

## I. Articles

### LEX SPORTIVA AND NATIONAL LAW, FIFA AND HELLENIC FOOTBALL FEDERATION (HFF) REGULATIONS

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#### **Introduction**

A major and long-standing problem is the application of the rules of the Fédération Internationale de Football Association (FIFA), as rules of Lex Sportiva in the national football field, taking into account the difference between the internal rules of law<sup>1</sup>. FIFA imposes its regulations on the national federations, through adoption and compulsory acceptance; otherwise they are expelled<sup>2</sup>. The same regulations also regulate relations such as employment, public order, health and safety, which do not fall within the scope of its regulatory competence.

#### **Institutional guarantee of Sports**

The Greek constitution set sports under the highest supervision and protection of the state as the law stipulates and instructs the legislator to define organized sports and sport activity<sup>3</sup>, so that sports within the sports association system serve the public purpose<sup>4</sup>. It also highlights and identifies individual and social rights and individual exploitation rights of those involved in sports action.

The legislator treats professional sports with special provisions, but does not seem to take into account that this field is another genre. According to the insti-

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1. James A.R. Nafziger (2013), "The Nationality Issue in International Sports Law", in: SPORTS LAW, Structures, Practice, Justice- Sports Science and Studies, [Dimitrios Panagiotopoulos, Wang Xioping Eds], Hellenic Center of Research on Sports Law: Athens, pp. 32-35.

2. Article 10 & 11 of FIFA Statutes edition 2016.

3. Dimitrios P. Panagiotopoulos (2013), "The Greek constitution Concerning Sport and Sports Federation", in: News Prospects of Sports Law [Publication Committee festschrift for 60th birthday of Dr Kee -Young YEUN], YR Publish Company: Seoul, pp. 143-175

4. Dimitrios P. Panagiotopoulos (2017). Sports Law International: Lex Sportiva – Lex Olympica. biblioedit: Athens pp.91-151

tutional criteria, professional sports is called to satisfy different needs and desires for another reason in a different symbolic way of presentation and existence from amateur sports.

The common legislator therefore oscillates between the rules he sets for sport as a whole, the sports system through sports associations and sports federations, which essentially serve the public purpose and rules laid down by the Constitution and the law to operate the system of professional sports and in this case football, the purpose of which, through the development and promotion of the sports and games in question, is of a completely different purpose<sup>5</sup>.

The participation of those involved in this type of sporting activity is primarily the financial benefit and profit. Athletes, no matter how much they come from a sports club, become hard workers in sports corporations by signing contracts. In sports companies economic operators have placed financial instruments with the expectation of entitlement, the same economic benefit as profit and publicity. Coaches provide services like match referees as well as athlete mediators, not so much for the sake of sports, but mainly for the same financial benefit, for their livelihood and the profit of their employer, moral or material. This is the reason why in theory those involved in amateur sports are called legal nature fiction, while in professional action, they are called legal fiction.

### **Sports Law Legislator & Lex Sportiva**

In this confusing landscape and precisely because professional sports action is delimited and defined by law, there is an institutional involvement of the relevant sports federations as well as the Football Federation with the professional structures and it is represented as an absolute authority. In the context of the Lex Sportiva rules and the invocation of the corresponding rules of the relevant international sports federation of FIFA, it sets rules outside its competence, in addition to the purely sporting event, the proper cultivation of the sport and the conduct of competitions<sup>6</sup>. It sets rules for issues concerning the professional - economic sports activity and the personal and financial freedoms of those involved in it with simultaneous formation of a framework of jurisdiction and administration of justice on these issues with the obligation to exclusively resolve the financial

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5. Dimitrios P. Panagiotopoulos (2015) "Employments Relations In Sports Activities And Protection of Individual And Economics Freedoms a Corpus Juris Athletiki", in: *International Sports Law Review Pandektis*, Vol. 11:1/2, pp.8-20, *ibid* (2014), "Contracts for Sports Services", *Kutafin University Law Review (KULawR)*, Vol.1:2, pp 191 -207. Also Ioannis C. Anagnostopoulos(2015) "Employment Relations in Sports Activities", in: *International Sports Law Review Pandektis*, Vol. 1:1/2, p.195

6. Dimitrios P Panagiotopoulos., Ioannis Mournianakis (2006), "Suspension of governing bodies: analysis", in: *World Sports Law Report*, Vol. 4, Issue 7, σελ. 8-11 and in: *Sport und Recht* (2006), "Verbandsautonomie und staatliche Regulierung", pp. 189-192 and in: *Lex Sportiva* 5, pp. 1-7.

disputes of athletes or coaches even prohibiting them from appealing to the civil courts with a mandatory clause<sup>7</sup>. Apart from the conduct of the matches, the way the referees are appointed creates a field of opacity, which contributes, among other things, to corruption and often to the conciliation of the conduct of the matches with all the known consequences<sup>8</sup>.

All of the above takes place because the Football Association, in order to be able to take part in international matches and championships of its sport, is obliged to apply the regulations of the respective international federation (FIFA), the rules *Lex Sportiva*. It is pointed out that the law of these rules is essentially private and constitutes a non-national law, for which there is no established framework of legality internationally. These rules are imposed heteronomously from above and necessarily apply to the circle of stakeholders, while they also regulate issues concerning personal and financial freedoms, but also other areas that only the national legislator has the power to do.

Although the theory does not recognize much power in *Lex Sportiva*, nevertheless it is a *sui generis* sports legal order<sup>9</sup>, which is governed by absolute subjectivity and regulates the relations of persons participating in international sports and Olympic action. Unfortunately, the states have not been able to formulate a unified and uniform practice in the international landscape of sport and sporting and Olympic practice<sup>10</sup>.

Thus, in the international arena of sports action and competitions, the *Lex Sportiva* system:

a) has developed and imposed worldwide an undisputed moral force of international sports organizations cf. FIFA and the International Federations, IOC and most recently SportAccord, and

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7. Panagiotopoulos Dimitrios P. (2016), "Arbitral Jurisdiction in Sports Activities", In: *e-Lex Sportiva Journal*, Vol. IV: 1-2, pp.20-34, *ibid.* (2008), "Lex Sportiva and sporting jurisdictional order", in: *International Sports Law Review Pandektis*, Vol.7:3-4, pp. 335-373.

8. Klaus Vieweg (2016), "Tribute to Lucio Colantouni – Lex Sportiva and the Jurisdiction of CAS", In: *e-Lex Sportiva Journal*, Vol. IV: 1-2, Pp.7-19. See also Panagiotopoulos Dimitrios P. (2017). *Sports Law: Lex Sportiva – Lex Olympica Op.cit.*, pp. 483-500, see *ibid.* (2004ed), *Sports Law [Lex Sportiva] in the World*, Ant. N. Sakkoulas: Athens .

9. Dimitrios P. Panagiotopoulos (2012), "Lex Sportiva: International or sui Generis – 'Unethnic' Law?", in: "SPORTS LAW: PROSPECTS OF DEVELOPMENT", sixth International scientific practical conference, Moscow State Law Academy et al, Russia. 30 May 2012 MoskBa, pp. 25-31. Also see *ibid.* (2016) *Physical Activities-Legal Horizon and Sports Regulation as Lex Specialis: Lex Sportiva*, in: *The Open Sports Sciences Journal*, 2016, 9, (Suppl-1, M5) 35-42, see *ibid.* and (2014) *In Sports Activities when there is Ludica, Lex is Not, but when Lex is, then only Lex Sportiva is !!! As a Category of Sports Law*, in: *e-Lex Sportiva Journal*, Vol. I:2, pp.7-18.

10. Dimitrios P. Panagiotopoulos (2014), "General Principles of Law in International Sports Activities And Lex Sportiva", in: *International Sports Law Review Pandektis*, Vol. 10:3-4, pp.332-350, in *Sports Science Research (in Chinese) No 1*, pp 74-81. *Lex sp-Lex Ol*

b) has established an absolute control of this activity within the walls of the system and imposes this law on the other sports structures of the sports world and on sports life internationally, even in the states themselves.

At IASL we have repeatedly stressed the need to establish an International Sports Charter in order to form a truly international Lex Sportiva, so that the institutional autonomy of the international federations is brought under international legal control or under what would be called a sports UN<sup>11</sup>.

### **Contractual relations in sports: Personal - financial freedoms**

Sport internationally through the professional side but also the international Olympic Games, has been fully reduced to a large economic activity and represents over 2.5% of international trade and seems to have exceeded it or 1% plus the GDP of the EU<sup>12</sup>.

Freedom and therefore participation in sporting action is intertwined with financial freedoms and acquires special and critical interest.

#### **1. Freedom of work and personality development**

In other word is required to safeguard:

- a) *the freedom of contract in the sporting activity as a free choice of the contracted athlete or third party,*
- b) *the possibility of concluding the contract or not and*
- c) *the free formulation of the terms of the agreement on issues: 1) transfers and 2) free movement of athletes-coaches and sports executives.*

#### **2. Restrictions on financial freedom in sporting action**

In this context, the question arises, is it possible to ask and by what restrictions and conditions of exercising economic activity in Sports domestically and internationally? What are the limits of these restrictions and what are the factors

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11. Dimitrios Panagiotopoulos, Wang Xioping Eds. (2013), SPORTS LAW: Structures Practice, Justice, Sports Science and Studies [Proceedings of 18th IASL Congress (Beijing 2012)], Hellenic Center of Research on Sports Law : Athens also. Dimitrios P. Panagiotopoulos (2015 Ed), SPORTS LAW, 22 Years I.A.S.L: Lex Sportiva - Lex Olympica and Sports Jurisdiction Experience - Development & Perspective [20th IASL Congress Proceedings, (Athens11-13 Dec.2014)], EKEAD: Athens.

12. Dimitrios P. Panagiotopoulos (2003), "The institutional autonomy of sport and the limits of the economic freedom" (1995 4th IASL Congress, Nov.10-11 Nov., Barcelona), in: International Sports law Review Pandektis, Vol. 5:1, pp. 31- 45. Aso idid (2009ed), Sports Law: An Emerging Legal Order - Human Rights of Athletes, Nomiki Bibliothiki: Athens, Athens. Also see ibid (2005 ed.), Sports Law: Implementation and the Olympic Games, Ant. N. Sakkoulas: Athens.

that determine these limits of economic freedom? Who is the body that has the legal competence to set rules with such limits<sup>13</sup>?

In addition, the issue of protection and guarantee, the personal and financial freedoms of those involved in sport and the principles it incorporates become absolutely clear<sup>14</sup>. Also areas that fall outside the regulatory competence of individuals are:

- a) *sports ethics and competition ethics on the basis of the sports idea.*
- b) *human values and individual dignity.*
- c) *sports public order and safety.*
- d) *Ensuring the public purpose of sport as a public good, when it has been established with the criterion that it evolves our society qualitatively and implants human values according to the UNESCO UNHCR<sup>15</sup>.*

Autonomy in sport<sup>16</sup> is legitimate insofar as the general interest is not harmed, therefore special legal regulations are required from the one who has the legal regulatory competence in the cycle of sports activity (national-international) for:

- 1) contracts and agreements of athletes, coaches and movement and transfers.
- 2) *The nature of the service, the additional financial benefits and remuneration.*
- 3) *The health of athletes and the process of ensuring it.*
- 4) *The television rights to broadcast sports games<sup>17</sup>*
- 5) *Advertising and financial relations of athletes-clubs-companies-amount of funds.*
- 6) *The operation of the various gyms-leases of sports facilities.*
- 7) *The tax issues and exemptions for the participants in the sports action.*
- 8) *Sponsorships-Ambush Marketing<sup>18</sup>.*
- 9) *Security and public order during games.*

So who is responsible for ensuring this law of the above issues in sports

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13. Dimitrios P. Panagiotopoulos (2013), "Clauses for A Legitimizing Basis of Regulatory Competence in International Sports Activities *a Lex Sportiva & Lex Olympica Constitutional Charter*", in: International Sports Law Review Pandektis (ISLR/Pand), Vol. 10: 1-2, pp.15-24.

14. Andreas Zagklis (2015), "Basketball Arbitral Tribunal (Bat): A Quick, Efficient, Innovative Way To Settle Financial Disputes", In: Sports Law, 22 Years I.A.S.L (Dimitrios Panagiotopoulos Ed), Hellenic Center Of Research On Sports Law: Athens], Pp.290-298.

15. Economic freedom.

16. Calixto Vinicius Machado (2014), "Lex Sportiva as an Autonomous Transnational Legal Order", in: e-Lex Sportiva Journal, Vol. II: 2, pp. 293-308.

17. José C. Páez (2013), "The Sale of Broadcasting Rights of Spanish Football Competitions under Competition Law", in: e- Lex Sportiva Journal, Vol. I:2, pp. 196-204.

18. Alexandrakis Vagelis (2013), "Ambush Marketing: the Added-Value of Event-Specific Legislations", in: International Sports Law Review Pandektis (ISLR/Pand), Vol. 10: 1-2, pp.189-196 see more in Dimitrios P. Panagiotopoulos Andreas Zagklis (2003), "Sponsorship - Sponsorship in sports, legal aspects and applications", in: Sports Organization and Management, Vol. 1: 2, pp. 225-237.

action and will guarantee personal and financial freedoms? Is it a legislative competence of the private bodies - the Lex Sportiva cycle? Or is it the exclusive responsibility of a state or supranational entity?

As early as 2013, the IASL sent a formal letter to the International Labor Organization calling for a real mechanism to protect the rights of athletes and coaches in the world of work and for the work and legal status of athletes and coaches to be settled internationally. IOC and ILO in 2014 at Session 322a, put on the agenda the discussion of the working conditions of athletes and coaches, where the team of employers stated that it did not want a discussion about athletes and coaches. *In addition, it was emphasized at the meeting that: "[...], in order to address these specific issues, it would be appropriate to set up a minimum international framework, as many athletes work in different parts of the world and for employers who belong to different national rights between them, which often conflict with each other, thus creating insecurity regarding the rights of athletes, causing gaps in their insurance coverage".*

In addition to the issue raised by the IOC-ILO, the European Court of Justice raises the question of whether organizations such as FIFA have the legitimacy to adopt such a regulation, which has no sporting purpose but governs economic activity, and concerns fundamental freedoms<sup>19</sup>. As such a regulatory power to regulate contractual relations cannot be conferred on a private organization such as FIFA which has no public authority to do so and cannot be considered to be compatible with European law in the first place, in particular for respect due to policies and financial freedoms.

The Greek legislator, who under the pressure of FIFA and under the threat of exclusion of H.F.F. from all the events held under its auspices, showed an excessive submissiveness despite the opposite of the regulations of the Sports Law (Law 2725/1999) and sports legislation in general.

Thus, the application of the provisions of the law with absolute regulatory and legislative competence of the HFF (article 29 par. 12 Law 3479/2006), eventually led many operators of the sports football federation, referees and members of the Board of PAE to be accountable before Greek justice with the accusation of forming a criminal organization, bribery and bribery to the degree of a felony.

After the amendments of 2012 and recently after the problems of corruption, the Greek legislator attempted to limit this power/autonomy<sup>20</sup> and stipulated that the statute and the regulations of the HFF concerning the so-called self-government of the HFF must be harmonized with the Constitution and current legislation as well as the respective FIFA-UEFA bodies.

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19. Olga Shevchenko (2013), "The Institutional Autonomy of Sport and the Limits of the Freedom in the Employment Relationship", in: e-Lex Sportiva Journal (e-Lex.SJ), VOL.I:1, pp. 13-21.

20. Gr.Law 4326/2015 article 15.

With Law 4431/2016 and the need to appoint a Steering Committee to the EPO, it was placed under a committee by FIFA, apart from Constitutional logic, which does not seem to have contributed to the solution of the problem, as proved by the recent events in the PAOK FC against AEK FC Greek Cup Final with known ending. Therefore, the integrity and safety of the games is not a problem of application of the disciplinary rules of FIFA - HFF<sup>21</sup> or in accordance with the legislative authorization under Greek sports law, the relevant Minister has the ability to impose fines and administrative measures.

Therefore, the institutional entanglement but also the involved economic activity in football with the sports institution without distinct structures and incompatible leads and will lead to the above results<sup>22</sup>. In the context of the retreat of national sports law and the implementation of Lex Sportiva as represented internationally, we witnessed that the championship was suspended until recently based on the ability and discretion of the Minister of Sports in accordance with the law, while FIFA agents arrived to settle the problem with the HFF under the threat of Grexit from international events! In addition, it was stated by the central administration that, in order for the championship to continue, the players of the first division football clubs will be called upon to be obliged in a statement of will that similar phenomena will not reappear on the pitch. It is a fact that if the wishes and statements were true, there would be no crimes, much less unconventional, unsportsmanlike conduct and sins.

We must not lose sight of the fact that football anonymous company is not a Church, besides being a special purpose capital company. Its establishment, organization and operation are governed in principle by the law on "public limited companies"<sup>23</sup> as it is in force and to the extent that they are not amended by the more specific and prevailing -in case of conflict- provisions of Sports Law 2725/1999<sup>24</sup>. An example is Law 4049/2012 on the acquisition of PAE shares by Persons with citizenship of third countries and the manner and conditions of granting such a license and issuance of a certificate of participation by the Professional Sports Committee with the obstacles that apply to shareholders of sports anonymous company<sup>25</sup>.

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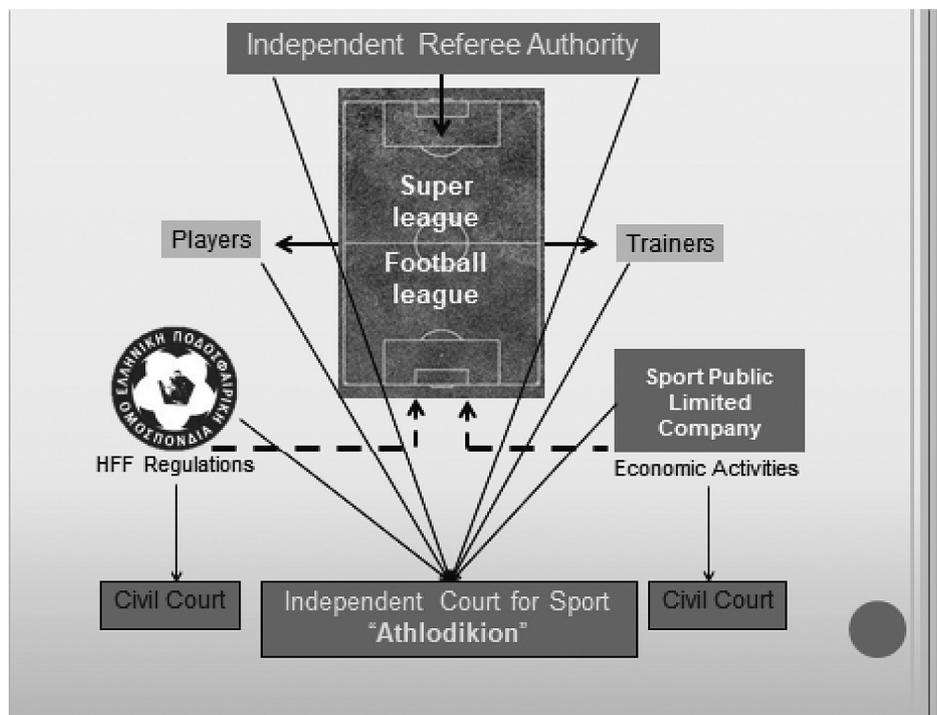
21. Code of Ethics HFF article 19.

22. Panagiotopoulos Dimitrios P. (2016) "Personal and Economic Freedoms and FIFA Regulations (Lex Sportiva)", in: International Sports Law Review Vol. 11, Issues 3-4, pp.247-253.

23. Gr. Law 2190/1920.

24. See the articles 63-108.

25. Gr Law 2725/1999 article 3 par. 1 after changes about Law 4639/2019 and law 4726/2020. Also see Dimitrios Panagiotopoulos (2019), "Report on Greek Sports Law", in: Greek Law Digest, Nomiki bibliothiki: Athens, pp. 617-626.



It is easy to understand that we must now become aware that individuals cannot legislate on matters relating to employment, personal and financial freedoms in professional sport and much more in football, and on matters of coaches, professional athletes, football referees and mediators, which require uniform regulation. We must now become aware that individuals cannot legislate on matters relating to employment, personal and financial freedoms in professional sport and much more in football, and on matters of coaches, professional athletes, football referees and mediators, which require uniform regulation<sup>26</sup>. Individual sports authorities such as the HFF and internationally FIFA can have no regulatory authority on these issues. The only duty of these organizations is, with their rules, to ensure the quality and technically perfect sport of football with the final phase of the honest and correct conduct of the games and the good internal relations of their members only.

The rest are issues of independent and cooperating structures with a special legal framework and the supreme supervision of the state according to the Constitution. It would therefore be legitimate, in the context of the sports anonymous companies, instead of being football teams themselves and going up and down

26. Panagiotopoulos Dimitrios P. (2011), "Lex Sportiva and International Legitimacy Governing: Protection of Professional Players", *US-China Law Review*, Vol. 8:87, pp 122-136.

in the final outcome of the league and the emergence of violent conflicts, by law being obliged to set up an independent special club structure with their players under administration designated by an interested sports anonymous companies, regardless of sport.

Thus, the technical and competitive field of the special structure club will be supervised by the HFF and will be led in its category to matches while its administration and the persons involved (coaching players) are defined by contract by the sports anonymous companies and are controlled by it, which expects and reaps the results of the structure it supports financially.

The relevant sports federation, i.e. in this case with the association of special structure of sports anonymous companies is involved horizontally and closely by special provisions only in ensuring the physiognomy of the sport and the application of rules of intra-competitive and intra-sports nature and perpendicular to its relations with its member clubs<sup>27</sup>. The relevant sports federation, ie in this case with the association of special structure of sports anonymous companies is involved horizontally and closely by special provisions only in ensuring the physiognomy of the sport and the application of rules of intra-competitive and intra-sports nature and perpendicular to its relations with its member clubs<sup>28</sup>. In this context, the independent structure of Referees under the ad hoc lottery can also operate for their participation before the start of the football matches, from an objective list created by a proposal of the independent relevant body of referees in both the amateur and professional structure of unions

The horizon of such a regulatory logic should also define the sports jurisdictional system of the two levels of jurisdiction within a Sports Court for all competitive and sporting disputes that arise in the professional sports becoming, with a special procedural system and ensuring independence in operation, while the disputes concerning matters of a personal, financial and contractual nature to fall directly under the second instance of jurisdiction with the possibility of appealing to the relevant civil courts according to their nature and the procedure provided by the sports legislator.

In any case, a form of judicial formation (Department) like the current ASE-AD can operate within the Court of Appeals, with an appeal before it, for the resolution of the disciplinary disputes arising from the application of the rules (Lex sportiva) of the sports federations on decisions of the foreseen their courts.<sup>29</sup>

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27. Wang Xiaoping (2013), "Legal Relations of Parties involved in Professional Sports", in: e-Lex Sportiva Journal, Vol. 1:2, pp. 131-140.

28. Richard H. McLaren (2013), "Governance in Sports Governing Bodies", in: SPORTS LAW, Structures, Practice, Justice- Sports Science and Studies, [Dimitrios Panagiotopoulos, Wang Xioping Eds], Hellenic Center of Research on Sports Law: Athens, pp. 311 -317.

29. Dimitrios P. Panagiotopoulos (2015) "Employments ... a Corpus Juris Athletiki", International Sports Law Review Pandektis, Vol. 11:1/2, Op. cit. pp.8-20.

All judicial bodies, as well as the authorities controlling the sports activity of the administration, in order to properly apply the laws and the Constitution, can be directly subject to an independent Sports Structure which could, among other things, apply the principles of such a Code of Sports Ethics<sup>30</sup>, with the release of the central administration from any problem so that it can play its institutional and political role for the cause of all sports.

## Conclusion

Lex Sportiva rules should have a legal basis in the national and international legal order for: a) basic guarantees of the rights of athletes and participants in sports life, b) valid jurisdiction to ensure the fundamental right to judicial protection and the substantive judicial review of sports disputes, and c) a special sports procedural system for the administration of justice with completeness, legal certainty and enforceability of judgments.

Freedom of sporting activity in the context of the institutional autonomy of sport, and in particular of football, cannot be a legal obstacle for state or supranational entities to determine the legal scope of both sporting action and the horizon of economic and personal freedoms on the basis of principles of law and on the basis of the principle of the possibility of recourse to an impartial tribunal on the condition of a fair trial.

In the context of the institutional autonomy of international as well as national sports bodies, it is necessary to establish a Corpus Juris Athletiki, an International Code of Sports Law, an International Sports Charter in order to impose international legitimacy on sports and to make Lex a truly international sport.

The problem of football in Greece is institutional and of special structures. After many years of appearance of professional football since 1979, the institutional entanglement must be removed with a statute!

The establishment of independent cooperating structures with structural legal regulations in the cycle of professional action of sports and football will ensure the smooth operation and good inter-competitive and intra-sports relations and the corresponding efficiency of the structures for the benefit of Football and Sports but also in general of those who operate economically in this area with transparency and a horizon for the future!

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Dimitrios P. Panagiotopoulos, Karachaliou Aikaterini (2014), "The Principle of Exclusion in the Framework of the National Sports Law Procedural Issues in the Administration of Justice (The Case of the Art. 131 2725/1999 Greek Law) ", in: e- Lex Sportiva Journal, Vol. II: 2, pp. 356-36.

30. See more the Code of Sporting spirit - morality and deontology (, Hellenic National Olympic Committee, constitution article 22, Gr. law 4936/2019 article 13 and 4726/2020.