

Integrity and Human Rights Protection in Sports

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The first instrument to give effect to certain of the rights stated in the Universal Declaration of Human Rights and make them binding was the European Convention on Human Rights.

- It was opened for signature in Rome on 4 November 1950,
- it came into force in 1953 and
- it was ratified by the 47 member States of the Council of Europe

One question that is very difficult to answer is the exact legal nature of sports provisions regarding integrity issues:

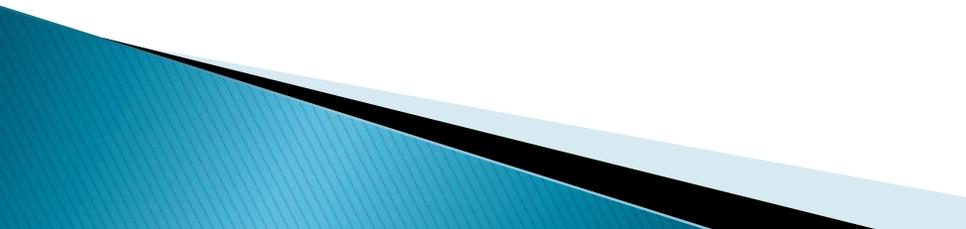
Are they provisions of criminal nature?

Are they provisions of civil nature?

Or whether based on sports specificity they could be considered as sui generis provisions?

- The Court of Arbitration for Sport (CAS),
- The Swiss Federal Tribunal (SFT), where decisions from the CAS are appealed,
- The Court of Justice of the European Union (CJEU),
- The European Court of Human Rights (ECHR)

THEY ARE ALL reluctant to attribute a sui generis nature to sports disputes as this would harm legal certainty and it could also attribute some sort of criminal nature to sports disputes concerning integrity issues.



The CIVIL NATURE ARGUMENT makes all matters concerning due process, the standard of proof, safeguarding defendants rights, protection of defendant's privacy, much easier.

On the other hand, A CRIMINAL NATURE of sports integrity related provisions, would require the safeguarding of the defendants rights and a higher standard of proof.

In short, the civil nature of these disputes makes a conviction of the athlete-defendant easier and the appeal against such a decision more likely to be dismissed

Arguments for accepting the criminal aspect or at least some sort of sui generis aspect :

1. Integrity related sanctions often have also a criminal aspect in national laws.
2. The gravity of integrity related sanctions is such that the higher standards of criminal procedure should be followed.
3. The commonly invoked comparison to the strict liability rule used in doping cases is irrelevant, given the fact that this rule was used only after the commission of the offence was proven beyond any reasonable doubt.

- ▶ Sport Federations tend to pick common law jurisdictions as these have very strict rules for annulment of a decision based on the **unconscionable contract of adhesion** argument.
- ▶ Also these jurisdictions allow opting for a minimum standard of proof such as the “**preponderance of evidence**” rule, thus making convictions very easy even in cases of “your word against mine”.
- ▶ A high standard of proof such as the “**beyond reasonable doubt**” rule would safeguard the athlete’s fundamental rights and would make convictions almost impossible.

Sports authorities investigating integrity related cases, possess wide investigative powers that allow them to collect evidence from all participants in the sports world. These powers allow them to collect a great amount of evidence. Their authority sometimes goes as far as demanding access to bank accounts, phone records, download all data from witness's mobile phones, access their social networks etc.

Apart from the obvious intrusion in the athlete's private sphere, the side of the accused athlete does not possess any of these powers in order to collect counter-evidence.

In integrity related procedures the **sport federation**, the **Investigating officers** and the **Prosecuting officers** are practically one entity, from an organizational and a financial point of view so that they can control the evidence presented in Court against the Athlete.

Therefore the Sport Federation is a party in the legal proceedings as well as the «police» handling the investigation and the «Public Prosecutor»



For all this wide range of rights and powers granted to the Sport Federation the athlete's side is denied in Court even the right to a high standard of proof.

Where is the Fair trial when the federation holds a sword and the athlete not only is denied to hold a sword too but is even denied the shield?



In terms of globalization, the sports sector is a pioneer. It has achieved a much higher level of globalization than any other sector.

Its central authority created a global sports regime regulating sports universally and generated a global sports legal order.

This however did not come without cost. In terms of democracy and protection of human rights there are some cases where the sports sector is still in the middle ages.



The Example of Tennis

1. The Koellerer Case (CAS 2011 /A/2490)
2. The Savic Case (CAS 2011 /A/2621)
3. The Olasso Case (CAS 2014/3467)

In the years of Galileo the Inquisition required two respectable witnesses to convict the accused.

In the above mentioned cases the athletes were convicted based on the word of a single witness (Preponderance of Evidence).

Спасибо!

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