross-sectional disciplines also offer a “home advantage” to lawyers; lawyers can bring to these disciplines their ability to systematise, their sense of perspective, and their ability to predict the outcome when conflicts have to be resolved by means of litigation.

¹ See, e.g., the remark made by FIFA chief prosecutor Kindermann during the 1971 so-called Bundesliga-Skandal: “Sports law takes precedence over state law”, see H.P. Westermann, Die Verbandsstrafe und das allgemeine Recht, Bielefeld 1972, p. 52.
² Grunsky’s remarks in Haftungsrechtliche Probleme der Sportregeln, Karlsruhe 1979, p. 5, regarding the “growth rate of sports law” are as true now as they were in 1979.
³ A current and clear example of this development is provided by the Amerell and Kempter Affair which concerned the DFB referees Manfred Amerell and Michael Kempter who exploited the media for their own purposes. With the help of the DFB, Kempter publicly accused Amerell, a referee official, of sexual harassment, whereupon Amerell, in order to weaken the accusations, made public private e-mails and text messages which he had received from Kempter. See FAZ, 17.04.2010, p. 35.
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A list of 48 keywords compiled by the author in co-operation with the Asser Institute (The Hague) for a projected common database gives a first impression of the diversity of conflicts and the wide-ranging terrain that constitutes sports law. The list will be made available to the public on completion.

An introduction to sports law is inevitably limited in scope and depth and thus, the main focus of this essay is on private law. A survey of the distinguishing features of sports law (II.) is followed by a more detailed examination of its five defining characteristics: the fact of self-regulation (III.), its two-track structure (IV.) the international character of sports law (V.), the multiplicity of effects (VI.), and the fact that sports law is a cross-sectional matter (VII.). Following on from there, doping and liability issues – areas that tend to be particularly relevant in practice – are discussed in brief (VIII. and IX.), followed by a forecast for the future (X.).

II. The Distinguishing Features of Sports Law

The first, and central, feature of sports law is that it is a system of self-regulation. International and national sports associations lay claim to the right to individually regulate “their” sport; to apply and, if necessary, to enforce their rules. What is, at first sight, astonishing is the density of regulation, due in part to the function of sports rules, exemplified by codes running to several hundred pages each. Furthermore, the values specific to sports and to associations have a formative influence on the system of self-regulation. Fair play and the ban on doping are well-known examples of this. The monopolistic structure, the so-called Ein-Platz-Prinzip (III. 1.), and the existence of sports tribunals invested with a power of final decision (III. 3.) ensure consistency in the application and, if necessary, in the enforcement of regulations.


5 See infra III. 2. b).

6 The DFB statutes (available at http://www.dfb.de/index.php?id=11003) run to 680 pages. The UEFA (approximately 1810 pages) and FIFA (approximately 1440 pages) regulations are even more voluminous.
II. The distinguishing features of Sports Law

The second feature of sports law, and one which is particularly relevant to state law, is its “two-track structure”, i.e. the coexistence of the associations’ regulations with rules of national and international law. Numerous matters – for example the admission to a monopolistic association or the expulsion from a sports club, the transfer of players, the awarding of media rights (especially television) – are also dealt with by national and by European law rules. As a consequence, conflicts with the sports associations’ claim to final self-regulation are inevitable. What is problematic in this context is to what extent state courts are competent to review the decisions of sports associations and to arrive at different conclusions. The cases of Krabbe, Baumann, Bosman, Simutenkov, Webster and the centralised marketing of “Bundesliga” television rights have brought these problems to the fore of public attention. Despite these spectacular cases, one should not lose sight of the fact that most cases are in fact settled by means of self-regulation. Thus, the output of cases by the DFB’s governing bodies (including review panels of the association itself and courts of arbitration) equals that of the German labour courts. These jurisdictional bodies may thus be seen as substantially easing the workload of the state.

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7 On the state of European sports in general and on that of European football in particular, see the Independent European Sport Review’s Executive Summary, a summary of which is available at http://www.independentsportreview.com/doc/Executive_Summary/IESR_Executive_Summary_de.pdf (last accessed September 1, 2010). In addition, the European Commission presented a white paper on sports in 2007. The paper deals with the most pressing social and economic issues relating to sports. The Commission proposes detailed steps in their action plan. The white paper and related documents are available for download at http://ec.europa.eu/sport/white-paper/index_en.htm (last accessed September 1, 2010). For further information regarding the white paper, see Stein, SpStR 2008, pp. 46 et seqq.

8 The Federal Cartel Office (Bundeskartellamt), for example, prevented the conclusion of an exclusive agreement between DFL and Sirius Sport Media GmbH regarding the marketing of the television broadcasting rights for Bundesliga games in the period extending from 2009 until 2015. In the view of the Federal Cartel Office, the centralised marketing of broadcasting rights by the DFL was a cartel agreement which would only be admissible if the consumer were to have a reasonable share in the advantages of the cartel. This, in the view of the Federal Cartel Office, could only be guaranteed if a synopsis of the Bundesliga matches were to be broadcast on Saturdays before 8 p.m. on a T.V. channel which was freely available to members of the public. For these reasons, the contract between DFL and Sirius Sport Media GmbH did not come into existence. Thus, DFL was able to generate only 411 million Euro in profits from the television rights instead of a possible 500 million Euro. See FAZ, 18.08.2008, p. 31; FAZ, 17.09.2009, p. 18.

9 Hilpert, BayVBl 1988, p. 161 (p. 161) estimates that there are approx. 340,000 cases per year. See also idem, Das Fußballstrafrecht des Deutschen-Fußballbundes (DFB), Berlin 2009, S. V (preface) where Hilpert proceeds from the assumption that 400,000 cases occur every year.
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courts. This, one might say vertical, “two-track structure” is complemented by a horizontal segmentation, traceable to the difference between national and international regulations. Bearing this fact in mind and taking account of the multitude of legal regimes that could potentially collide with the law set by the associations, sports law is seen as a very complex patchwork.

This leads one to a third feature of sports law: its international character. Sports law cases are alike in all legal systems. The solutions found for these cases, however, sometimes differ substantially, especially as regards the extent of judicial review and the importance accorded to constitutional law. There are efforts at harmonisation in order to mitigate this—a regular exchange of views at an international level, as, for example, within the International Association of Sports Law and the International Sports Lawyers Association is constructive in this regard. Sports law journals with an international orientation are equally useful, especially the International Sports Law Journal and Pandekits and also the Marquette Sports Law Review, SpaRt, causa sport, and Desporto & Direito. International LL.M. programmes with a focus on sports law, for example those of Griffith University in Australia and Marquette University in USA, are also worth mentioning.

A fourth characteristic of sports law is that economically relevant regulations, originating in sports law, affect a huge number of persons and organisations, integrating them into networks of relationships. Statutory and contractual regulations often have a multitude of effects that have to be taken into account, especially when it comes to interpretation, in the case of sponsoring, for example.

The fifth and final characteristic of sports law is that it is a cross-sectional matter which calls for interdisciplinary awareness. In many cases, public, private and criminal law aspects all play a decisive role. This is evidenced by the journals referred to above and by special series dealing with sports law, such as “Recht und Sport” (“Law and Sport”, 38 volumes to date), “Beiträge zum Sportrecht” (Studies in Sports Law, 34 volumes to date), “Schriftenreihe des Württembergischen Fußballverbandes” (“Football Association of Baden Württe-
III. Self Regulation


III. Self-Regulation

1. The Organisation of Sports Associations

Outside of schools or universities, sports are usually organised by clubs and associations.14 It is hardly astonishing, therefore, that DOSB15 – the umbrella organisation behind German sports – has 27 million members in more than 91,000 gymnastics and sports clubs, which, for their part, are divided into a further 90 member organisations.16

The organisation of sports associations is marked by the pyramidal organisation of clubs and associations having the status of registered associations as defined by § 21 BGB.17 The pyramids are structured as follows: a sports club – a group of people interested in sports – is a corporate member of both the local sports federation of the district, county, or town and of the district or county’s discipline-related federation. The discipline-related federations of the districts and counties, in their turn, are members of the respective federal states’ discipline-related federations. The federal states’ discipline-related fed-

13 The tables of contents for the conference volumes are available at http://www.irut.jura.uni-erlangen.de/.
14 However, sports are increasingly being practised outside of clubs. See PHBSportR-Summerer (fn. 4), part 2, margin number 1.
15 DOSB was founded on May 20, 2006. It represents the union of the two former umbrella organisations in German sports – DSB and NOK.
17 In recent times, the professional divisions of clubs are, in part, outsourced to external companies. Cf. FAZ, 25.04.2009, p. 30 regarding FSV Frankfurt 1899 Fußball GmbH.
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operations for the different sports are – as are the sports clubs\(^{18}\) and the local sports federations of the districts, counties, and towns themselves\(^{19}\) – united in the federal states’ sports federations, whose catchment areas are congruent with the borders of the federal states. In addition, the discipline-related federations of the federal states are members of their respective national umbrella organisations (for example “Deutscher Skiverband”). Finally, these organisations and the 16 sports federations of the federal states are ordinary member organisations of the DOSB.\(^{20}\) The pyramidal structure is continued at international level.\(^{21}\) The national discipline-related federations are united in European federations (for example UEFA) and international federations (for example FIFA, FIS). The International Olympic Committee is an association set up in accordance with Swiss law and has 143\(^{22}\) personal members. It is responsible for the Olympic Games and represents world sports.

A further distinguishing feature of the system of sports associations is the so-called Ein-Platz-Prinzip\(^{23}\). According to § 4 No. 2 DOSB-Aufnahmeverordnung in combination with the codes of the international umbrella organisations and the IOC only one umbrella organisation per field can be admitted to the DOSB. Similarly, the “Ein-Platz-Prinzip” is embodied in the statutes of the sports federations of the federal states. Thus, most sports associations, national and international ones alike, have a monopoly as regards both the catchment area and the respective sport\(^{24}\) which helps avoid conflicts of competence – for example concerning the organisation of championships. At the same time, the monopoly excludes associations not integrated into the system from the distribution of public funds. As the total volume of public funds given away by

\(^{18}\) E.g. in Bavaria, see § 4 I of the BLSV statutes.

\(^{19}\) E.g. in Baden-Württemberg, see § 4 I a) of the LSV Baden-Württemberg statutes.

\(^{20}\) § 6 I of the DOSB statutes.

\(^{21}\) For more details regarding the relationship between national and international associations see V.

\(^{22}\) Current as of April 2010. The figure does not include honorary members (currently 28) and honour members (currently 1).


\(^{24}\) Although hard to imagine today, German sports were exceedingly fragmented until 1933. There were approximately 300 organisations (of all political and religious persuasions) actively competing with each other. After 1933, the clubs were collected together in an umbrella organisation (Deutscher Reichsbund für Leibesübungen). Fond memories of the prowess of a unitary organisation inspired the reconstruction of the system post-1945. See Labbeick, Das Recht der Sportverbände, Marburg 1971, p. 68. On international aspects, see Fanzang, Normsetzung und -anwendung deutscher und internationaler Verbände, Berlin 1990, pp. 57 et seqq.
III. Self Regulation

the federal government amounted to 139 million Euro in 2010, there is considerable potential for conflict in Germany.25

2. The Autonomy and Power of Associations

a) Legal Basis

The autonomy of clubs and associations is a consequence of the general principle of party autonomy, which describes the right of clubs and associations to regulate their internal affairs.26 It comprises both the right to make laws, especially statutes, and the right to administer those laws by applying them to the facts of a particular case. Its legal basis is enshrined in §§ 21 et seqq. BGB. Furthermore, the autonomy of associations is an integral part of the right to free association and as such is guaranteed by Art. 9 I GG27 and in European law, by Art. 12 I GRC.

b) The Rules of the Game – Their Function and Meaning

Participation in sports ranges from occasional leisure activities to a full-time job to earn a living. Despite a common interest in the sporting process running as smoothly as possible, there are many conflicts between the persons concerned – not only between the athletes themselves, but also between clubs and associations, officials, managers, sponsors, agents, and spectators. One need only think of doping problems or of spectacular injuries on the football pitch. A need for regulation arises from this potential for conflict.

In practice, the most important consequence of the associations’ autonomy is that national and international sports associations have the legal power to enact binding sports rules, dealing, in more or less voluminous codifications, with a specific discipline; the official athletics rules28 or the international handball

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25 See HB, 28.01.2010, p. 17. The federal budget for the promotion of top athletes has fluctuated considerably in recent years. While budgetary support stood at 133 million Euro in total in 2005, a mere 127 million Euro were available in 2006. In 2007, the available funds decreased once more by almost 20 million Euro to the sum of 108.5 million Euro. Since 2008, when the budget rose again to 127 million Euro, a marked increase has been observed.

26 Cf. Scherrer/Ludwig (fn. 23 Fehler! Textmarke nicht definiert.), p. 45.


28 http://www.leichtathletik.de/.
rules[29] may serve as examples. They have different complementary functions. These rules serve to typify the specific sport by drawing up abstract general regulations concerning the venue (pitch etc.), the aim of the competition, the playing time, the number of players per team, the equipment (devices and sportswear), the moves allowed, as well as the athlete’s outward appearance.[30] It is this standardisation that enables sports competitions to take place on a larger scale. Whereas children playing football can set the rules themselves in a manner that suits their individual needs, the organisation of a league or the compilation of ranking tables, calls for standardised requirements for each sport. Sports rules which lay the foundation for competitions are complemented by rules intended to achieve equal opportunities for all participants and to avoid unfair competition. Weight classes in weight lifting and boxing, the ban on performance-enhancing drugs (doping), rules on the admission of special devices and gear, as well as the outlawing of certain moves (for example the two-footed jump-off in the high jump) serve this purpose. Rules regulating the transfer of athletes from one club to another and setting transfer fees also serve to guarantee equal opportunities[31] for all competing clubs. Rules are intended to avoid disputes, or to at least ensure that the game or competition runs smoothly. Last but not least, rules are meant to protect the athletes, their opponents, and spectators from dangers typically arising in connection with sports. Regulations dealing with doping, fixing minimum and maximum ages


[30] Thus, figure-hugging clothes (bathing suit or tank top) are required in women’s volleyball to enhance television appeal (see rule 5.1.1 of FIVB).

The lawsuit concerning the one-piece jersey worn by the national team of Cameroon is also worth mentioning in this context. One-piece outfits were outlawed by FIFA during the 2004 African Cup. The action commenced by the outfitter of the Cameroon team was eventually settled out of court, see http://www.fussball24.de/fussball/4/57/58/19915-kamerun-trikots-fifa-und-puma-schliessen-vergleich (last accessed September 1, 2010). The issue of advertising on the athlete’s body must also be addressed in this context.

For reasons of equal opportunities and in order to stem the downright flood of world records, FINA also drew up new rules and regulations in relation to athletes’ swimming costumes. In future, the costumes should not extend over the neck, shoulders and/or ankles; the material should not be thicker than a millimetre and the suit should have a maximum buoyancy of one Newton per 100 grammes. Costumes tailored to the individual athletes are, in general, also forbidden. See FAZ, 16.03.2009, p. 28.

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in boxing, outlawing the rotation technique in the javelin throw\(^{32}\) – which would allow throws through the whole stadium up to the spectators’ stand – and FIFA football rule No. 12 (unlawful play and unsporting behaviour) serve to illustrate this.

Codified sports rules are very important in practice because the associations’ statutes declare them to be binding on everyone within the association. In some areas, rules of conduct regulate the “trivial little matter of sports” down to the tiniest detail. Anyone wanting to play football in a club in Germany, for instance, is obliged by rules of reference\(^{33}\) to abide by the DFB’s rules. A football player willing to join a new club is faced with an elaborate codification\(^{34}\) according to which a club change can only take place if the old club agrees or a certain waiting period\(^{35}\) has expired. In practice, sports rules have a substantial impact on the risk of self-injury (one need only think of the non-physiological landing required in gymnastics) and on the risk posed by team mates and opponents. More and more frequently, sports rules and regulations can be seen to have the function of increasing the attractiveness of the sport for spectators, thereby increasing its attractiveness for broadcasters and sponsors in order to increase the popularity of the sport and profits earned from television marketing measures and sponsoring. One example of this is the rule-change in volleyball, where the number of points required in order to win a set was increased from 15 to 25. However, in this case, the receiving team may win a point (Rally-Point-System). A further example is provided by the shortening of the set in table tennis from 21 to 11 winning points. Finally, certain sports rules have certain effects on the market for sports equipment and public perception. Sport rules create market preferences for products which conform to these rules and, in certain circumstances, exclude products which do not.\(^{36}\)

\(^{32}\) The matter of just how dangerous the javelin throw continues to be was illustrated at the Golden League in Rome in July of 2007. Long jumper Salim Sdiri was hit in the chest and badly injured by the spear of Finnish thrower Tero Pitkämäki. Despite the ban on the rotation technique, the spear had drifted out of its assigned sector. See FAZ, 16.07.2007, p. 26.

\(^{33}\) § 3 Nr. 1 and 2 of the DFB statutes.

\(^{34}\) §§ 16 et seqq. of the DFB SpielO. According to § 20, the FIFA rules are directly applicable to international transfers.

\(^{35}\) § 29 Nr. 6 of the DFB SpielO. Where amateurs switch clubs, the mandatory waiting period may not apply, see § 17 of the DFB rules.

\(^{36}\) Rule 2 of the DFB soccer rules determines size, weight, pressure, and material of the balls used in a soccer game. Only balls that are in accordance with the rule may be labelled “FIFA-approved” and sold as such. This labelling alone brings about a tremendous increase in sales compared to balls without this kind of label. On problems in respect of antitrust law, see Tischner, Die rechtliche Bedeutung technischer Normen...
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This became evident during the 2006 Football World Cup. FIFA asked a single German firm to equip all World Cup referees and stadiums. The sportswear manufacturer in question had specialised in the development and production of sports gear conforming exactly to the rules of the DFB, FIFA and UEFA. To the firm, this World Cup contract alone was worth about 500,000 Euro in revenue.\(^37\)

From a legal point of view, one has to bear in mind that sports rules are regulations set by national or international associations and have their legal basis in private law. They rank below statute in the hierarchy of legal norms.\(^38\) However, it is also important to know that sports rules imposing abstract and general rules of conduct\(^39\), especially where allowed or forbidden movements are concerned,\(^40\) are often distinguished by their indefinite wording. Thus, we speak of “unlawful play” or “unsporting behaviour” when in the referee’s opinion the player plays dangerously.\(^41\) This definition must be more clearly defined since it does not state exactly where the line is to be drawn. This kind of wording may be described as “indefinite terms” created by associations. In the above-mentioned example, the associations transfer the power to decide to the referee.\(^42\)

c) The Binding Character of Standardised Rules

It is obvious that a national or international competition can only serve its purpose if all participants are subject to the same rules. It would be next to impossible to have the German “Bundesliga”, for instance, if every club were to have and practise its own rules. The same applies at an international level to the European Leagues and European and World Championships.

When joining a club, the athlete initially agrees to submit to the statutes of the club only. How, then, can the rules of national and international associations

\(^{37}\) Cf. SZ, 06.06.2006, p. 26.

\(^{38}\) See, e.g., Pfister, SpRt 1998, p. 221 (p. 222); Labos, NJW 1972, pp. 125 et seq.

\(^{39}\) Marburger, Die Regeln der Technik im Recht, Köln 1979, pp. 258 et seqq.

\(^{40}\) E.g. rule 12 of the DFB soccer rules and rule 8 of the international indoor handball rules.

\(^{41}\) Rule 12 DFB soccer rules.

\(^{42}\) Referees are trained to make these decisions (e.g. demonstration film for referees “Allowed – Forbidden”). There is also a collection of “Official Decisions” by FIFA in addition to the soccer rules.
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be given binding force\(^{43}\). It may happen by way of statute\(^{44}\): The national association for the specific sport draws up rules to which the associations of the Länder are bound as its members. The clubs are bound, indirectly, by force of the statutes of the respective Land’s federation. In this way, the rules of national associations are embodied in the statutes of clubs. The athlete is bound by these statutes because of his admission to the club. This kind of binding force is called “indirect membership”. Rules may also have a binding force with an individual, i.e. contractual, agreement.\(^{45}\) This may take three forms: an individually bargained contract (for example Boris Becker – German tennis federation), a contract of participation founded on registration and admission to a particular competition, and a general licence applied for by and granted to the athlete within the respective sports association’s sphere of organisation and responsibility. The last two examples are instances of submission by individual agreement.\(^{46}\) The contract of participation and/or admission documents that the athlete expressly or impliedly accepts the relevant rules.

d) Sanctions Imposed by Clubs and Associations

Standardised rules and their observance are very important for sports competitions. It is therefore necessary to sanction offences, as illustrated by the fight against doping. This leads one to the classic problem of sanctions imposed by clubs and associations. The acceptance of the clubs’ and associations’ statutes as binding is always accompanied by a submission to the authority of the club or association. There are different dogmatic explanations for this submission: statute-based, on the one hand, and agreement-based on the other. The, supposedly, still prevailing view\(^{47}\) assumes that unilateral decisions – especially punishments imposed by associations – have their legal basis in the autonomy.

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\(^{44}\) BGHZ 128, 93 (100); Röhricht (fn. 43), p. 12 (pp. 15 et seqq.); Vieweg, SpRt 1995, p. 97 (pp. 98 et seqq.).

\(^{45}\) BGHZ 128, 93 (96 et seqq.); Röhricht (fn. 4343), p. 12 (pp. 18 et seqq.); Vieweg, SpRt 1995, p. 97 (p. 99).

\(^{46}\) BGHZ 128, 93 (103 et seqq.).

of associations. Sanctions not only provide instruments for solving internal conflicts; they also grant the opportunity to regulate an aspect of life falling within the association’s autonomy. Another view holds that unilateral decisions of clubs and associations have their legal basis in contract law. By joining a club, the member agrees to the statutes. Sanctions provided for in the statutes are contractual penalties as defined by §§ 339 et seqq. BGB. The penalty imposed in a particular case is at the discretion of the decision-maker.

The relationship between the association and an (indirect) member is marked by an increased potential for conflict when the association has a monopoly and the (indirect) member depends on its activities and services. Pressure points in this context are sanctions imposed by associations – for example disqualifications or suspensions due to a doping offence – and, directly related to these, the extent to which those measures are reviewed by the state courts. The importance of this problem in practice cannot be overestimated. The number of sports-related disputes stands at an estimated 420,000 per year. This exceeds the annual number of cases which come before the German labour courts.

Similar problems arise when a sports association refuses to issue benefits which the member believes himself to be entitled to, or makes decisions which do not express an adverse judgement as such, but, nevertheless, have negative consequences for the member. Participation in courses organised by the association, nominations for or admissions to a sports competition as partici-

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50 For a survey see Vieweg, fn. 24, pp. 49 et seqq.
51 Cf. the case of track and field athlete, Charles Friedek, who was not nominated by the DOSB to take part in the 2008 Olympic Games in Peking. While he had fulfilled the Olympic requirement of 17 metres on two occasions, he was, according to the regulation, required to achieve the same distance at a further event. An interim injunction against this decision was unsuccessful, cf. OLG Frankfurt a.M. NJW 2008, pp. 2925 et seqq. Cf. previous decision of the German Sports Court of Arbitration (Deutsches Sportschiedsgericht) against the DVL, FAZ, 21.07.2008, p. 26. For a general insight into this particular set of problems, see Monheim, SpRt 2009, pp. 1 et seqq.; Hold, Rechtliche Probleme der Nominierung von Leistungssportlern, Bayreuth 1992, pp. 21 et seqq.; Wöhr, Nominierung als Rechtsproblem - Bestandsaufnahmen und Perspektiven, in: Vieweg (ed.), Spektrum des Sportrechts, Berlin 2003, pp. 105 et seqq., referring to actual cases.
III. Self Regulation

pant or manager\textsuperscript{52}, the fixing of line-ups against the wishes of the clubs concerned, may all serve as illustrations.

3. Sports Tribunals

As shown above, sanctions and other decisions made by associations can interfere with an athlete’s or club’s activities in many ways. An athlete suspended for two years because of his first doping offence is deprived of his earnings for this time period, for example. He may be too old to continue in professional sports once the suspension has expired.\textsuperscript{53} Decisions of associations can threaten the survival of sports clubs too: when a licence is denied because the economic requirements for it are not met, for instance.\textsuperscript{54} Relegations (and the

\textsuperscript{52} This is illustrated by the case of figure-skating coach Ingo Steuer, who – after failing to be nominated by the NOK for the 2006 Olympic Games in Italy because of his "Stasi" background – had to obtain an interim injunction in order to be admitted to the Games. Later, the NOK dismissed Steuer because of insulting remarks made in an interview. Steuer obtained another interim injunction, which the NOK opposed, but which was later confirmed. See LG München I SpRu 2007, pp. 124 et seqq. In the meantime, both sides have taken to a “policy of tolerance” with Ingo Steuer still working as DEU coach, but without any direct or indirect funding by the state. In December 2008, DEU and Ingo Steuer reached an in-court settlement in order to finally resolve their dispute. According to the settlement, the DEU was expected to collect approximately 250,000 Euro in sponsorship monies in the time preceding the 2010 Winter Games in Vancouver. Ingo Steuer would then be remunerated out of this sum. The direct payment of trainers who were involved with the secret police of the German Democratic Republic is still not permitted by the Federal Ministry of the Interior.

\textsuperscript{53} Cf. the case of Justin Gatlin, a sprinter, who was penalised with an eight years’ suspension for another doping attempt in 2006. An American court later shortened this ban to four years. Gatlin wished to achieve a further halving of the penalty and attempted to do this by means of an appeal before the CAS. After this appeal failed in June of 2008, he appeared in front of the District Court in Florida and obtained permission to start in the impending trials by way of an interim injunction. However, when the judge noticed that he did not have jurisdiction to decide an appeal against a CAS judgment, but rather that the matter was one for the Swiss Federal Supreme Court (Schweizerisches Bundesgericht) alone, he revoked the interim injunction four days later. Cf. FAZ, 26. 06.2008, p. 40.

inevitable loss of money that could have been made from the marketing of TV rights, from sponsoring, and from merchandising) may result in the economic collapse of a club. Disputes concerning particular decisions are therefore inevitable. In order to settle these internal disputes it is possible – due to the autonomy of sports associations – to set up internal tribunals (sometimes comprising several tiers as in the case of the DFB tribunal\(^{55}\)), aimed at quick and fair decisions.\(^{56}\) In this way, the jurisdiction of state courts is restricted. However, there are limits to autonomous self-regulation. Sports are subject to the fundamental decisions of state (in particular constitutional) law. Therefore, a certain amount of external state control is unavoidable. This leads one to the classic problem of whether and to what extent the decisions of sports tribunals may be reviewed by state courts.\(^ {57}\)

**IV. The Two-Track Structure of Sports Law**

**1. The Law of Associations versus State Law**

Sports law is aimed at dealing with the many conflicts that may arise from social and economic relationships within sports. It aims to strike a fair balance between the needs of all concerned and to take account of conflicting interests. This does not just mean drawing on the skill and expertise of sports organisations as embodied in their regulations.\(^ {58}\) It also means applying principles of general law when the associations’ power of self-regulation fails or is misguided. As a consequence, sports law is distinguished by its two-track struc-
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It comprises two sets of norms: on the one hand, there are the associations’ rules; and on the other, there are the universally applicable rules of national and international law. As we shall see below, the solutions to legal issues relating to sports often depend on the determination of the exact relationship between these two sets of norms. The interplay between the associations' law and the general law, the many forms sports may take, the complexity of the interests affected – all lend special character to sports law. At the same time, they are an important contributing factor to the ever-changing nature of sports law, as evidenced by the need to adapt the associations’ rules to those set by the general law.

2. The Review of Associations' Decisions by the State Courts

It should by now be obvious by now that the associations’ law and state and European law do not exist in complete isolation from each other. This gives rise to the question of whether and to what extent an association’s decisions may be reviewed by state and European courts.59 This question is of central importance because the decisions of state and European courts have a knock-on effect on the enactment of rules by associations and on the decision-making of their executive bodies (including sports tribunals). One must distinguish between three different types of review: review of the content of rules set by an association, review of the facts, and review of the process of applying the law to the facts.

With regard to clubs and associations that do not wield any significant social and economic power, the courts confine themselves to reviewing whether the punishment imposed has a legal basis in the statutes, whether the prescribed procedure has been observed, whether the respective rules and statutes are consistent with state law and good morals, and whether the establishment of the facts is correct and the punishment imposed, not blatantly inequitable.60 The state courts have begun to apply these principles to the review of other decisions by associations.61 As far as associations with significant socio-economic power are concerned (as, for instance, sports associations), the re-
restricted review of punishments has come under increasing criticism since the 1960s. The problem became all too obvious in the so-called Bundesligaskandal\(^\text{62}\) of the early 1970s, when it appeared that the associations’ executive bodies – the sports tribunals of the DFB – had largely ignored core values regarding freedom of occupation and professional rights.\(^\text{63}\) It was at this point that the common aim of critics – i.e. to harmonise the associations’ power and individual rights – was taken up by the courts.

If one accepts the associations’ right to punish and make adverse decisions, not only for reasons of practicality and convenience, but also as a fundamental aspect of the constitutionally guaranteed autonomy of associations, then the problem of a lack of legal protection\(^\text{64}\) must be dealt with. This calls for an extensive review of the content of norms\(^\text{65}\) enacted by associations since these norms constitute the basis for sanctions and other adverse decisions. The approach of the Federal Court of Justice\(^\text{66}\) – content review by means of an extensive consideration of interests – can be applied a fortiori to the internal relationship between an association and its members.\(^\text{67}\) The fact that the association enjoys a monopoly position and the fact that the member is dependent on its services may be taken into account. The BGH has started to review sports rules by referring directly to § 242 BGB.\(^\text{68}\) Where indeterminate terms – as, for example, “unsporting behaviour” – are used as a legal basis for punishment, the state courts must check whether these terms violate core principles of state law and whether it is legitimate to grant a margin of appreciation in the first place.\(^\text{69}\) Secondly, it is necessary that the courts review the facts.\(^\text{70}\) This

\(^{62}\) See the informative documentation provided by Ranball, Bundesliga-Skandal, Berlin 1972, as well as Hilpert (fn. 55), pp. 209 et seq.

\(^{63}\) Academics then tried to find justification for the courts’ right to supervise sanctions imposed by associations. For a general account, see Vieweg, JuS 1983, p. 825 (pp. 827 et seq.).

\(^{64}\) Biermester, DOV 1978, p. 1 (p. 2), sees the sports associations as being factually deprived of rights and further holds that they are often forced to renounce rights.

\(^{65}\) BGH NJW 1995, p. 583 (p. 587); NJW 2004, p. 2226 (p. 2227).

\(^{66}\) BGHZ 63, 282 et seqq. = NJW 1975, pp. 771 et seqq.; in more detail infra IV. 3.

\(^{67}\) Nicklisch, Inhaltskontrolle von Verbandsnormen, Heidelberg 1982, p. 29; Reuter, ZGR 1980, p. 101 (pp. 115 et seq.).


\(^{69}\) H. P. Westermann (fn. 1), pp. 104 et seqq. m.w.N.

\(^{70}\) BGH JZ 1984, p. 180 (p. 187); see also Vieweg JZ 1984, p. 167 (pp. 170 et seq.).
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prevents the athlete being deprived of his rights because facts have been incor-rectly established. One must bear in mind, however, that an ad hoc field-of-play decision, such as the calling of a foul in soccer, may be necessary to en-sure that the competition runs smoothly. Such a decision should not be changed retrospectively – even if, upon inspection of evidence recorded by technical means, e.g. video evidence, it is proven wrong. It is arguable, however, that effects of a field-of-play decision reaching beyond the competition itself – such as bans – should be subject to judicial review. Thirdly, there must be a review of the process of applying the law to the facts, if only to close off potential loopholes. The central question here being whether the associations may be granted a margin of appreciation.

The approach outlined above takes into consideration that the interests of sports associations and the interests of members – including the members of clubs belonging to the respective associations – are not merely opposed; they also share a common basis. The approach preserves the chance of settling conflicts internally, but properly and fairly, by means of statutes and mechanisms of decision-making – for example procedures before the sports courts. By granting a margin of appreciation, the state courts can exercise restraint when replacing the decisions of expert panels with decisions of their own. The threat of having decisions reviewed and overturned by national and international courts should lead to rules and decisions being put in place by the associations which athletes and clubs can accept as proper and objective.


72 H. P. Westermann (fn. 1), pp. 107 et seq.

73 BGHZ 102, 265 (276).

74 Punishment of non-members is, however, impermissible. See BGHZ 28, 131 (133); 29, 352 (359); cf. Lakes, Erstreckung der Vereinsgewalt auf Nichtmitglieder durch Rechtsgesellschaft, in: Hefenmehl/Gmühl/Brox (eds.), Festschrift für Harry Westermann, Karlsruhe 1974, p. 325 (pp. 334 et seqq.) (discusses the powers of associations with regard to licensed soccer).
Sports associations are increasingly trying to prevent judicial review altogether by resorting to courts of arbitration as defined by §§ 1025 et seq. ZPO. Thus, most associations’ statutes prescribe that independent sports courts take the place of the state courts – for example, the German Sports Court of Arbitration, registered on the 01.01.2008. Since arbitral awards can only be reversed by a state court if they are fundamentally flawed (see the enumerative listing in § 1059 ZPO), an arbitration clause functions as a de facto exclusion of the state courts’ jurisdiction. This is only compatible with the constitutional right to effective legal protection if the protection offered by the court of arbitration is equivalent to that offered by a state court. At a minimum, the decision-makers must be independent and impartial. In addition, they cannot be members of the sports clubs involved.

3. The Right of Admission to a Monopolistic Sports Association

The constitutional and civil law guarantee of the autonomy of associations is based on the premise that an abuse of power by the association is prevented by mechanisms of self-regulation, in particular because of the fact that membership is voluntary. As a consequence of the “Ein-Platz-Prinzip”, the system of sports associations is characterised by strong local and disciplinary monopolisation. Should a monopoly association, which – like DOSB and its predecessor (DSB) – functions as a distributor of public funds, embody the “Ein-Platz-Prinzip” in its statutes and should it admit a sports association to a special field, conflicts with competing associations in the same discipline are bound to

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77 This is, however, conditional upon the arbitration agreement being framed in sufficiently clear terms, cf. LG Dortmund GRUR-RR 2009, p. 117 (p. 118).

78 See, e.g., § 32 III, IV DOSB statutes. On the issue of the Court of Arbitration for Sport’s independence, see Oshütz, Sportgerichtsbarkeit, Berlin 2005, pp. 98 et seqq. with reference to the Swiss Federal Supreme Court.


80 See supra III. 1.
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arise. This is what happened in the “RKB Solidarität” case, which resulted in a landmark ruling by the Federal Court of Justice.81

DSB had refused admission to RKB Solidarität82 on account of the “Ein-Platz-Prinzip” embodied in its statutes because cycling was already represented by the Bund Deutscher Radfahrer e.V. The BGH ruled that restrictions on admission to a monopoly association are subject to judicial review. It based its review on a formula deduced from § 826 BGB and from elements of § 20 VI GWB, according to which a refusal to admit must not unlawfully discriminate against the applicant vis-à-vis existing members. The key factor is a comprehensive consideration of the monopoly association’s and the applicant’s interests. The court found that RKB Solidarität had such a vital interest in profiting from the rights and benefits of membership that withholding those rights and advantages amounted to disadvantageous treatment. The court allowed, however, that DSB had a countervailing legitimate interest in ensuring that decisions on the entitlement to incentive measures be taken within the individual disciplines (in accordance with the “Ein-Platz-Prinzip”), so that DSB could limit itself to ensuring interdisciplinary coordination. Therefore, the clause in the statutes prescribing the “Ein-Platz-Prinzip” was – in principle – justified. The BGH, however, remanded the case back to the trial court so that it could discuss the question of how both the “Ein-Platz-Prinzip” and the principle of equal treatment of (similar) associations could be enhanced with both parties.83

RKB Solidarität became an extraordinary member of DSB in 1977, having been granted a special area of responsibility.84

The Federal Court of Justice has since confirmed its ruling on several occasions.85 Judges86 and academics87 have applied the decision as far as the practi-

81 BGHZ 63, 282 et seqq. = NJW 1975, pp. 771 et seqq.
82 Before 1933, RKB Solidarität, which has its roots in a labour movement, was the biggest cycling association in the world. After World War II, it was set up again and, ever since 1964, has been trying to become a DSB member.
83 BGHZ 63, 282 (pp. 286, 291 et seqq.) = NJW 1975, p. 771 (pp. 774 et seqq.).
84 According to § 5 Nr. 1 of the DSB statutes (now § 6 I, II of the DOSB statutes i.V.m. § 4 Nr. 3 DOSB-AufnahmeO).
87 Nolte/Polzin, NZG 2001, p. 980; Friedrich, DSR 1994, p. 61 (p. 65); see also Vieweg, Verbandsrechtliche Diskriminierungsverbote und Differenzierungsgebote, in: Württembergischer Fußballverband e. V. (ed.), Minderheitenrechte im Sport, Baden-Baden 2005, p. 71 (pp. 73 et seqq.).
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cal result is concerned. In their explanations, they variously draw on the formula of the BGH (derived from § 826 BGB and § 20 VI GWB)\(^88\), on §§ 20 I, 33 GWB (previously §§ 26 II, 35 GWB)\(^89\), or on the horizontal effect of fundamental rights.\(^90\) Sometimes, the right of admission is understood to be an aspect of the principle of equal treatment and an offshoot of customary law.\(^91\) An alternative view holds that the association has bound itself by its statutes.\(^92\)

V. The International Character of Sports Law

A survey of the phenomenon that is Sport which confines itself to the national arena can no longer do justice to the subject. The international aspect of sporting competitions plays an extremely important role and is one of its essential characteristics.

1. The Relationship between National and International Associations

The globalisation of sports\(^93\) affects all areas of the sporting process. There are few professional disciplines that may still be confined to the borders of only one country. International competitions are organised as world events for clubs (e.g. Champions League und Europa League in soccer) as well as for national teams and individual athletes (e.g. the Olympics and world championships). Ideally, uniform rules should apply to all participants in international

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\(^88\) Cf. BGH NJW 1999, pp. 1326 et seqq.; OLG Frankfurt WRP 1983, p. 35 (p. 37); OLG Stuttgart NZG 2001, p. 997 (p. 998); OLG Düsseldorf SpuRt 2007, pp. 26 et seqq.; OLG München SpuRt 2009, p. 251 (p. 251); MüKo-Reuter (fn. 79), before § 21, margin number 114.

\(^89\) LG Frankfurt, cited in OLG Frankfurt WRP 1983, p. 35 (p. 37).


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competitions. It is for this reason that every global competition is organised and marketed centrally by an international association (e.g. FIFA). Participating athletes as well as national associations and clubs either submit to these uniform rules by contractual agreement or are bound to them through statutes, due to the pyramidal structure of sports organisations.94

For international professional soccer, the situation is as follows: along with DFB, there are at present 208 national associations in total that are collectively assembled under the banner of FIFA, an umbrella organisation for international soccer. All of these national associations must be members of one of FIFA’s six confederations (continental associations). For Europe, this is UEFA. On the one hand, FIFA membership gives national associations lucrative advantages in the shape of financial and logistic support; on the other, there are far-reaching obligations, concerning the statutes, ideals, and aims of FIFA. It is FIFA’s most important job to organise the world championships in soccer. Altogether, 52 national European associations are members of UEFA. Apart from the European Championships in football, UEFA organises competitions for clubs, i.e. the Champions League and the Europa League.

2. Requirements under European Law

European Law holds considerable sway over the organisation of professional sport – even over the creation of the rules and regulations of individual sports bodies. This is made clear by the case of long-distance swimmers Meca-Medina and Majcen who, during the 1999 World Championships, tested positive for Nandrolone and were consequently barred from membership of FINA, the international swimming federation, for four years. In spite of a later reduction of the bar to two years by the International Sports Court of Arbitration, CAS, the athletes filed a complaint with the European Commission in which they argued that the anti-doping regulations concerned were incompatible with European competition law and freedom to provide services. Both the Commission and the European General Court (formerly European Court of First Instance)95 were of the opinion that, due to the fact that the doping provisions in question were not of economic relevance, the European Treaty (now, TFEU) did not apply.96 Doping bans served sporting, non-economic purposes and were therefore not subject to review by the European Courts.

94 See supra III. 2. c.
96 The ECJ ruled that sporting activities are encompassed by European law only insofar as they are part of economic life as defined in Art. 2 EC, ECJ Slg. 1974, p.1405 (Walrave); Slg. 1993, I-4921 (Bosman); Slg. 2000, I-2681 (Lehtonen).
The ECJ\(^{97}\) was of an entirely different opinion. Anti-doping regulations and the sanctions threatened by the same could have completely negative effects upon competition. In spite of this, however, the case was not successful because the provisions under attack were found to be proportionate to the aim of ensuring fair competition. In this line of jurisprudence, recently confirmed in the case of MOTOE\(^{98}\), the ECJ acknowledges that sport has a certain special role to play in society; this special role does not, however, remove sport from the purview of European Law. \(^{99}\)

The influence of EU primary law\(^{100}\) on association rules and regulations is clearly evident in the development of the so-called foreign player clause in professional football. Until the mid-1990s, the Registered Player Charter of the DFB provided that no more than three foreign players could take part in any Bundesliga game simultaneously. Such rules were common both nationally and internationally. Their primary aim was to promote ‘home-grown’ players. The Bosman decision (which concerned the Belgian Football Association) was the subject of furor when the ECJ\(^{101}\) decided that such clauses are not compatible with Art. 48 EEC (now Art. 45 TFEU, ex-Art. 39 EC). As a result, the DFB lifted its own provision concerning foreign players in the 1996/1997 season. As regards non-EU players, however, a similar limit remained in place. A further decision of the ECJ of the 12.04.2005\(^{102}\), however, finally brought an end to such clauses. The Russian professional footballer, Simutenkov, had taken a case against a provision put in place by the Spanish Football Association which provided that only a limited number of non-EU foreign players could be employed. The ECJ viewed the provision as violating the prohibition of discrimination which was explicitly included within a partnership agreement concluded

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\(^{97}\) ECJ Sp\(\text{a}\)Rt 2006, pp. 195 et seqq. The decision is harshly criticised by Infantino, Sp\(\text{a}\)Rt 2007, pp. 12 et seqq. His article is in turn heavily criticised by Pfister, Sp\(\text{a}\)Rt 2007, pp. 58 et seqq.


\(^{99}\) On the issue of the applicability of European (competition) law to sports rules and regulations cf. the EU Commission White Paper on Sport (COM(2007) 391 final). Stein, Sp\(\text{a}\)Rt 2008, pp. 46 et seqq. is also instructive in this regard.

\(^{100}\) Cf. in this context the new rules of jurisdiction for sport in Art. 165 TFEU. Mauz, Ca\(\text{s}\) 2010, pp. 99 et seqq.; Persch NJW 2010, pp. 1917 et seqq. are also instructive in this regard.

\(^{101}\) ECJ, Case C-415/93 (15 December 1995), Court of Justice Reports 1995 I-4921 et seqq., NJW 1996, pp. 505 et seqq.; the judgment and its consequences were very thoroughly discussed by legal scholars. Cf. Appau, Sp\(\text{a}\)Rt 1996, pp. 39 et seqq.; Streit, Sp\(\text{a}\)Rt 1998, p. 1 (pp. 2 et seqq.); Vieweg/Röthel, ZHR 166 (2002), p. 6 (pp. 8 et seqq.).

\(^{102}\) ECJ EuZW 2005, pp. 337 et seqq. (with comment by Fischer/Gröfl) = Sp\(\text{a}\)Rt 2005, pp. 155 et seqq.
between the EU and Russia. The inadmissibility of foreign-player clauses (effective as of 1996/1997) was extended to include non-EU players who were the subject of association agreements concluded between EU and non-EU states. Since then, DFB has responded by completely abolishing the foreign-player clause as of the 2006/2007 season.

In practice, association rules and regulations which concern the compensation of a football club for its training of a particular player after that player has been transferred to another football club are common. In the view of domestic courts, such a provision represents an infringement of § 138 I BGB in connection with Art. 12 I GG. The ECJ, however, takes a different view. Compensation for the training of youth players is, in its opinion, essentially compatible with the principle of freedom of movement of workers (Art. 45 TFEU) because it serves a legitimate purpose i.e. the promotion of the training and recruitment of youth footballers. As the contentious (French) clause did not refer to compensation for the training of youth players, but rather to a liability to pay damages independently of the training costs as compensation for breach of contract, the ECJ decided that the regulation in question was unfitting and disproportionate.

3. Efforts to harmonise international sport

Due to the multitude of national and international competitions, athletes and associations may find themselves subject to different regulations, depending on the sporting event in which they are participating. This may be considered a highly unsatisfactory state of affairs. Taking sanctions as an example, it may be almost impossible to explain why the same offence can result in completely different penalties, depending upon whether the offence takes place at national or international level. The right to equal treatment and equal opportunities

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103 Similarly, ECJ SparRt 2009, pp. 61 et seqq. This case dealt with the association resolution of EWG–Turkey, the wording of which corresponded closely to the association agreement of EWG–Russia.

104 See decision taken at assembly of December 21, 2005. In addition, a “local-player rule” was introduced (see § 53a DFB SpielO), according to which every association is obliged to give contracts to at least 12 German players and at least four players trained in a German club. Cf. jurisprudence of the EGC and ECJ under V. 2.


106 EuGH NJW 2010, pp. 1733 et seqq. (C-325/08, Olympique Lyonnais SASP/Olivier Bernard, Newcastle UFC).

107 Schleiter, Globalisierung im Sport, Stuttgart 2009, pp. 45 et seqq. uses the term regulation deficit of international sport in this context.
must be guaranteed, at least where the same sport is concerned. Otherwise, sports may lose credibility and athletes are virtually invited to challenge and reject the sanctions imposed on them as being arbitrary. Efforts at harmonisation, therefore, go hand in hand with the internationalisation of sport – particularly in regard to doping and fair play.

As far as harmonisation is concerned, a giant step forward was taken – after years of effort – in the fight against doping with the establishment of WADA and the enactment of the WADA Code. The central elements of harmonisation in this case are doping controls, analysing methods, sanctions, and legal protection. The harmonising process is, however, far from complete. On the contrary, it appears to have become all the more relevant now that some countries – France and Italy among them – have criminalised doping. As a result – depending on the individual athlete’s nationality or the venue of the competition – sanctions imposed by associations may be complemented by pecuniary penalties or even prison sentences imposed by state courts. The possible introduction of a state law prohibiting doping has been the subject of much discussion in Germany, too. In the end, however, the German legislature opted merely to tighten up the drug laws (AMG).

An example from the realm of cycling demonstrates the current fragmented state of the relevant legislation. The German professional cyclist Danilo Hondo was suspended for two years by CAS because of a doping offence. Due to the specific legal position in Switzerland (where Hondo has his permanent residence), the local court of the canton – not normally the court of competent jurisdiction – was empowered to review the decision of the sports tribunal. This was only possible because the headquarters of both the international cycling federation UCI and the WADA are also in Switzerland. Thus, the lawsuit

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108 E. g. Vieweg/Siekmann (fn. 10).
109 See fn. 10. For a detailed discussion of the matter, see Kern, Internationale Dopingsbekämpfung, Hamburg 2007, pp. 221 et seqq.
111 See infra VIII. 4.
112 FAZ, 22.03.2006, p. 34.
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cconcerning the doping offence was a purely national conflict, with the result
that instead of the federal court the local court of the canton was competent to
deal with the appeal against the CAS decision. The court of the canton granted
a preliminary injunction, provisionally reversing the judgment, but ultimately
upheld the CAS ruling.113

The application of the fair play principle (cited repeatedly all over the world)
also requires international standardisation. Up until now, neither academics
nor practitioners have succeeded in developing a general definition of the term
“fair play”.114 According to the International Fair Play Charter, the term fair
play means "more than just observance of the rules of the game; rather, fair
play describes the mental attitude of the athlete: respect for the opponent and
for the protection of his psychological and physical health. A player behaves
fairly if he puts himself in the other athlete’s shoes."115 This approach could be
regarded as too narrow in so far as it refers only to the relationship between
the athletes themselves. The idea of fair play, however, must also be enforced
in a vertical direction, i.e. between individual athletes and governing associa-
tions as well as between athletes and spectators.116 Sports rules, the condi-
tions of competition, and the requirements for admission must not be laid down
arbitrarily. They must be compatible with the principle of equal treatment. The
classification of each and every offence as unfair behaviour is equally problem-
atic. Offences against mere rules of order not aimed at the protection of others
(such as the prohibition upon taking off one's shirt after scoring) might not be
considered violations of the fair play principle. The binding force of the fair

113 Cf. http://www.merkur-online.de/sport/gericht-verlaengert-hondo-sperre-428989.html (last accessed September 1, 2010). In the end, the court of the canton added the
time periods during which the cyclist could take part in competitions because of the in-
terim injunction to his time of suspension. In January 2008, Danilo Hondo returned to
competitive cycle racing and continues to participate in the sport.

114 For various attempts at a definition, see Vieweg (fn. 71), p. 1255 (pp. 1266 et seqq.); P. J.
Tettinger, Fairness als Rechtsbegriff im deutschen Recht, in: Scheffen (ed.), Sport, Recht
und Ethik, Stuttgart 1998, pp. 33 et seqq.; on the term "fairness", see generally H. P.
Westermann, Fairness als Rechtsbegriff, in: Württembergischer Fußballverband e. V.
(ed.), Fairness-Gebot, Sportregeln und Rechtsnormen, Stuttgart 2004, p. 79 (pp. 81 et
seqq.); Lenk, Fairness in der Siegengesellschaft? Statement zur Preisverleihungsfeier
pageStatement=LenkStatement (last accessed September 1, 2010); Lenk/Pölz, Das Prin-

115 See http://sport.freepage.de/cat-bin/feets/freepage_ext/41030x030A/rewrite/lk
sport/fairaggzit.html (last accessed September 1, 2010).

116 The principle of fair play was clearly violated by Hamburg professional footballer,
Paolo Guerrero, who threw a plastic drinks bottle at an abusive fan after a game. He
consequently received a five-game ban, cf. FAZ, 07.04.2010.
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play principle is derived from various legal sources: sometimes Art. 6 ECHR is cited, at other times reference is made to the general provision of § 242 BGB. Commitment by the associations themselves and by all of those bound by their codes can be achieved by embodying the principle of fair play in the statutes and rules of sports associations. Finally, one could describe fairness as a private international rule of law (lex sportiva). This area is still reasonably undeveloped. Therefore, it seems a little premature to proceed on the basis of the existence of a binding lex sportiva.

4. The “50+1” and “6+5” rules

Currently, two sets of problems which both have European law as a common background and which are the subject of debate should be mentioned.

At present the DFL so-called 50+1 rule which has its legal basis in section 8 subsection 2 of the rules and regulations of the body and section 16 c) subsection 2 of the DFB rules and regulations is highly controversial. In accordance with the “50+1” rule, the registered players’ divisions of the clubs of the first and second Bundesliga which have been sold off to legal entities are only granted the license necessary for participation in games if the club itself owns at least 50+1 of the voting shares in the legal entity. Opponents of this regulation – which makes it impossible for outsider large-scale investors to gain a majority share in a German football club – view it as being a clear hindrance to competition and, therefore, a violation of European Law. In academic journals, two strongly opposing points of view are represented. Whereas the aboli-

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119 Cf. Nr. 6 Basic Principles of the Olympic Charter; see Vieweg (fn. 71), p. 1255 (p. 1271).
120 For a detailed discussion see Adolphsen (fn. 93), pp. 281 et seqq.; Adolphsen (fn. 31), pp. 628 et seqq.; Naßfinger (fn. 93), p. 61; Osdietz (fn. 78), pp. 351 et seqq.
122 Of all of football officials, president of Hannover 96, Martin Kind is a particularly vocal advocate of the abolition of the “50 + 1 rule”. An application to do so was, however, rejected by an overwhelming majority during the general assembly of members of the DFL on 10.11.2009. Cf. HB, 11.11.2009, p. 30. Cf. http://www.fsl.de/sport/fussball/1bundesliga/news/50-1-hannover-96-reicht-schiedsgerichtsklage-ein/5006563.html (last accessed September 1, 2010) as regards the arbitration action before the permanent arbitration panel of the DFB.
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...tion of the “50+1” rule is viewed as unlawful by some, who support a claim to retain the status quo, enforceable by the courts, another point of view considers the conformity of the “50+1” rule to the provisions of competition law to arise out of the freedom of sports associations to create their own rules and regulations. This would enable a basic decision, based on the politics of sport, to refuse to allow soccer to be transformed into an “investors’ ball-game”. The opponents of “50+1” are vehemently against this. They adhere to the view that the regulation in its current form is disproportionate because, in advance and without exception, it obstructs investors from acquiring an isolated majority share. Therefore, they maintain, it is an infringement of the European basic principle of freedom of competition (Art. 101 TFEU, ex-Art. 81 EC). As regards the obvious European concerns regarding the “50+1” rule, it is clear that, on an association level, there exists an urgent need to regulate this area. If the concerns outlined cannot be dispelled in the near future, a clarification by the ECJ will be necessary.

Similarly, the European admissibility of the so-called 6+5 rule is both controversial and topical. This rule states that each football club must begin each game with at least six players each of whom would be entitled to play for the national team of the countries in which the respective teams have their seats. Only five players in the starting team do not have to fulfil this stipulation. Both the European Commission and many legal scholars express considerable legal doubts in relation to the “6+5” rule especially in light of the guarantee of free movement of workers enshrined in Art. 45 TFEU (ex-Art. 39 EC). Nonetheless, FIFA – backed by isolated voices – wants to have the rule in place as soon as possible. In the meantime, however, UEFA has taken a different route and decided in favour of the so-called homegrown rule, in accordance with which eight players in each club must have trained in the country in which the club is based for at least three years when they were between the ages of 15 and 21. As this rule does not hinge on the nationality of the players, the European Commission regards it as being compatible with European Law.

123 Hovemann/Wieschemann, SpuRt 2009, pp. 187 et seqq.
128 E.g. Battis/Ingold/Kahwiet, EuR 2010, pp. 33 et seqq.
5. International Courts of Arbitration – the Court of Arbitration for Sport (CAS)

CAS/TAS (the French designation), founded in 1984, is charged with facilitating up-to-date and informed decisions and is intended to reduce the amount of control held by national courts. The rules and regulations imposed by international federations such as FIFA are incapable of excluding the state completely. Rather, upon exhaustion of all internal control measures, there still exists the possibility of appealing to the general courts of law. The competence of these courts is determined by connecting factors like the athlete’s nationality or his place of residence. The state courts then apply the substantive law as determined by the rules of private international law. As the outcome of a case may vary depending on the applicable substantive law, the globalisation of sports brings with it a danger of judicial fragmentation. For reasons of equality, a unitary sports jurisdiction is much to be desired. The establishment of international courts of arbitration would solve this problem. According to Art. 192 of the Code on Private International Law, the parties may exclude an appeal to the state courts altogether by including a suitable provision in their arbitration clause. As a rule, a legal action would then have to be dismissed for procedural reasons. Like many other international associations, FIFA has laid down in its statutes that final decisions can be reviewed by CAS only. CAS was initially founded by the IOC. At this stage, however, it has become independent of it and can be regarded as a real court of arbitration. Of particular note in recent years are the arbitral verdicts handed down in the cases of Webster and Matuzalem in which CAS was concerned with the matter of the assessment of damages in the event of breach of contract by professional athletes.

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131 For a detailed account, Adolphsen, SchiedsVZ 2004, pp. 169 et seqq.
132 Under German law (§§ 1025 et seqq. ZPO), arbitration clauses function as an exclusion of the state courts’ jurisdiction. See supra IV. 2.
133 See Netzé, Das internationale Sport-Schiedsgericht in Lausanne, in: Röhricht (ed.), Sportgerichtsbarkeit, Stuttgart 1997, pp. 9 et seqq.; Hilpert (fn. 55), pp. 341 et seqq.; Monheim (fn. 75), pp. 381 et seqq.; Oechtitz (fn. 78), pp. 43 et seqq. describes the composition, the jurisdiction and the course of proceedings of CAS.
134 Oechtitz (fn. 78), p. 130
136 SporRt 2009, pp. 157 et seqq.
CAS’s right to final decision was thrown into doubt by a judgment rendered by the Swiss Federal Supreme Court on the 22nd of March, 2007. For the first time, a CAS decision was overturned by a state court. CAS had suspended Argentinian tennis pro Guillermo Canas for fifteen months on account of a doping offence. The athlete appealed the case to the Swiss Federal Supreme Court despite the fact that such an appeal was expressly ruled out by the ATP regulations. The court decided that the waiver (based on Art. 192 of the Code on Private International Law) was invalid and that the action was therefore admissible. Unlike parties to a conventional commercial contract, athletes and associations did not find themselves in a horizontal, but in a vertical relationship. Athletes were inevitably faced with an unpleasant choice between accepting the association’s conditions and foregoing their right to engage in sports professionally. A valid waiver would require a degree of freedom of choice: agreement to an exclusion clause could only be said to be voluntary if the athlete was allowed to participate irrespective of it. Since an assumption of voluntary consent seems quite far-fetched in professional sports, any waiver pursuant to Art. 192 of the Code on Private International Law would, on this view, have to be considered inadmissible. In its subsequent decision and based on the opinion of the Swiss Federal Supreme Court, the CAS imposed a 15-month ban upon Canas and, in doing so, confirmed its first arbitral verdict.

VI. Multiplicity of Effects - Illustrated by Reference to Sponsoring

It is a feature of sports law that, quite frequently, a large number of persons are directly or indirectly affected by statutory or contractual regulations, creat-

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139 Oschütz, Jusletter June 4, 2007, margin number 11, also arrives at this conclusion. Accordingly, in the aftermath of the case, several arbitral verdicts of the CAS were challenged in the Swiss Federal Court of Justice. The most prominent case to date is probably the “Pechstein” case. In its judgment of 25.11.2009 (CAS 2009/ A/ 1912, SpRt 2010, p. 71 with comment by Emanuel, SpRt 2010, pp. 77 et seqq.), the CAS accepted indirect evidence of doping for the first time as the basis for a competition ban of several years by the ISU upon the speed skater, Claudia Pechstein. The Swiss Federal Supreme Court initially granted Pechstein’s application for an injunction (CaS 2009, pp. 368 et seq.) and allowed her to participate in the Olympic Game qualifiers by means of an interim injunction. Ultimately, however, the complaint against the court of arbitration’s decision was disallowed in the proceedings of 10.02.2010. Cf. the proceedings to date CaS 2010, pp. 3 et seqq. (with comment by Reissinger).

140 SpRt 2007, pp. 244 et seqq.
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ing the potential for multiple conflicts. This may be illustrated by reference to sponsoring: usually, we understand the term “sponsoring” to mean the allocation of money and products as well as services by companies to persons and organisations in sporting, cultural, social or ecological fields for the entrepreneurial aim of marketing or communication.\(^\text{141}\) For this purpose, a sponsoring contract, which directly affects the sponsor and the sponsee, is concluded. Whereas the sponsee profits by taking in money, the sponsor hopes for additional revenue from a positive “image transfer”.\(^\text{142}\) The economic importance of sponsoring is immense in commercial and professional sports. Alongside ticket sales, merchandising, and the marketing of TV rights, sponsoring agreements represent one of the main sources of income for promoters. For example, 15 firms paid up to 45 million Euro each to become official partners of the FIFA World Cup 2006.\(^\text{143}\) During the 2010 World Cup, the six official FIFA partners for marketing and other rights paid about 110 million Euro each.\(^\text{144}\) Nine firms are currently named as so-called TOP sponsors\(^\text{145}\) of the IOC for the Olympic Games in Vancouver in 2010 and those in London in 2012. These are expected to spend a total of 883 million US dollars on the games.\(^\text{146}\) Manufacturers of sporting goods are also increasing their engagement in the area of sponsoring by developing new sponsoring concepts. Adidas, for example, will produce a uniform “Liga-ball” for the first and second Bundesliga for the first time in the 2010/11 season and will pay the 36 professional clubs about 25 million Euro in total over a period of five years. Naming rights are becoming more and more important as the (re-)naming of football stadiums in Germany shows. The Munich “Allianz Arena” is one example.\(^\text{147}\)


\(^{142}\) For a detailed account of the aims of sponsors, see Weiand, Der Sponsoringvertrag, Munich 1999, pp. 5 et seq.; Wegner (fn. 141), pp. 39 et seq.

\(^{143}\) Hamacher, SpuRt 2005, p. 55.

\(^{144}\) Cf. Wittneben, GRUR-Int. 2010, p. 287 (p. 288).

\(^{145}\) TOP is the abbreviation for “The Olympic Partners”.

\(^{146}\) http://www.reuters.com/article/idUSTRE60B5KT201009112 (last accessed September 1, 2010); IOC 2010 Olympic Marketing Fact File, p. 14 (http://www.olympic.org/Documents/IOC_Marketing/IOC_Marketing_Fact_File_2010%20r.pdf (last accessed September 1, 2010). The IOC, however, is trying to win another TOP sponsor for the 2012 Olympic Games in London in order to exceed the 1 billion US dollar mark.

\(^{147}\) According to Wittneben, GRUR 2006, p. 814 (p. 814) twelve of the eighteen Fußball-Bundesliga associations play in a stadium named after the sponsor. Out of 119 stadi-
VI. Multiplicity of Effects - Illustrated by Reference to Sponsoring

Another recent example is provided by the sale of naming rights to Toyota by the Handball-Bundesliga, which has been officially known as the TOYOTA Handball-Bundesliga since the 2007/08 season.\textsuperscript{148} Although the German Football Bundesliga does not yet have a “name sponsor”\textsuperscript{149}, many European football leagues do, some of which generate considerable profit. For example, Barclay’s Bank sponsors the English Premier League ("Barclay’s Premiership") to the amount of 30 million Euro per year.

The following figure illustrates that – apart from sponsor and sponsee – many third parties are indirectly affected:

For the athletes and clubs of a sponsored club or association – i.e. for those connected with the sponsee through the pyramid of sports associations – a number of questions arise concerning; their share in the bargain, their advertis-

\begin{footnotesize}\begin{enumerate}
\item Cf. FAZ, 17.08.2007. Toyota pays an estimated 2 Million Euro per season for this right.
\item Deutsche Telekom AG did acquire an option for the naming rights as of the 2007/08 season, but allowed these to lapse, unused, cf. SZ, 16.02.2007, pp. 15, 28.
\end{enumerate}\end{footnotesize}
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...ing duties150 or, conversely, their duty to refrain from advertising151. Similarly, the promoter is indirectly affected (if he is not the sponsee). Conflicts of interest – concerning the amount of remuneration, stadium publicity and marketing – may also arise in relation to the owner of the sports ground (if he is not the promoter of the event). The promoter’s interests compete with the interests of the media, especially those of television companies, to gain the highest possible revenue from advertising in order to recoup their investment in the purchase of TV rights.152 This last scenario shows that the interests of those concerned may also run parallel to each other: a positive viewer response increases the advertising revenue for both the promoter and the media, for instance.153 Agencies work in this complicated market, supporting sponsors, sponsees, and

150 See Reichert (fn. 141), pp. 45 et seqq.
151 The extent to which athletes and associations owe loyalty to the sponsor must also be addressed. An example of this is the row over costumes between German swimmers and the DSV at the 2008 Short-Course European Championships. Many athletes were extremely critical of Adidas’ swimsuits which were, apparently, not suited to competitions, whereupon Adidas terminated its supplier contract with the DSV without notice, cf. FAZ, 18.12.2008, p. 32.
152 The potential for conflict between promoter and the media became evident during the Tour de France 2007. German television companies ARD and ZDF stopped their live reports after several cases of doping were detected. Sat 1 and Pro Sieben took over, but with disastrous results (a market share of only 5.6% decidedly below par). See SZ, 26.07.2007, p. 17.
153 The extent of the occasional influence of the media on sports associations was apparent in the case of the German showjumper, Christian Ahlmann who, in the Olympic Games, used a “banned substance” on his horse, Güster, and was subsequently banned from the FEI for four months. The broadcasters ARD and ZDF demanded that the FN impose effective measures against this infringement. At this point, the FN feared a withdrawal of television channels from showjumping. Against this background, the penalty imposed by the FEI appeared to be too lenient. The FN filed an appeal on the facts with CAS, whereupon the ban was extended to eight months. Cf. FAZ, 25.10.2008, p. 30; FAZ, 15.08.2009, p. 28.


The correlation between the interests of sponsors, organisers and the media as well as the connected risk potential is apparent in the cases of Emig and Mohren. Both Jürgen Emig, former head of sports of the regional broadcaster HR, and Wilfried Mohren, former head of sports of the regional broadcaster MDR, received considerable amounts of money in bribes from organisers and sponsors in order to ensure that their sports events would be broadcast in preference to others. Emig is said to have received 625,000 Euro in total, Mohren, 330,000 Euro. Emig was sentenced to two years and eight months imprisonment for corruption, breach of trust and the aiding and abetting of bribery. Mohren received a suspended sentence of two years imprisonment for corruption, fraud, the acceptance of benefits and fiscal evasion. Cf. BGHSt 54, 202; FAZ, 01.10.2009, p. 37.
VI. Multiplicity of Effects - Illustrated by Reference to Sponsoring

the media in finding suitable partners and in bargaining over and closing contracts.154 Finally, the interests of spectators are at stake. If tickets are handed out to sponsors in advance and never reach the market, the public demand for seats may not be met or stadiums may remain half empty.155

While there used to be a lack of binding rules in this area (despite competing interests and the consequent potential for conflict)156, most sports associations have now integrated such rules into their statutes and regulatory instruments.157 The DFL “Rules on the Exploitation of Commercial Rights”, for instance, contain a subsection headed “Marketing Rights in Sponsoring and Special Forms of Advertising” where relations between the “Ligaverband” and its members – the clubs of the first and second “Bundesliga” – are regulated as far as sponsoring is concerned.158 The legal relations between the parties most immediately affected, however, are regulated mainly by contract.159 Sponsoring contracts between sponsor and sponsee can relate to individual events, to sporting equipment and sportswear, as well as to licences concerning trademarks and similar matters.160 Usually, the desired sponsoring money can only be obtained by granting the sponsor exclusive marketing rights in return. This may be done by assigning trademarks.161 However, trademark protection is difficult to attain because these designations are usually purely descriptive. This is particularly true in the case of the designation of big sporting events (such as

154 Vieweg, SpaRe 94, p. 6 (p. 10); Weiand (fn. 142), pp. 14 et seqq; Wegner (fn. 141), pp. 63 et seqq.

155 The distribution of so-called VIP tickets by the sponsors among business partners and, in particular, public officials can also throw up fiscal risks and the danger of being prosecuted for a criminal offence. For instance, Utz Claassen, the former chairman of the board of the energy provider, EnBW was charged with the granting of undue advantages because before the 2006 World Cup, he had sent tickets to the event to members of government in Baden-Württemberg responsible for making decisions which materially affected the company. Claassen was eventually acquitted because it could not be proven that he wanted to influence the government officials’ decision-making by making gifts of the tickets, cf. BGHSt 53, 6; Staschik, Rechtliche Grenzen der Kon taktpflege im Sport, SpaRe 2010, pp. 187 et seqq.

156 Cf. Vieweg, SpaRe 1994, pp. 73 et seqq.

157 On the permissibility of such rules generally, Reichert (fn. 141), pp. 36 et seqq; Bracht/Meldäger (fn. 141), vol. II, pp. 43 et seqq.

158 See § 12 OVR and in respect of the distribution of the sponsoring monies § 19 OVR.

159 See Weiand (fn. 142); Wegner (fn. 141).


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“Olympics” or “World Cup 2006”). Thus, when the city of Leipzig applied (unsuccessfully) to host the Olympics, a special “Law to Protect Olympic Symbols and Designations” was passed in order to guarantee the level of protection demanded by the IOC as a prerequisite for application.163 Shortly before the Football World Cup in Germany, two decisions of the Federal Court of Justice concerning trademark protection attracted public attention. The Federal High Court164 decided that registration of the trademark “Fußball WM 2006” was “insufficiently distinctive” as defined by § 8 II Nr. 1 MarkenG and had to be erased. In a further decision in the lead-up to the 2010 World Cup in South Africa, the BGH165 imposed severe restrictions upon FIFA’s trademark rights and denied the global football federation’s claim for cancellation against the sweet manufacturer, Ferrero, on points of trademark law as well as ones of competition law.

VII. Sports as a Cross-Sectional Matter

The growing commercialisation and professionalism of sports have led to conflicts the solutions to which must be drawn from various branches of law. Sports affect all branches of national law as well as European law. “Sports and”-disciplines – like sports and commercial law, sports and labour law, sports and media law, sports and tort law, sports and the law of associations, and sports and constitutional law, to cite only a few examples – make up the multi-faceted matter of sports law. Relations between promoters, associations, athletes, and fans are governed by private law.166 Claims in contract and claims in tort have to be derived from the norms of the BGB. The marketing of big sports events, especially the transfer of marketing and commercial rights to the

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163 For the legal reasoning, see BT-Drs. 15/1669, p. 8. From the beginning, there was doubt whether the OlympSchG was constitutional. LG Darmstadt, SparRt 2006, pp. 164 et seqq. and Degenhart, AIP 2006, pp. 103 et seqq., believe it to be unconstitutional. Contra Nieder/Rauscher, SparRt 2006, p. 237 (pp. 238 et seqq.).
166 Cf. as regards the admissibility of a Federal Republic-wide stadium ban for (potential) hooligans BGH SparRt 2010, pp. 28 et seqq. with comment by Breucker.
media, is based on private law (BGB, UWG, UrhG etc.), too. In addition, administrative law can apply if, for instance, security measures are to be taken against clubs or fans. The prevention of danger (police and safety law) often plays an important role, especially as far as big sports events are concerned. As for constitutional law, an athlete’s fundamental rights may be at stake where sanctions imposed on him or her (e.g. disqualification or suspension) are in question. The rules of an association and the measures taken in a particular case must be compatible with the athlete’s freedom of profession as defined by Art. 12 GG. Finally, criminal law is time and again the focus of public attention. The recent “game fixing” scandal in German soccer (criminal aiding and abetting of fraud as defined by § 263 StGB) concerning referee, Robert

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169 In addition to freedom of profession, the personal rights of the athlete enshrined in Art. 2 I in conjunction with Art. 1 I GG may be affected. One need only think of the case of the 800 metre sprinter, Caster Semenaya of South Africa who, subsequent to her superb victory in the 2009 track and field World Championships in Berlin was the subject of a worldwide public discussion of her gender – initiated by the actions of the IAAF – of her gender, cf. FAZ 27.09.2009, p. 20.

170 Hoyzer was requested by a “betting mafia”, of which the Sapina brothers were part, to manipulate the Bundesliga- and DFB Championship games which they had betted upon in order to realise higher betting proceeds. The issue of whether the making of a manipulated bet was criminal fraud or only a “non-criminal racket”, as the Federal Public Prosecution viewed it, was contentious. At final instance, the BGH ruled that fraud had taken place, BGHSt 51, 165. Cf. also Jahn/Maier, JuS 2007, pp. 215 et seqq.; Engländer, JR 2007, pp. 477 et seqq.; Valiger/Rümann/Kirchheim, NSZ 2007, pp. 361 et seqq.; Radtke, Jura 2007, pp. 445 et seqq. At the end of 2009, a further Europe-wide football
Hoyzer, the ever-relevant hooligan problem (especially §§ 223 et seq., 123 StGB), and the recurring debate concerning the pros and cons of having an anti-doping code spring to mind.

VIII. Doping

There is hardly another topic that – for decades – has raised the tempers of sports enthusiasts as much as the problem of how to combat doping. Over the years, the efforts of national and international sports associations have created a complicated patchwork of competences, methods of control and analysis, lists of prohibited substances, sanctions, and remedies. The “Krabbe”173, Baumann”174 and “Pechstein”175 cases (of particular relevance to Germany) and the instructive “Roberts”176 case may serve as examples. WADA and the World Anti-Doping Code mark an important step towards harmonisation. Yet both international comparison and a comparison of the different disciplines


172 Even with the introduction of a new anti-doping law which stops short of making doping a criminal offence, the debate still rages on. Bavaria has recently put a new citizen’s initiative for a Protection of Sports Act into action and has drafted a corresponding bill. See infra VIII. 4.

173 Führungs-Akademie des Deutschen Sportbundes e.V. (ed.), (fn. 75), pp. 211 et seqq. gives a chronological account of the Krabbe-Cases I-III.

174 For a documentary of the facts, Huug, SpRu 2000, p. 238; for more detail see Adolphson, SpRu 2000, pp. 97 et seqq.

175 Cf. Fn. 139.


177 See Hieber (fn. 55), pp. 326 et seqq. for a list of all doping offenders.
show that substantial differences in regulations, especially with regard to doping controls during training, remain. Furthermore, not all sports organisations have accepted the WADA Code as binding. The amount of legal literature dealing with the doping problem has grown to immense proportions. In view of the current developments, further discussions at national and international level are sure to follow. In the 2008 Tour de France, Stefan Schumacher and Bernhard Kohl had positive doping tests. This was also the case for Patrik Sinkewitz and Alexander Winokurow during the 2007 Tour de France. In the same year, then race-leader Michael Rasmussen was suspended. Also of note is the confession to doping by Floyd Landis, whose 2006 victory was disallowed. As to horseriding, there have been positive tests for doping in the case of Isabell Werth and Christian Ahlmann. The “Pechstein” case is a further example. The most pressing question, however, is whether sports fraud should become a criminal offence.

1. The Aims of the Ban on Doping

The ban on doping is intended to achieve three things: equal opportunities and fair play, protection of athlete health, and continued respect for sport.
2. Anti-Doping Measures

The most important tool in the fight against doping is the establishment of a comprehensive system of control. This calls for both “in-competition” and “out-of-competition” controls. “In-competition” controls at the national level have been carried out since 1968. Rigorous “out-of-competition” controls were introduced in 1990. Since its establishment in 2003, the National Anti-Doping Agency has been responsible for organising anti-doping controls in Germany. The number of in-competition controls in 2009 was approximately 2,500 per year and that of out-of-competition controls, easily about 3,700. Athletes are selected either systematically or at random and asked for a blood or urine sample. In general, there is no prior warning. A problem arises if the athlete is not available, which, in the past, occurred, despite detailed reporting obligations, in up to 20% of cases. For this reason, detailed notification requirements for athletes (so-called Athlete Whereabout Requirements) were introduced as of 01.01.2009 in the new World Anti-Doping Code. Pursuant to Fig. 11.1.3, all top-level athletes who are part of the “Registered Testpool” must disclose in advance where they are resident and where they will be training in the following year as well as the competitions in which they intend participating. The National Anti-Doping Organisation or, as the case may be, the international sport association must be notified immediately of any – even minor – changes. Furthermore, Fig. 11.1.4 contains an obligation for the athletes to provide a window of 60 minutes per day in the following quarter during which they must make themselves available for doping tests at a particular place. Any infringements of the notification requirements contained in the WADA Code can result in severe penalties (ban from competing) for the athletes. In light of the massive infringement of the athletes' personal freedom, it
is often asserted that the WADA provisions are legally impermissible.\textsuperscript{190} A multitude of international sports associations – FIFA and UEFA amongst others – reject the system of notification required by WADA as being disproportionate.\textsuperscript{191}

The analytic procedures used by accredited laboratories have become progressively more accurate over the years. In some instances, athletes who did not expect to be found out were convicted, either because of the time lapse since taking the drug or because they had taken a “masking” substance. Still, the pressure to keep up with new developments continues as doping analysts confront new and harder-to-trace drugs.\textsuperscript{192}

3. Sanctions

Sanctions for doping offences are usually imposed by the national or international sports association responsible for the case in question. Sanctions by state agencies exist in only a handful of countries. The sanctions available to sports organisations are (1) disqualification of the athlete concerned and (2) forfeiture. There are also fines\textsuperscript{193} – which can be substantial – and bans, the duration of which depends on whether the athlete involved is a first-time or a repeat offender. Problems in this context are posed by the need to ensure proportionality between the doping offence and its punishment and by the question of whether fault is a necessary element of liability.\textsuperscript{194}

\textsuperscript{190} For example, by Musiol, SpaRt 2009, pp. 90 et seqq.; Karff, SpaRt 2009, pp. 94 et seqq.; Schaar in: FAZ, 04.03.2009, p. 28. Cf. general discussion of the area Niewalda, Dopingkontrollen im Konflikt mit allgemeinem Persönlichkeitsrecht und Datenschutz, Berlin 2011 (being printed).

\textsuperscript{191} Cf. FAZ, 21.03.2009, p. 27. The indirect proof of doping by abnormal blood values – as in the case of Pechstein – has been fiercely debated, cf. FAZ, 06.07.2009.

\textsuperscript{192} For example, a limited method of proving gene-doping has only recently become available, cf. FAZ, 21.03.2009, p. 27. The indirect proof of doping by abnormal blood values – as in the case of Pechstein – has been fiercely debated, cf. FAZ, 06.07.2009.

\textsuperscript{193} The Tour de France 2007 cyclists had to sign a declaration by UCI to pay a fine of one year’s earnings in addition to the usual suspensions in case of a doping offence. On the validity of a declaration of obligation, cf. Babners/Schöne, SpaRt 2007, pp. 227 et seqq.

\textsuperscript{194} See Petri (fn. 179), pp. 208 et seqq.
An athlete may appeal the imposition of a sanction to the internal review system of the sports organisation concerned or to a court of arbitration, such as, for instance, CAS. Recourse to the state courts is increasingly being cut off by arbitration clauses.\(^{195}\)

### 4. Anti-Doping Code?

Doubts concerning the efficacy of leaving the fight against doping in the hands of sports organisations have led to calls for legislative intervention. There was and still is disagreement over whether the regulation of the subject matter previously contained in §§ 6a I, 95 I Nr. 2a of the Drug Act (AMG) was sufficient\(^{196}\) or whether “sports fraud” should be made a crime\(^{197}\) (§ 263 of the Criminal Code, criminalising fraud in general, is commonly\(^{198}\) believed not to

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\(^{196}\) Linck, NJW 1987, p. 2545 (p. 2551); Heger, JA 2003, p. 76 (pp. 79 et seq); Pukrop, SpRt 2006, pp. 192 et seqq.; for a detailed account of the preconditions for imposing a penalty under AMG and BtMG, see Schild, Sportstrafrecht, Baden-Baden 2002, pp. 169 et seqq. In favour of bringing doping offenders within the UWG regime, Frisinger/Summerer, GRUR 2007, pp. 554 et seqq.


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apply to this situation). Critics of the proposal worry about an undue curtailment of the autonomy of sports organisations, a conflict with the traditional principle of strict liability, and an undesirable criminalisation of athletes. They also point out that the proposed legislation would probably not be of much use in practice (because of the heavy workload of policemen and public prosecutors) and that the relevant sections of the AMG already make it possible for police and prosecuting authorities to intervene. They believe that a tightening-up of the drug laws would be sufficient to render the fight against doping more effective. The legislature agreed and confined itself to an amendment of the Drug Act. The statute imposes penalties of up to ten years for commercially trafficking doping substances. The mere fact of possessing certain common – and especially dangerous doping substances may result in penalties if the amounts found far exceed those needed for private consumption. This statutory provision does not go far enough for Bavarian State Government in particular. It recently prepared a new draft for a statute to combat doping and corruption in sport. The draft provides that not only possession and dealing in doping substances will be penalized, but also participation in competitions under the influence of doping substances and bribery as well as the bribing of participants, trainers and referees. It remains to be seen if and in what way the legislature will lead to improvements in this field.

199 Thomas Bach, president of the DOSB, sees no need for further measures in the fight against doping. Academics, too, are, for the most part, not in favour of penalising doping; see, e.g., Dury, SpRt 2005, pp. 137 et seq.; Jahn, SpRt 2005, pp. 141 et seq.; Fröhms, FoR 2003, pp. 52 et seq.; Krähe, SpRt 2006, pp. 194 et seq.; Heger, SpRt 2007, pp. 153 et seq., takes a more differentiated view but also disapproves of penalising out-of-competition doping.

200 The German Bundestag passed the law on July 5, and it was published in the Bundesgesetzblatt on the 31.10.2007. Thus, the more stringent rules against doping came into force on the 01.11.2007.

201 In relation to the punishment of blood doping in accordance with the amended AMG, cf. Reuter, SpRt 2008, pp. 145 et seq.

202 The draft is printed in SpRt 2010, pp. 104 et seq. It has attracted support (König, SpRt 2010, pp. 106 et seq.) as well as opposition (Kudlich, SpRt 2010, pp. 108 et seq.; Beukelmann, NJW-Spezial 2010, pp. 56 et seq.; Bantelberg, SpRt 2007, pp. 155 et seq.) also follows the same line as the Bavarian State Government. She calls for the creation of a section 298a BGB in order to combat “sports fraud”.

203 For the many questions in this context, see Vieweg, SpRt 2004, p. 194 (pp. 195 et seq.).
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IX. Liability Issues

1. The Basics of Liability

Sports tend to put people in physical proximity with each other, whether voluntarily or involuntarily. Professional sports in particular are characterised by a network of relationships between athletes, clubs, associations, organisers, owners of venues, and spectators. Given the many points of contact, conflicts are bound to arise. It is hardly surprising, therefore, that the courts have been swamped with cases which give rise to liability issues in a sports context.

Initially, these cases tended to feature ski accidents. They usually raised issues of liability in tort. Liability pursuant to § 823 I BGB requires the tortfeasor to have breached a duty of care. Since the standard of care expected of skiers has never been codified, the task of formulating an appropriate standard is left to the courts. The FIS rules for skiers, first drawn up in 1967, are helpful in this regard (not only for judges with no personal experience of skiing). As rules set by a private body, they are not legally binding. However, they are generally regarded as defining the applicable standard of care. The dogmatic justification advanced in support of this power to define the standard of care differs. Some point to the fact that the FIS rules are accepted by the general public as being the expected standard of care, others go so far as to treat them as customary law. As with the FIS rules, the rules of other sports organisations concretise the applicable standard of care and thus modify the gen-

204 See e.g. OLG Karlsruhe NJW 1959, pp. 1589 et seq.; OLG Stuttgart NJW 1964, pp. 1839 et seq.; BGH NJW 1972, pp. 627 et seq.; more recently, OLG Hamm NJW-RR 2001, pp. 1537 et seq.; OLG München NJW-RR 2002, pp. 1542 et seq.; LG Ravensburg SpaRt 2008, pp. 39 et seq.; a general account of Austrian and German jurisprudence on skiing accidents, see Pichler/Fritzweiler, SpaRt 1999, pp. 7 et seq. The case of the prime minister of Thuringen, Althaus, is a well-known example. Althaus was sentenced to a fine in summary proceedings for involuntary manslaughter which occurred as a result of a skiing accident in Austria, FAZ, 05.03.2009, p. 4.

205 Available at http://www.fis-ski.com/de/fisintern/allgemeinregelnfis/10fisregeln.html (last accessed September 1, 2010).

206 The FIS rules were amended in 1990 and 2002. For the 2002 update, see Pichler, SpaRt 2003, p. 1 et seq.

207 BGHZ 58, 40 (43 et seq.); BGH NJW 1987, p. 1947 (p. 1949); OLG München SpaRt 1994, p. 35 (p. 36); Herrmann/Güth, NJW 2003, p. 3253 (pp. 3253 et seq.); Me-Ko-Wagner, BGB, 5th edition 2009, § 823 margin number 555.

IX. Liability Issues

ceral principles of tort liability.

Liability issues surrounding sporting events have proved to be another field for litigation. Event organisers face comprehensive duties of care. Clubs and associations may become liable to each other and to their members in contract or in tort. Finally, spectators and even third parties may feature in liability scenarios. Arriving at a workable solution to these situations of conflict calls for sensitivity to the sports context, since an application of general rules would frequently lead to unsatisfactory results.

2. Typical Cases

Traditionally, jurisprudence and legal scholars have classified the multitude of cases of liability in a systematic manner.

a) Liability of Clubs and Club Committees

Clubs follow the general rule of liability. Where the club has entered into a contract – with athletes, spectators, or sponsors – it may be liable pursuant to §§ 280 et seqq. BGB for culpably (§ 276 I BGB) breaching its contractual duties. In this context, the club has to answer for the culpable behaviour of its committee members (§ 31 BGB) and for the culpable behaviour of any other person it employs in discharging its contractual duties (§ 278 BGB). In practice, liability in tort tends to be more of a problem. A club owes a duty of care to all those coming into contact with its sporting activities. The duty varies depending on the type of sport in question and the size and the degree of professionalism of the event concerned. The volenti principle applies to all typical injuries. These injuries are outside the club’s sphere of responsibility (even if there is no contractual exclusion clause).

The dogmatic justification for this exclusion of liability differs. Some point to the principle enshrined in § 254 BGB (volenti non fit injuria). Others modify the definition of negligence pur-

210 Cf. e.g. Scheffen, NJW 1990, pp. 2658 et seqq.; and Vieweg Haftungsrecht, in: No
te/Horst (eds.), Handbuch Sportrecht, Schorndorf 2009, p. 123 (pp. 128 et seq).
212 This is controversial: see § 278 BGB and Staudinger-Wück, BGB, Berlin 2005, § 31 margin number 3; Flume, Die Personengesellschaft, Heidelberg 1977, pp. 321 et seq.; MülKo-Reuter (fn. 79), § 31 margin number 32.
214 On the possibilities of and limits upon contractual exclusions of liability, Heermann (fn. 211), pp. 78 et seq.
suant to § 276 I BGB. According to these scholars, certain types of behaviour should not be considered negligent based on a “sports-specific interpretation” of the term negligence. Other authors do not consider this behaviour to be unlawful at all. The courts, on the other hand, usually resort to the catch-all provision of § 242 BGB and accuse the tort victim of inconsistent behaviour (venire contra factum proprium) if he voluntarily exposes himself to a risk of danger and yet tries to recover damages once the risk has materialised. Atypical and concealed risks are an entirely different matter. A club is required to take reasonable precautions against these. An orientation regarding duties of care can be found in the relevant rules and regulations of sports associations (e.g. the International Ski Competition Rules) or, more generally, in the relevant rules for accident prevention of the so-called Verwaltungsberufsgenossenschaft (German Accident Prevention and Insurance Association, Section Administration).

Where third parties are injured, a board member may be found personally liable as well as the club. Committee members may also become liable to the club itself. Conversely, there may be situations, where the club is found to be liable to its board members.

b) Liability of Organisers

The above applies, mutatis mutandis, to the organisers of a game. It is often difficult to resolve the preliminary issue of who is organising a game. The

217 See Lange, Schadensersatz, § 10 XV 4, pp. 645 et seq.
218 Heermann (fn. 211), p. 57 et seqq.
219 See, e.g., BGHZ 63, 140 (144 et seqq.); see also Füllgraf, VersR 1983, p. 705 (p. 710).
220 Clubs organising competitions have to take precautions to prevent hooliganism, see AG Koblenz SpaRt 2006, p. 81. Trespassing must be prevented, see DFB-Sportgericht SpaRt 2006, p. 87.
221 See Pichler, SpaRt 1994, p. 53 (pp. 54 et seqq.).
222 For possible constellations, see Heermann (fn. 212), pp. 82 et seqq. In this connection, the new regulation contained in § 31a BGB must be observed, in accordance with which any honorary members of the board in an internal relationship to the club are responsible only where intention and/or gross negligence are present. Cf. Orth, SpaRt 2010, pp. 2 et seqq.
223 For a detailed treatment of the matter, cf. Vieweg/Röhl, SpaRt 2010, pp. 56 et seqq.; see also Föllmer, MDR 1995, pp. 541 et seqq. The matter of the organiser’s responsibility
organiser may, but need not be the home club. “Organiser” is defined by the courts as someone who is responsible for preparing and conducting a game and who bears the financial risk. In its “Europapokalheimspiele”-ruling, the BGH treated UEFA, rather than the German soccer federation as (co-) organisers. This would lead to the classification of the DFL as co-organisers of the German soccer championships. Apart from owing contractual duties, organisers may owe a duty of care in tort. Thus, organisers must ensure that spectators are not hit by stray ice hockey pucks or footballs. They may also have to restrain attacks by fellow spectators.

c) Liability of Associations

Liability for unlawfully withholding or revoking a licence is especially relevant in this context. Without a licence, an athlete cannot participate in a sports competition. For the applicant, the effect of being refused a licence or of having an existing licence revoked is equivalent to being placed under a (temporary) de facto ban: he is denied access to potential sources of revenue (television, sponsoring, marketing and spectators). This frequently threatens an athlete’s livelihood with the result that licence disagreements are almost bound to end up in court. If the court decides that the licence was unlawfully terminated or withheld, the damages awarded can be considerable. In addition to being

arose in the “Zugspitzlauf” case, for example. During the 2008 “Zugspitzlauf” race, two men died due to hypothermia and exhaustion caused by a storm. The Public Prosecutor proceeded on the basis that the organiser had not paid heed to its duty of care because it had been warned of the storm before it occurred. Garmisch-Partenkirchen Local Court, however, acquitted the organiser of the charge of involuntary manslaughter due to the victims’ own responsibility for their endangerment, FAZ, 02.12.2009, p. 9.

227 BGHZ 27, p. 264 (p. 266); B KartA SpRt 1995, p. 118 (p. 121).
228 BGHZ 137, pp. 296 et seqq.
229 BGH NJW 1984, p. 801 (p. 802); OLG Celle SpRt 1997, pp. 203 et seqq., with an annotation by Blum.
230 OLG Schleswig-Holstein SpRt 1999, pp. 244 et seq.
232 In addition to the responsibility of the sports association, the auditor involved is generally also found to be liable, see Hermann (fn. 232), pp. 13 et seqq., who also deals with further third parties who may also be liable.
required to answer for their own culpable behaviour, sports clubs or associations may become vicariously liable for the negligent acts of third parties (such as referees234).

d) Liability of Athletes

Liability issues typically arise where one competitor is injured through the act of a fellow competitor. These “competitor-caused injuries” (Mitspielerverletzungen) have come before the courts on several occasions over the past few decades.235 The cases usually revolve around the question of how stringent a duty of care is owed by fellow competitors towards each other. The usual standard of care – that one is liable for any negligently inflicted injury (§ 276 I 1 BGB) – does not really fit the context of sports. When it comes to the observance of the rules of the game, it seems inappropriate to make the person who causes the damage reimburse the victim for any and all injuries sustained. The rules of the game – the FIS rules referred to above, for instance – serve to modify the applicable standard of care.236 Generally, liability is also limited where the rule infringement is minor and a typical risk of the sport – in cases where athletes get carried away by zeal for the game, are momentarily inattentive, or are worn out by fatigue, for example.237 It is only when it comes to the matter of the legal basis for limiting liability in such cases that there is a (considerable) divergence of views. While some point to the above-mentioned modification of the standard of care, others put forward doctrines like consent238, volenti non fit iniuria (cf. § 254 BGB)239, or abuse of process.240

234 Cf. in this context the recent “Hoyzer” case. Eufe, SpoRt 2006, pp. 12 et seqq.; Eufe does not think that the DFB is answerable for the negligence of the referee. He says that the DFB should only have general liability for negligence in the area of its own selection and control.
236 Scheffen, NJW 1990, p. 2658 (p. 2659).
238 The concept of consent, which would act as a defence, is dismissed by the BGH as an “artificial assumption” which can, if need be, only be applied to extremely dangerous types of sports such as car racing; cf. BGH NJW 1975, p. 109 (p. 110).
IX. Liability Issues

sum up, competitors only become liable to fellow-competitors if they cross the “unfairness” threshold. The matter of where that threshold lies is a one that cannot be determined in the abstract, but has to be considered anew in each individual case, taking due account of the special characteristics of the sport concerned.

Similar limitations on liability apply where an athlete injures a member of staff or a spectator. Staff members and spectators voluntarily expose themselves to a risk of injury and are therefore less deserving of legal protection than third parties. As against third parties, the ordinary rules of tortious liability apply. Athletes may also become liable to clubs, associations or sponsors.

e) Liability of Spectators

Spectators may become liable when actively intervening in a game or other sports contest. One high-profile example is the case of Monica Seles, who was stabbed on the tennis court by a spectator using a 13-cm-long knife. A spectator who physically attacks and injures an athlete is liable in tort pursuant to

240 BGHZ 34, 355 (363); BGH NJW 1975, p. 109 (p. 110).
241 Even though an express limitation of liability to cases of intention and gross negligence may be agreed upon in individual cases, there exists, nonetheless, the possibility of review in accordance with § 307 BGB in the case of combative sports and competitions with which the risk of considerable danger is associated. Cf. BGH SpaRt 2009, pp. 122 et seqq.
242 OLG Hamm SpaRt 2006, pp. 38 et seq.; LG Freiburg SpaRt 2006, pp. 39 et seq.; OLG Hamburg SpaRt 2006, pp. 41 et seq. AG Düsseldorf SpaRt 2007, pp. 38 et seq. These principles have been of equal application to both contact and non-contact sports since the car race decision of the BGH (BGHZ 154, pp. 316 et seqq. = NJW 2003, pp. 2018 et seqq. = SpaRt 2004, pp. 260 et seqq.). The decisive issue is that the sport in question carries a high risk of injury. See Behrens/Rühle, NJW 2007, p. 2079 (p. 2080).
243 According to recent decisions of the BGH, (SpaRt 2008, pp. 119 et seqq.), an exclusion of liability in the event of minor infringements of regulations does not come into play if and insofar as insurance protection exists. The existence of personal liability insurance does not, however, form a basis for claims – the injured party must always prove that the injuring party has undergone a breach of his duty of care. Cf. BGH NJW 2010, pp. 537 et seqq.
244 E. g. boxing, a “physical” sport, has a different standard of care than tennis, where there is no bodily contact with the competitor. For a discussion of the different types of liability, see Herrmann (fn. 211), pp. 108 et seqq. For an analysis of liability in Asian combative sports, cf. Gänzl, SpaRt 2008, pp. 57 et seqq.
245 See Herrmann (fn. 211), pp. 128 et seqq.
246 For a comprehensive account, Herrmann (fn. 211), pp. 132 et seqq.
§§ 823 et seqq. BGB. This liability is invoked not only by intentional, but also by negligent acts of spectators. The liability of spectators, unlike the liability of fellow athletes, is not limited, because attacks by spectators are not part of the typical risk athletes implicitly assume in agreeing to take part in a game. Hooligans and “streakers”, too, must compensate third parties for any losses resulting from their unlawful behaviour.

X. Conclusion

Sports today no longer exist in a legal vacuum. The (pecuniary and non-pecuniary) interests of those involved are too important to be placed completely outside the purview of the law. Globalisation and professionalism as well as the commercialisation and the growing media interest in sports have made it impossible to resolve conflicts by trusting self-regulation alone. The final stage in the regulation of sport by and through law has not yet been reached. This is evident from the sustained efforts at harmonisation at international level and from the never-ending debate about the pros and cons of a German anti-doping code. Despite a genuine need for regulation, one should not lose sight of what is after all a key characteristic of sports – the fact that clubs and associations are in principle entitled to manage their own affairs and to do so autonomously. There must be a limit to the control exercised by the state courts where sports offer better and more effective solutions. Laying down the rules of the game and specifying sanctions for rule infringement, for instance, are matters integral to sports that must remain the exclusive preroga-

247 It is a different matter in the case of the promoter’s liability which was excluded in the Seles case due to a lack of foreseeability. LG Hamburg NJW 1997, pp. 2606 et seqq.; Mohr, SpaRt 1997, pp. 191 et seq.

248 For a similar view, see Heermann (fn. 211), p. 225.

249 Thaler, Hooliganismus und Sport, in: Arter/Baddeley (eds.), Sport und Recht, Bern 2006, p. 245 (pp. 261 et seq.). In accordance with §§ 280 I, 631 BGB, hooligans must compensate third parties (e.g. a club) for any losses; see Rostock SpaRt 2006, pp. 83 et seqq.; generally on the liability of spectators when trespassing unlawfully, AG Brake SpaRt 1994, pp. 205 et seq, annotated by Bür. As regards the admissibility of a stadium ban for (potential) hooligans extending across the Federal Republic, cf. BGH SpaRt 2010, pp. 28 et seqq.
X. Conclusion

tive of clubs and associations. The goal should be to strike an appropriate and fair\textsuperscript{250} balance between self- and legal regulation. It is precisely this delicate balancing act that makes sports law such an interesting and ever-evolving interdisciplinary area of law.

\textsuperscript{250} For more information on the term “fairness”, see supra (fn. 114) as well as Scher-rer/Ludwig (fn. 23), p. 110 et seq.
### List of Abbreviations

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<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>AcP</td>
<td>Archiv for die civilistische Praxis (Law Journal)</td>
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<tr>
<td>AfP</td>
<td>Zeitschrift für Medien- und Kommunikationsrecht (Law Journal)</td>
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<tr>
<td>AG</td>
<td>Amtsgericht (Local Court) bzw. Aktiengesellschaft (public limited liability company)</td>
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<td>AMG</td>
<td>Arzneimittelgesetz (Drug Act)</td>
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<tr>
<td>ARD</td>
<td>Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland (Consortium of public law broadcasting bodies of the Federal Republic of Germany)</td>
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<tr>
<td>Art.</td>
<td>Article</td>
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<tr>
<td>AufnahmeO</td>
<td>Aufnahmeordnung (Regulations regarding admission to DOSB)</td>
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<tr>
<td>BayVBl</td>
<td>Bayerische Verwaltungsblätter (on Bavarian Administration)</td>
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<tr>
<td>BGB</td>
<td>Bürgerliches Gesetzbuch (Civil Code)</td>
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<tr>
<td>BGHSt</td>
<td>Sammlung der Entscheidungen des Bundesgerichtshofs in Strafsachen (Judgments by the Federal Court of Justice – Criminal Division)</td>
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<tr>
<td>BGHZ</td>
<td>Sammlung der Entscheidungen des Bundesgerichtshofs in Zivilsachen (Judgments by the Federal Court of Justice – Civil Division)</td>
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<tr>
<td>BLSV</td>
<td>Bayerischer Landes-Sportverband e.V. (Bavarian Sports Association)</td>
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<tr>
<td>BT-Drs</td>
<td>Bundestagsdrucksachen (Legislative Materials)</td>
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<td>BrMG</td>
<td>Betäubungsmittelgesetz (Narcotics Act)</td>
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<td>Abbreviation</td>
<td>Full Form</td>
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<tr>
<td>BVerwG</td>
<td>Bundesverwaltungsgericht (Federal Administrative Court)</td>
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<td>CaS</td>
<td>causa sport (Law Journal)</td>
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<tr>
<td>CAS</td>
<td>Court of Arbitration for Sport</td>
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<td>CR</td>
<td>Computer und Recht (Law Journal)</td>
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<tr>
<td>DAR</td>
<td>Deutscher Akkreditierungsrat (German Accreditation Council)</td>
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<td>DEU</td>
<td>Deutsche Eiskunstgewerbekammer (German Ice-Skating Union)</td>
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<tr>
<td>DFB</td>
<td>Deutscher Fußball-Bund (German Football Association)</td>
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<td>DFL</td>
<td>Deutsche Fußball Liga (German Football League)</td>
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<td>DLV</td>
<td>Deutscher Leichtathletik-Verband (German Athletic Association)</td>
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<td>DOSB</td>
<td>Deutscher Olympischer Sportbund (German Olympic Association)</td>
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<tr>
<td>DÖV</td>
<td>Die öffentliche Verwaltung (Public Administration)</td>
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<tr>
<td>DSB</td>
<td>Deutscher Sport Bund (German Sport Association)</td>
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<td>DStR</td>
<td>Deutsches Steuerrecht (German Tax Law)</td>
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<tr>
<td>DSV</td>
<td>Deutscher Schwimm-Verband (German Swimming Federation)</td>
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<tr>
<td>EC</td>
<td>Treaty establishing the European Community</td>
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<td>ECHR</td>
<td>European Convention on Human Rights</td>
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<td>ECJ</td>
<td>European Court of Justice</td>
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<td>ECJ-Slg</td>
<td>Judgments by the European Court of Justice</td>
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<tr>
<td>EEC</td>
<td>Treaty establishing the European Economic Community</td>
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<td>e.g.</td>
<td>exempli gratia (for example)</td>
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<tr>
<td>EGC</td>
<td>European General Court</td>
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<tr>
<td>EnBW</td>
<td>Energie Baden-Württemberg (local energy provider)</td>
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<td>Et Seqq.</td>
<td>And the following</td>
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<td>Abbreviation</td>
<td>Full Form</td>
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<tr>
<td>EU</td>
<td>European Union</td>
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<tr>
<td>EuGH</td>
<td>European Court of Justice</td>
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<td>EuR</td>
<td>Zeitschrift Europarecht (Law Journal)</td>
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<tr>
<td>EuZW</td>
<td>Europäische Zeitschrift für Wirtschaftsrecht (Law Journal)</td>
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<tr>
<td>e.V.</td>
<td>eingetragener Verein (registered association)</td>
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<tr>
<td>FAZ</td>
<td>Frankfurter Allgemeine Zeitung (German Daily)</td>
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<tr>
<td>FEI</td>
<td>Fédération Équestre Nationale (International Equestrian Federation)</td>
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<tr>
<td>FIA</td>
<td>Fédération Internationale de L'Automobile (International Automobile Federation)</td>
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<tr>
<td>FIFA</td>
<td>Fédération Internationale de Football Association (International Football Federation)</td>
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<tr>
<td>FINA</td>
<td>Fédération de Internationale de Natation (International Swimming Federation)</td>
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<tr>
<td>FIS</td>
<td>Fédération Internationale de Ski (International Skiing Federation)</td>
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<tr>
<td>FIVB</td>
<td>Fédération de Internationale de Volleyball (International Volleyball Federation)</td>
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<tr>
<td>FN</td>
<td>Deutsche Reiterliche Vereinigung (German Equestrian Federation)</td>
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<tr>
<td>FoR</td>
<td>Forum Recht (Law Journal)</td>
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<tr>
<td>FSV</td>
<td>Fußballsportverein (football club)</td>
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<tr>
<td>GG</td>
<td>Grundgesetz (Basic Law)</td>
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<tr>
<td>GmbH</td>
<td>Gesellschaft mit beschränkter Haftung (Limited liability company)</td>
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<tr>
<td>GRC</td>
<td>Charta der Grundrechte der Europäischen Union (Charter of Fundamental Rights of the European Union)</td>
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<tr>
<td>Acronym</td>
<td>Description</td>
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<tr>
<td>MüKo</td>
<td>Münchener Kommentar (Commentary on German Law)</td>
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<tr>
<td>NADA</td>
<td>Nationale Anti-Doping Agentur (National Anti-Doping Agency)</td>
</tr>
<tr>
<td>NJOZ</td>
<td>Neue Juristische Online-Zeitschrift (Law Journal)</td>
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<td>NJW</td>
<td>Neue Juristische Wochenschrift (Law Journal)</td>
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<td>NJW-RR</td>
<td>Neue Juristische Wochenschrift-Rechtsprechungsreport (Law Journal - Report on Legal Practice)</td>
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<td>NJWE-VHR</td>
<td>Neue Juristische Wochenschrift Entscheidungsdienst Versicherungs- und Haftungsrecht (Law Journal - Report on Legal Practice)</td>
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<tr>
<td>NOK</td>
<td>Nationales Olympisches Komitee für Deutschland (National Olympic Committee for Germany)</td>
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<tr>
<td>NStZ</td>
<td>Neue Zeitschrift für Strafrecht (Law Journal)</td>
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<td>NZG</td>
<td>Neue Zeitschrift für Gesellschaftsrecht (Law Journal)</td>
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<tr>
<td>OLG</td>
<td>Oberlandesgericht (Higher Regional Court)</td>
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<td>OlympSchG</td>
<td>Gesetz zum Schutz des olympischen Emblems und der olympischen Bezeichnungen (Law on Protection of Olympic Emblems and Terms)</td>
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<tr>
<td>OVR</td>
<td>Ordnung für die Verwertung kommerzieller Rechte (Rules on the Exploitation of Commercial Rights)</td>
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<td>pp.</td>
<td>pages</td>
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<tr>
<td>PHBSportR</td>
<td>Praxishandbuch Sportrecht (Reference Book on Sports Law)</td>
</tr>
<tr>
<td>ReSpoDo</td>
<td>Rechtskommission des Sports gegen Doping (Sports Anti-Doping Commission)</td>
</tr>
<tr>
<td>RuVO</td>
<td>Rechts- und Verfahrensordnung (Procedural Code)</td>
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</tbody>
</table>
RKB  Rad- und Kraftfahrerverbund (Bicycling and Motorcycling Federation)
SchiedsVZ  Neue Zeitschrift für Schiedsverfahren (Law Journal)
SpielO  Spielordnung (rules of the game)
SpuRt  Sport und Recht (Law Journal)
StGB  Strafgesetzbuch (Criminal Code)
SZ  Süddeutsche Zeitung (German Daily)
TAS  Tribunal Arbitral du Sport (Court of Arbitration for Sport)
TFEU  Treaty of the Functioning of the European Union
UCI  Union Cycliste Internationale (International Cycling Union)
UEFA  Union des Associations Européennes de Football (European Football Association)
UrhG  Urhebergesetz (Copyright Act)
UWG  Gesetz gegen den unlauteren Wettbewerb (Unfair Competition Act)
VersR  Versicherungsrecht (Insurance Law)
WADA  World Anti-Doping Agency
WRP  Wettbewerb in Recht und Praxis (Law Journal)
ZDF  Zweites Deutsches Fernsehen (German broadcaster)
ZGR  Zeitschrift für Unternehmens- und Gesellschaftsrecht (Law Journal)
ZHR  Zeitschrift für Handelsrecht (Law Journal)
ZIS  Zeitschrift für internationale Strafrechtsdogmatik (Law Journal)
ZPO  Zivilprozessordnung (Code of Civil Procedure)