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ENLARGED PARTIAL AGREEMENT ON SPORT (EPAS)

SEMINAR on Sports Judiciary and Human Rights, Strasbourg, 14 February 2013
ROUND TABLE on Sport Arbitration and State Arbitration, Strasbourg, 15 February 2013

REPORT PREPARED BY THE EPAS SECRETARIAT

The seminar on "Sports Judiciary and Human Rights", organised by the EPAS in co-operation with the International Institute of Human Rights was held in Strasbourg on 14 February 2013.

It was opened by Snežana Samardžić-Marković, Director General of Democracy, Guido Raimondi, Vice-President of the European Court of Human Rights, Denis Oswald, IOC member, Professor and Director of the International Centre for the Study of Sport (CIES), Neuchâtel, and Sébastien Touzé, Secretary General of the International Institute of Human Rights. It also included an intervention by Alexandre Miguel Mestre, Portuguese Secretary of State for Youth and Sport.

On the morning of 15 February, the seminar was complemented with a Round Table panel discussion involving four states which discussed the issue of co-ordination between state and sports law. The presentations made during the seminar and contributions provided by participants in the round table are available on the EPAS website (www.coe.int/EPAS) in the "Studies and Reports" section.

The Executive Secretary of the EPAS took note of the views expressed by participants at the seminar and round table and he said that he would report to the EPAS Governing Board on the following conclusions and proposals, in order for them to be considered in the planning of future activities:

- The participation of the Vice-President and representatives from the Registry of the European Court of Human Rights, as well as academic institutions with expertise in the field of human rights, including the International Institute of Human rights, was welcomed. A continued co-operation with these institutions is desirable.

Possible follow-up or activity: interventions by EPAS in conferences or seminars organised by these bodies; continued co-operation with the ECHR speakers and the academic world.

- This co-operation is all the more relevant since several cases relating to the protection of human rights in sport are pending before the ECHR and could be declared admissible.
- EPAS, using the Recommendation of the Committee of Ministers to Member States on the European Sports Charter (92/13 Rev) and the Recommendation on the principle of autonomy of sport in Europe (2011/3) as a basis, could help address issues such as:
 - conflicts of jurisdiction;
 - damage to the autonomy of sport;
 - compliance of the sports movement's procedures with fundamental rights.

Possible follow-up or activity: Discussion during joint meetings of the Governing Board and the Consultative Committee, advisory visits or seminars.

- The EPAS may also play a role in education and training:
 - ... to acquaint sports organisations, as well as their disciplinary and arbitration bodies, with the requirements of the European Convention on Human Rights, in particular the procedural safeguards that must be guaranteed: this may be an opportunity to clarify and disseminate procedural principles to be guaranteed in disciplinary proceedings under Article 6 ECHR.

Possible follow-up or activity: produce an EPAS good practice manual for sports organisations and/or speak at vocational training courses or lifelong learning courses for members of disciplinary bodies.

- ... to acquaint judges and registrars of state courts with the sports movement's procedures (disciplinary systems and arbitration bodies) and with the principle of autonomy of the sports movement.

Possible follow-up or activity: produce an EPAS good practice manual for judges and/or speak at vocational training courses or lifelong learning courses for magistrates or judiciary staff.

- During the seminar, the Executive Secretary noted the statements by public authority representatives who reported that government authorities are often confronted with requests for legislation endorsed by the sports movement. Taking this kind of scenario into account completes the traditional approach of the sports movement's autonomy and is seen as a means of defence against undue and unwelcome interventions by the public authorities. It could also be traded between interested delegations. The issue of disproportionate requirements in terms of legislation, during some major events was mentioned in this context.

Possible follow-up or activity: Round table or discussion between the delegations of the EPAS Governing Board.

- And finally, one speaker from the sports movement suggested developing the notion of "public order" in an intergovernmental framework. Indeed, in most legal systems, it seems that the review by the judge (state) on the substance of referees' decisions (private) is limited to the compatibility of the sentence with public order. However it seems that the notion of "public order" is not harmonised at all at international level and is broadly interpreted in some jurisdictions whereas restrictive in others.

Possible follow-up or activity: study of comparative law on the above-mentioned notion of public order to examine sports arbitration decisions; Round table or discussion between the EPAS Governing Board delegations in light of the results of such a study.

APPENDIX I – Programme of the Seminar on Sports Judiciary and Human Rights

10:30	Registration of the participants	
11:15	Opening session <ul style="list-style-type: none"> • Council of Europe • European Court of Human Rights • Olympic Movement • International Institute of Human Rights 	Snežana Samardžić-Marković, Director General of Democracy Guido Raimondi, Vice-President of the European Court of Human Rights Denis Oswald, IOC Member, Professor and Director of the International Centre for Sports Studies (CIES), Neuchâtel Sébastien Touzé, Secretary General of the Institute
12:00	Cocktail with snacks	
13:30	Introductory speech	Pierre Cornu, Senior Legal Counsel (CIES)
	1. Substantial and procedural coordination of rules in sports matters	
14:00	1.1 The coordination of public authorities' regulations in sports matters	Rapporteur : Simon Gardiner, Reader in Sports Law, Leeds Metropolitan University (U.K.)
14:20		Panelist : Alexandre Miguel Mestre, Portuguese Secretary of State for Sports and Youth
14:30	1.2 The coordination of legal remedies in sports matters	Rapporteur : Charles Dudognon, Director General of the Centre for the Law and Economics of Sport (CDES, University of Limoges), Editor-in-chief of JuriSPORT
14:50		Panelist : Carlos Schneider, Disciplinary Counsel at UEFA
15:05	Questions and answer from the audience	
15:20	Coffee-break	
	2. Overview of sports litigation in the light of the European Court of Human Rights' proceedings	
15:45	2.1. The independence of sports arbitration	Rapporteur : Matthieu Reeb, CAS Secretary General
16:05		Panelist : Antonio Rigozzi, Attorney-at-law and Professor, Geneva (Switzerland)
16:20	2.2. Sports litigation and Human Rights : lodging a sports-related application in Strasbourg: options, risks and obstacles	Rapporteur : Daniel Rietiker, Administrator at ECHR, Case-processing Division, and lecturer at the University of Lausanne
16:40		Panelist : Nathalie Korchia, Attorney-at-Law, Paris (France)
16:50	Questions and answer from the audience	
17:10	Conclusions and closing of the Seminar	Sébastien Touzé, Secretary General of the Institute Stanislas Frossard, Executive Secretary of EPAS
17:30	End	

APPENDIX II – List of participants – Seminar on Sports Judiciary and Human Rights (bilingual)

Public authorities

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im Bundeskanzleramt der Republik Österreich

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APPENDIX IV – Contributions from member states

Current state of affairs in Finland

There have been very few sport law cases before arbitration tribunals in Finland. One of the main reasons for this situation is the National Board of Legal Protection in Sports which handles most of the relevant sports law cases in Finland. It was established by national sports federations and their association in 1991. The Board can handle cases concerning disciplinary decisions, competition rules (but not the rules of the game), member rights in associations and nomination of national representatives for Olympics and World Championships etc. On the other hand, the Board cannot make decisions concerning interim measures and contract law disputes. Therefore, contract law cases are decided by civil courts and arbitration tribunals.

Members of the Board are all lawyers. Most of them have LL.M. with court training. Members work on a voluntary basis. However, there are close links between the Board and ordinary courts. Regularly, the President of the Board has been a member of the Supreme Court.

Decisions of the Board are not legally binding. However, decisions have been de facto effective. Only in exceptional cases, these decisions have been challenged before ordinary courts. One of these decisions is a well-known case of Minna Lainio (track & field). It was a doping case, in which the Supreme Court gave the final decision. The Supreme Court decided that Ms. Lainio had access to court because the anti-doping decision made by a national sports federation, a suspension for two years, had relevant effects of her basic rights. However, the Supreme Court decided that there was a solid basis for this suspension.

Additionally, it can be mentioned that there have been some sport law cases concerning interim measures before civil courts. One case concerned match-fixing in Finnish Baseball. A disciplinary decision made by the National Federation was challenged by some players. However, interim measures were not granted by a District Court.

There have been some sports law cases before arbitration tribunals in Finland. The most well-known of these cases concerned the unfortunate incidents in World Ski Championships which were held in Lahti in 2001. Many Finnish skiers were held responsible for anti-doping rule violations. After the decision made by the National Federation, the skiers decided to sue the National Federation before an ad-hoc arbitration tribunal in Finland. Unfortunately, the International Ski Federation was not involved in the arbitration proceedings. Therefore, the final outcome of the arbitration proceedings had very slightly effects on the state of affairs.

Views of the Greek Secretariat General of Sport

- Sport justice in Greece is provided by the relevant disciplinary bodies operating either in the sport federations or the associations responsible for the professional leagues of each sport. The State is not responsible for the administration of disciplinary justice, but the relevant disciplinary entitled bodies are, according to the provisions of the relevant sport federations, within the context of sport movement autonomy. The Greek state has established the autonomy of sport federations and intervenes only in cases of public interest, spectators' violence incidents, as well as in cases of auditing state grants addressed to sport federations etc.

Criminal courts are responsible for judging the criminal part of spectators' violence cases (hooliganism), illegal betting and match-fixing in sport events, bribe and corruption of referees, athletes, sport agents a.s.o., as well as in cases of racial behaviours.

- The State does not interfere as far as the regulations of each sport are concerned, while the relevant sport federation is responsible for that, being in accordance with the rules and regulations of the respective international federation, within the context sport movement autonomy.

- In each sport federation operates also a Referees Committee aiming at the development and improvement of the respective sport refereeing issues, as well as the selection of the proper referees used every time in sport events. Referees associations as well as referees federations might also operate in each federation.

In order though to protect the public interest, the Greek State has established rules to prevent the selection of referees who are sentenced by the Greek Criminal Courts, for crimes described in article 3 of the Greek Sport Law (Law 2725/1999, O.G.G. A 121, as in force). Also the referees are due to submit their personal statement for their financial position, as well as that of their wives (or husbands respectively) and their underage children before the High Court Deputy Attorney General.

Sports justice and state justice in Switzerland

Swiss Confederation
Federal Department of Defence, Civil Protection and Sport
Federal Office for Sport
Sports Policy and Resources

Like nearly all European countries, Switzerland recognises the autonomy of clubs and associations, which stems from the private-law principle of freedom of association. Clubs and associations enjoy great freedom of action, particularly as regards the organisation of their internal affairs. Switzerland accordingly recognises the internal disciplinary rules of clubs and associations.

The Swiss Civil Code lays down the principle that any member of a club or association may go before a state court to challenge unlawful decisions (Art. 75). However, under Swiss law the parties may also agree to dispense with a state court and, instead, have the case heard by an arbitration tribunal.

In sports-related legal matters, Switzerland is subject to close international scrutiny: on the one hand, Switzerland is the headquarters country of numerous international sports federations set up and organised under Swiss law, and on the other, the Court of Arbitration for Sport (CAS) is based in Lausanne.

As an institutional arbitration body for sport, CAS centralises disputes relating to sports regulations and sees to substantive harmonisation. As CAS is now used by virtually all national and international federations as an external court of appeal to hear and decide sports-related disputes, the world of sport possesses, in CAS, a unique institution for the settlement of sports-related disputes.

CAS seeks to ensure unity of case-law and thus guard against the fragmentation of international sports justice. In deciding cases, expert arbitrators seek to ensure that due attention is paid to the special features of sport. The aim, in short, is to ensure speedy, appropriate and expert decision-making (*Zeitschrift für Sport und Recht* 6/2011, p. 230).

Where CAS acts as a court of arbitration based in Switzerland and the parties are resident or based in Switzerland, a national (domestic) arbitration procedure is involved. The proceedings are conducted in accordance with the provisions of the Swiss Code of Civil Procedure (Art. 353 et seq; SR 272). Where, however, at least one of the parties is resident or based abroad, an international arbitration procedure is involved. CAS acts as a Swiss international court of arbitration and applies international arbitration law. The proceedings are conducted in accordance with the provisions of the Federal Act on Private International Law (Art. 176 et seq; SR 291).

In sports-related disputes, the proceedings may be of three types:

1. Ordinary (first-instance) proceedings. These are used for sports-related disputes which concern neither the challenging of decisions of clubs or associations nor matters connected with the Olympic Games. They are used in particular to decide disputes arising from contracts on sports-related matters.
2. Appeal proceedings, which account for a much larger proportion. These are cases in which decisions by clubs or associations are referred to CAS for review. As Switzerland has no courts with specific jurisdiction to deal with cases involving associations, CAS always decides these cases as an appellate court.
3. Since 1996, CAS has also had an “Ad Hoc Division” for the Olympic Games. Arbitrators based directly at the Olympic venue decide disputes connected with the Olympic Games within 24 hours of the complaint being lodged. CAS arbitral awards which give rise to any of the grounds of appeal set out in Art. 389 of the Code of Civil Procedure or Art. 190 of the Federal Act on Private International Law may be appealed against by the parties before the Federal Court.

The Swiss Federal Court recognised the independence of CAS as far back as 1993, but made a reservation regarding its organisational and economic links with the IOC (BGE 119 II 271). Since the complete organisational separation of CAS from the IOC in 1994, the Federal Court has repeatedly and unreservedly confirmed the institution’s autonomy.

The independence of CAS was vociferously and vehemently called into question again in connection with the well-publicised dispute between Olympique des Alpes SA (OLA, which runs the professional section of the football club FC Sion) and FIFA. There were some noteworthy developments in the “FC Sion affair” at the end of 2011:

By way of enforcing a ban on signing new players imposed by FIFA in 2009, and following a succession of proceedings before various federation bodies, state courts and CAS, the central committee (executive body) of the Swiss Football Federation deducted 36 points from FC Sion in the Swiss Super League at the end of December. This led OLA to apply to the competent regional court for provisional legal protection, inter alia to prevent the points deduction from becoming effective. The regional court ruled that there was no urgency and dismissed the application. This was because OLA had applied to a state court to decide the principal issue instead of taking the case to CAS as provided for under the relevant OLA regulations. OLA had refused to call on CAS because it regards it as biased and “federation-oriented” (decision of 14 February 2012 of the Bern-Mittelland Regional Court; commentary in CaS 2012, 79).