

## Aspects of Sports Law & Lex Sportiva

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### Introduction [\[arriba\]](#)

The sports field is organized at international level in a community, which, in the margin and regardless of any state supervision, has developed its own, particular institutions and rules. International Sports Federations (ISF) constitutes private entities governed by the laws of their seat. The ISF regulate the sport, which they have responsibility for, the relationships between people and events that may evolve across state borders.

On top of this pyramid is placed the International Olympic Committee (IOC). The Olympic recognition of International Sports Federations and National Olympic Committees is the key, setting in motion the law set by the rules of the Olympic Charter. This recognition is given under certain conditions and has legitimizing and transmissive results. The same applies to the International Sports Federations (ISF), whose sports want to be recognized as Olympic ones. The international sport activity has been created alongside the state and formed a sui generis international sports law, the so called Lex Sportiva, which is followed by the national federations[1]. These sports institutions shape and regulate the relationships being developed, strictly and exclusively, within the framework of Lex Sportiva[2].

These rules are not imposed directly on the national (domestic) law, but as an obligation to the competent bodies and federations in the country to harmonize their regulatory function under national law, according to the regulations of the International Federations. This way Lex Sportiva is being imposed within a country, often through its incorporation within national sports law, so that the provisions of this sui generis sport legal order are being applied without conditions and supersede any other national law.

### I. Lex specialis derogate legi generali [\[arriba\]](#)

As special rules of law, the Lex Sportiva rules, as we have pointed out since a long time ago, prevail over contrary provisions, in accordance with the legal principle “lex specialis derogate legi generali”[3].

This shaping of Lex Sportiva as a sports law system applies, mutatis mutandis, the theory of Lex Mercatoria[4], as it has been analyzed at first in 1999 as an attempt for the scientific position on Lex Sportiva to be shaped, which now there is extensive and important debate about.

Thus Lex Sportiva represents a non-national legal system set by private entities, it isn't substantially -besides the mistaken claims- international sports law, since it has not been set by an international or supranational entity with corresponding legislative powers, so as to be considered as private or public international law.

In this framework, international sports law is only the law consisting of the anti-doping rules (WADA) and of international acts and conventions in sports, as well as the rules of law of supranational entities associated with sports and athletic activities. Additionally, the rules of the Code WADA, which has been adopted by

UNESCO, organization binding on all the states who signed the agreement to make it a rule of their domestic law, after approval of their parliaments, and these rules are rules of international sports law[5]. Therefore, International Sports law is completely different from the law of rules of Lex Sportiva / Olympica.

The International Sports Federations by their statute, in the context of contractual freedom, regulate their internal organization and operation and have regulatory and disciplinary powers, beyond the arrangement of the technical requirements for the organization of international competitions on their sport.

## II. Lex Sportiva System [\[arriba\]](#)

It is obvious that Lex Sportiva spreads across many areas of sport activity and regulates both aspects of purely athletic nature, as well as issues going beyond that, relating to the economic and personal freedom of those involved in sports and games as it has been judged by the European Court of Justice by its decisions on Bosman case (case C 415/93) and Laurent Piau case (case T-193/02), and must be issued by internationally legitimized bodies[6].

The sources and processes of that legal order do not coincide with the traditional sources and procedures of law, where the dominant element is the state. To circumvent the difficulties posed by the controversial nature and power of the law produced within the sports system, it has been created and operates under this system the Court Arbitration for Sport (CAS or TAS), which is an institution for sports arbitration[7]. The disciplinary power is being exercised by the circle of organs of Lex Sportiva over the athletes, managers, coaches or any other related to its action. The National Federations, in order to apply the rules of Lex Sportiva, have to introduce a clause in their statutes, whereby the associations and their members may not have the right to appeal to ordinary courts and should submit any dispute to the jurisdiction of the Federation or to the special -for that purpose- court of the Olympic construction: Court Arbitration for Sport (CAS).

The arbitration at national and international level is an integral part of the institutional mechanism that governs both the national and international athletes. One of its advantages is that it reflects the only way to guarantee uniform interpretation and application of rules in international sport activities[8]. In this framework the Court Arbitration for Sport shall be treated as a judicial body of the international sports community for the implementation of the rules of Lex Sportiva. Such a judicial institution must be based on the principles: efficiency of the legal process, impartiality and equal treatment of similar situations, so that the process of arbitration becomes valid. It is thus clear that Lex Sportiva identifies also the need for a tribunal that not only applies, but also edifies & completes Lex Sportiva rules in order to ensure and safeguard the Lex Sportiva system and the decisions of its stakeholders. The decisions of such a court should namely be constitutive of the Lex Sportiva law, even to impose the transformation of these rules or invalidate them when they conflict with the principles of law or when they are contrary to internationally acknowledged legal norms[9]. On the basis of the above can be argued that the Lex Sportiva system has formed CAS and not vice versa, as it is erroneously being supported[10].

The position that Lex Sportiva[11] is merely a category or subspecies of international law does not appear to be true on closer examination. We are facing a system of law, which undoubtedly possesses characteristics from the General Principles of Law and it regulates relations in the international domain. The

international sports system has succeeded to establish an impressive system of coercion, through sanctions and binding jurisdiction of the judicial institution, comparable only with national domestic law and Community law, in terms of efficiency and application.

The application therefore of sports law as *Lex Sportiva*, is not automatically guaranteed by the national courts within state jurisdictions. In other words, International Federations and the IOC introduce provisions in their statutes which prohibit appealing to civil courts, and consolidate judicial power for the organs of *Lex Sportiva*. Thereby they ensure the prospect of resolving sports disputes through arbitration by an institution institutionalized by the athletic community, the Court Arbitration for Sport (CAS).

Thus CAS has become responsible for resolving sports disputes between members of the international sports community, which has been accessed by the national federations and their members. This ensures the implementation of *Lex Sportiva* regulations, as modified exclusively by the competent international sports organizations.

Consequently, in the international sports field, as well as it has been developed nationally, besides the constitutionally designated Justice, we face the so-called organic "justice" (*justice organique*), which is awarded by the "organic courts" (*tribunaux organiques*), as a special judicial order of the sports judicial organs. In most statutes of nowadays, to almost all of international federations those provisions can be found, namely exclusion clauses, which prohibit appealing to civil courts and which have already established a uniform practice in terms of the settlement of sports disputes at international and national levels. The rules of international sports federations, whose members are national federations, provide exclusive jurisdiction to organs of sports disputes resolution of International Federations, while the potential that stakeholders appeal to the national sporting bodies or courts is being excluded. Lately the courts themselves have claimed their competence to decide on the validity of the decisions of the Federations related to athletes, both on domestic and international issues.

We observe differences between *Lex Sportiva* and international law on issues fundamental to the nature and the quality of the law itself. The position that *Lex Sportiva*[12] is merely a category or subspecies of international law, does not appear to be true on closer examination.

We are before another species of international legal system which can not be a simple category or a diversification of international law. Between the system of *Lex Sportiva* and public international law there is no conflict because there is a law of private nature, internationally, which is the sports "anethnic», that regulates a field of relations that could regulate the public order[13] to apply the provisions of this regulation. This is another kind of law on the international level, which is parallel with international law, shares common elements, such as the general principles of law generally, in a new composition[14], type in the international arena *Lex Sportiva / Olympica*. This is not an amalgam of law, but an independent system of anethnic sports law. The rules of this new legal order are a new system of rules derived from the composition of rules in proportion to the *Lex Mercatoria*[15], international law and domestic legal systems. When a legal system has such a binding effect and effective enforcement of its rules, then we face the same ideological dilemmas that for centuries we are trying to solve at a domestic jurisdictions level. The theoretical debate remains for years and the results have

crystallized into principles that are fair, clear and undeniable. In any organized structure when we have a concentration of power in a few hands the solution is given by the principle of legality and the separation of powers. Prerequisite is the complete separation of the institutions that exercise legislative, executive and judicial authority. Separation of instruments and separation of powers. The separation of powers and the implementation of democratic processes must ensure the provision of an independent judicial body and the existence of effective judicial protection[16], an international Court for Sports of special procedural rules of state standing, in a statutory framework of international legitimacy for sport and sports activity.

### III. Lex Sportiva -Olympica as an "anethnic" law [\[arriba\]](#)

Sports law in the international sporting field, as Lex Sportiva-Lex Olympica, is actually private, and means that there is an "anethnic" law, which necessarily regulates an area with no geographic boundaries concerning the relationships of persons involved in international and Olympic sports and action from more countries that require coordination in their activity within their States. That is, the Lex Sportiva-Olympica, a really "anethnic" law internationally, to which, however, the theory does not give special power[17]. Nevertheless, it constitutes a "sui generis" sports law legal order imposed in the sports world heteronomously, through these international sports organizations[18].

This new kind of law, Lex Sportiva & Lex Olympica as "anethnic" law of international practice, sets necessarily old accepted practices and organizational structures, established under another perspective that reveals the insufficiency of practices of international law, in a legal order which consists of a different kind of law internationally and has an impressive feature of coercion similar to the domestic jurisdictions. Many of us (perhaps based on thoughts of CAS) [19] claim that, through the jurisprudence of the abovementioned Court, there's has been formed a not-called Lex Sportiva but a Lex Ludica. With this distinction their willingness is to give -probably erroneously- a sporting dimension to this law, but they actually forget that if it is Ludica it couldn't be Lex and vice versa[20]. The Ludica concept comes from the theory of Homo Ludens of Hunginca, the game that finally has no need of rules of law[21] and can not be regulated by the law, while in the sporting action we have absolutely regulating laws - the Lex Sportiva, including technical rules of the particular character of the sport that do not constitute area of law free of non law rules[22].

Therefore, the question of Lex Sportiva legitimizing basis has been strongly posed internationally to researchers and scientists of sports law. The issue that arises is the creation of an international legal framework for the adoption of law rules relating to matters of personal and economic freedom of the parties, public order and safety and health issues of the athletes and people involved, in relation to which state and supranational entities have the authority to enact.

### Conclusion [\[arriba\]](#)

The rules of Lex Sportiva and Lex Olympica and the quality of the content of these norms with their particular characteristics in the international context of practice, demonstrate that sports law, is not a subcategory of international law, as International Sports Law, but a different kind of law, Lex Sportiva /Olympica. Lex Sportiva / Olympica, is another kind of law resulting from the synthesis of characteristics of international law (subject, object and content regulations) and

internal characteristics of domestic legal orders (effective mechanism of coercion, automatic incorporation norms in national laws exclusive and binding jurisdiction of judicial bodies).

This new kind of international law poses necessarily old accepted practices and established organizational structures under another perspective that exists in parallel with the international law and constitutes a sui generis sports law international legal order, imposed in an heteronomous way on the sporting world from these international organizations[23].

International Sports Law is consisted of the rules of international acts and conventions of bodies that are governed by rules of international law such as international treaties and acts on Sport, the rules of WADA Code and the International Charter for Sport but not of the rules by Lex Sportiva/Olympica. The need for fundamental changes in the organization of the international sport practice under the principle of legality in international sports field becomes imperative, via a constitutional charter for sport and an international jurisdiction.

As a step to this direction, during Sports Law conference in Moscow in 2011, IASL has decided to adopt an international sports charter, a draft paper of which has been processed by a Committee under Professor Dimitri Rogachev. This Charter will be completed at the IASL Conference in Bali in October 2013 in order to constitute an international legal instrument to be adopted by the international community, in the framework of the UN, to apply as the basis of international sports law.

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[1] Dimitrios P. Panagiotopoulos (1999) "Sports Law, a special branch of Sports Science" [in Gr."Αθλητικῆ Δραστηριότητα: Επιστήμη και Πρακτική" in : Professional Sports Activities, 1st Sports Law Congress EKEAD Ellin: Athens, pp. 38-52, see also Dimitrios P. Panagiotopoulos (2002), "Sports Legal Order in National and International Sport Life", 8th IASL Congress Uruguay, Modevideo Nov. 28-30, 2001, in: Revista Brasileira De Direito Sportivo (Instituto Brasileiro De Direito Desportivo), no: 2, Pp. 7-17 and in: International Sports Law Review Pandektis, Vol. 4:3, pp. 227-242. See also Dimitrios P. Panagiotopoulos (2003) Sports Law A European Dimension, Ant. N. Sakkoulas: Athens, pp.16-27, and ibid (2004), Sports Law (Lex Sportiva) in the world, Regulations and implementation, Sakkoulas: Athens, pp. 22-32. For more bibliography on sports law see:

[http://iasl.org/pages/en/sports\\_law\\_index/sports\\_law\\_bibliography.php](http://iasl.org/pages/en/sports_law_index/sports_law_bibliography.php)

[2] For the Lex Sportiva Theory see, Dimitrios Panagiotopoulos (2011), Lex Sportiva & Olympica, Praxis and Theory, Ant Sakkoulas : Athens pp 102-151.

[3] Dimitrios P. Panagiotopoulos (2003) Sports Law A European Dimension, Ant. N. Sakkoulas: Athens, p.25 and ibid (2004), Sports Law (Lex Sportiva) in the world, Regulations and implementation, Sakkoulas: Athens, pp 63-65.

[4] Typical example of that theory is the lex mercatoria as a foundation of

international commercial practice. For the special nature of this autonomous legal order see also Ch. Pampoukis (1996), *Lex mercatoria* (in Greek), Ant. N. Sakkoulas, p. 17 ff.

[5] See Antonis Bredimas, "Multilateral diplomacy for sport: the case of UNESCO", in: *Sports Law: Implementation and the Olympic Games*, [Dimitrios Panagiotopoulos Ed], Ant Sakkoulas: Athens, pp 327-334. see also A. Bredimas (2000), "The International Constitution of Physical Education and Sports of UNESCO - Legal Political dimension and Prospect", in: *Sports Ethic*, [D. P. Panagiotopoulos Ed.], Ellin: Athens, pp. 87-97, see also *ibid* (2005), "Legal Order of CIO and international Sports Federations and relation to International Legal Order [in Gr. Η νομικὴ φύση της ΔΟΕ και των διεθνῶν αθλητικῶν ομοσπονδιῶν και η σχέση τους προς την διεθνή και κρατικὴ ἔννομη τῦξη]", in : *Olympic Games and Law* (N. Klamaris et all Ed.), Ant Sakkoulas: Athens, pp. 80-84.

[6] Panagiotopoulos Dimitrios P. (2012), "Sports Law, a Primitive Theory", in: *International Sports Law Review Pandektis (ISLR/Pand)*, Vol. 9: 3-4, pp. 256-258. see also Panagiotopoulos P. Dimitrios, Mournianakis Ioannis, Alexandrakis Vagelis, Manarakis Sergios (2010), "Prospects for EU Action in the Field of Sport after the Lisbon Treaty", in: *I.S.L.R. Pandektis*, Vol. 8:3-4, pp. 301-310, as well as Panagiotopoulos Dimitrios P., Paschou Katerina (2006), "Lex Sportiva and Community Law: The Piau Case", in: *I.S.L.R. Pandektis*, Vol. 6:3-4, pp. 329-338.

[7] See Matthew Reeb (2002), *The role and functions of the Court of Arbitration for Sport (CAS)*, ISLI 2002/2, p.p. 21-25. See also Pantelis Dedes Andreas Zagklis (2006) *Court Arbitration for Sport*, [in Gr. Το Αθλητικὸ Διαιτητικὸ Δικαστήριο της Λωζάνης], Nom. Bibliothiki: Athens, pp. 25-46.

[8] See Dimitrios P. Panagiotopoulos (2006), *Sports Law II Sports Jurisdiction* [in Gr. Αθλητικὸ Δίκαιο II, Αθλητικὸ Δικαιοδοσῆα] Nom Bibliothiki, Athens, pp.144-148. For the practice of CAS for the applicable law and the enforceability of its decisions , see *ibid* pp. 192-203.

[9] See, Dimitrios P. Panagiotopoulos (2004), "International Sports Rules' Implementation - Decisions' Executability", in: *Marquette Sports Law Review*, Vol. 5:1, pp.1-12 and Comment in *ISLR/Pand.*, Vol. 5:4, pp.304-307. For a detailed analysis of this case, see also Dimitrios P. Panagiotopoulos (2011) *Lex Sportiva and Lex Olympica...*" Op. p, Part V, pp. 502-523.

[10] Considering all the above, the notion expressed by J. Nafziger in *International Sports Law*, 2nd edition, New York 2004, p 49, that "lex sportiva is the product of only a few hundred arbitral decisions within a limited range of disputes (...) It is still more of a lex ferenda than a mature lex specialis" seems unjustified. As much as we disagree regarding this opinion; Lex Sportiva exists with the already established rules and is not created by court decisions. These decisions only state in the present moment their devotion to the international sports system and less their interest to formulate case law, i.e. to subvert the rules of lex Sportiva, meaning to force the actors to change the rules in accordance with the operative part of the judgment. For the obvious existence of lex sportiva in the international sports domain compare Dimitrios Panagiotopoulos (2002), "Sports Legal Order ...", op. cit pp. 7-17 in: *International Sports Law Review Pandektis*, Vol. IV: 3, Pp. 227-242, *ibid* (2003), *Sports Law: A European Dimension...*, op. cit, pp. 16-27, (2003), "Reglements Sportifs - Limites Juridiques et Lex Specialis Derogat Legi Generali", in: *Revue Juridique Et Economique Du Sport*, Dalloz: Paris, pp. 87-98, (2004), *Sports law [Lex Sportiva]* op.cit, pp. 39-50, also *ibid* (2004), "Lex Sportiva: Sport Institutions and Rules of Law", in: *International Sports law Review Pandektis (ISLR/Pandektis)*, Vol. 5:3, , p 40 f., and in: (2005), *Sports Law - Implementation and the Olympic Games [ed]* , Sakkoulas: Athens pp. 40-44. For the Lex Sportiva Theory, generally see Dimitrios P. Panagiotopoulos (2011) *Lex Sportiva and Lex Olympica, Theory and Praxis*, Ant Sakkoulas: Athrens, pp.102-209 and for the "Lex

Olympica”, pp.375-439.

[11] Analogous to the Lex Mercatoria, see Dimitrios P. Panagiotopoulos (1999) and (2002), "Sports Legal Order in National and International Sport Life", 8th IASL Congress Uruguay, Montevideo Nov. 28-30, 2001, in: Revista Brasileira De Direito Sportivo (Instituto Brasileiro De Direito Desportivo), no: 2, Pp. 7-17 and in: International Sports Law Review Pandektis, Vol. 4:3, pp. 227-242.

[12] Analogous to the Lex Mercatoria, see Dimitrios P. Panagiotopoulos (1999) and (2002), "Sports Legal Order in National and International Sport Life", 8th IASL Congress Uruguay, Montevideo Nov. 28-30, 2001, in: Revista Brasileira De Direito Sportivo (Instituto Brasileiro De Direito Desportivo), no: 2, Pp. 7-17 and in: International Sports Law Review Pandektis, Vol. 4:3, pp. 227-242.

[13] This outside of nations sporting character of law is not identical with either a national, has a substantial similarity in the Community legal order, which is located midway between the legal systems of the Member States and the international legal order, borrowing elements from all, while remaining independent of them, "Supranationalität" and "supranationalité" German and French literature, respectively. But in this case the term more appropriate is an ethnic law, or Lex Sportiva-Olympica.

[14] See Adnan A Wali (2010), "The theory of the Sports Law: Towards specific Legislation for sports Transaction", in: International Sports Events and Law [Jacek Foks Ed.], Warsaw, pp.183-192.

[15] Lex Mercatoria: A creation, of a set of customary rules and general principles, which constitute an autonomous legal system capable of governing in a meaningful way the international trade, although not referring to a particular state legal system, previously See Goldman (1987) The applicable law: General Principles of law-lex mercatoria in Contemporary problems in international arbitration, J.M Lew (ed), Martinus Nijhof, 116.

[16] Under the conditions imposed by the Article 6 of the ECHR.

[17] Dimitrios P. Panagiotopoulos (2011) Sports law: Lex Sportiva and Lex Olympica..., Op. cit , pp.117-152, ibid (2004) "Sports Law [Lex Sportiva]...", op. cit, pp.34-49.

[18] Ibid, (1991), Olympic Law [in Gr Δβκαιο των Ολυμπιακων...], Op .cit. p. 249, see also D. Panagiotopoulos (1993) "The Olympic Games-an institutional dimension-perspective", in: Proceedings of International Congress, (The Institution of the Olympic Games), Hellenic Centre of Research on Sports Law: Athens, pp. 527-528.

[19] See, CAS decision no. 98/200 according to "[...] Sports law has developed and established through the years, mostly through the arbitration dispute resolution, a set of unwritten legal principles - rather like lex mercatoria for sport, or else a lex ludica - in which national and international federations have to obey. [...] ", see also k. Foster (2006)"Lex Sportiva -Lex Ludica: The court of Arbitration for sport Jurisprudence, in: Entertainment and Sports Law Journal, p.1-14. As well as same opinion by: J. Nafziger (1988) "International Sports Law" 2nd edition - Transnational Publishers Inc N. York (σελ. 57-61), Reeb "Digest of CAS Awards II-1998-2000" Kluwer Law International, p. xxx, McLaren (2001) "Introducing the Court of Arbitration for Sport: The Ad Hoc Division at the Olympic Games", 12 MARQ. SPORTS L. REV. 515 and Different as below, Dimitrios P. Panagiotopoulos (2009), "Sports Law Foundation: Lex Sportiva, a Fundamental Institutional Approach", in: Sports Law: an Emerging Legal Order - Human Rights of Athletes, Nomiki Vivliothiki: Athens, pp. 20-22 and in: International Sports law Review Pandektis, Vol.8, Issues 1-2, pp 6-14, ibid see also (2008), "Lex Sportiva and sporting jurisdictional order", in: International Sports law Review Pandektis, Vol. 8:3-4, pp. 335-373.

[20] See Dimitrios P. Panagiotopoulos (2009), "Sports Law Foundation: Lex Sportiva,a Fundamental Institutional Approach", in: Sports Law: an Emerging ...,

op. cit, pp 20, and in: International Sports law Review Pandektis, Vol.8, Issues 1-2, p. 12.

[21] See L. Silance (1977), "Interaction des règles de droit du Sport et des lois et traités émanant des pouvoirs publics" in : Review Olympic 120 : Lausanne, I.O.C., p. 622, Dimitrios P. Panagiotopoulos (2003), "Règlements Sportifs - Limites Juridiques et Lex Specialis Derogat Legi Generali", in: Revue Juridique Et Economique Du Sport, Dalloz: Paris, pp. 87-98.

[22] For this theory, See Max Kummer (1973), Spielregel und Rechtsregel, Stampfli & Cie AG, Berne, contra see Jean Pier Karaquilo (1989), "Le Droit du Sport et la Droit selon", 18th Conferesce for the European Community, Council of Europe, p.48, J. P.Karaquilo (ed, 1995), L' Activite Sportive Dans les Balances de la Justice, Tom. II, Dalloz: Paris. See also, Dimitrios P. Panagiotopoulos (2009), "Sports Law Foundation: Lex Sportiva, a Fundamental Institutional Approach", in: Sports Law: an Emerging Legal Order op. cit., p.19 see also ibid (2011) Lex Sportiva and Lex Olympica ... , op. cit., pp 107-114.

[23] Dimitrios P. Panagiotopoulos (2011) Lex Sportiva and Lex Olympica .... Op. cit., pp 392- 442, see also ibid (1991), Olympic Law [in Gr. Δβκαιο των Ολυμπιακβν...], Op. cit., p. 249 next, see also ibid (1993) "The Olympic Games-an institutional dimension-perspective ...», Op. cit., pp. 527-528.