THE SPORTS LAW REVIEW

THIRD EDITION

Editor
András Gurovits

THE LAWREVIEWS

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PREFACE

This third edition of *The Sports Law Review* is intended as a practical, business-focused legal guide for all relevant stakeholder groups in the area of sports, including sports business entities, sports federations, sports clubs and athletes. Its goal is to provide an analysis of recent developments and their effects on the sports law sector in 23 jurisdictions. It will serve as a guidebook for practitioners as to how a selected range of legal topics is dealt with under various national laws. The guidance given herein will, of course, not substitute for any particular local law advice that a party may have to seek in connection with sports-related operations and activities. It puts specific emphasis on the most significant developments and decisions of the past year in the relevant jurisdictions that may be of interest for an international audience.

The Sports Law Review recognises that sports law is not a single legal topic, but rather a field of law that is related to a wide variety of legal areas, such as contract, corporate, intellectual property, civil procedure, arbitration and criminal law. In addition, it covers the local legal frameworks that allows sports federations and sports governing bodies to set-up their own internal statutes and regulations as well as to enforce these regulations in relation to their members and other affiliated persons. While the statutory laws of a particular jurisdiction apply, as a rule, only within the borders of that jurisdiction, such statutes and regulations, if enacted by international sports governing bodies, such as FIFA, UEFA, FIS, IIHF, IAAF and WADA have a worldwide reach. Sports lawyers who intend to act internationally or globally must, therefore, be familiar with these international private norms if and to the extent that they intend to advise federations, clubs and athletes that are affiliated with such sports governing bodies. In addition, they should also be familiar with relevant practice of the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland, as far as it acts as the supreme legal body in sport-related disputes. Likewise, these practitioners should have at least a basic understanding of the Swiss rules on domestic and international arbitration as Swiss law is the *lex arbitri* in CAS arbitration.

While sports law has an important international dimension, local laws remain relevant in respect of all matters not covered by the statutes and regulations of the sports governing bodies, as well as in respect of local mandatory provisions that may prevail over or invalidate certain provisions of regulations enacted by sports governing bodies. The primacy of local laws is of particular importance in international employment relationships, for example, between clubs and foreign players, where the local laws of the clubs usually provide for a set of mandatory provisions that may impede performance by the athletes of their contractually agreed rights as regards the employers should they not fulfil the employment agreement. To avoid dependency on proceedings before local state courts and their application of local laws, which may be completely unknown to them, foreign athletes may seek to get the employers'

consent to arbitration (with place of arbitration in a jurisdiction that allows for arbitration in international employment relationships, such as, e.g., Switzerland) and to confer to the arbitral tribunal the competence to decide the dispute ex aequo et bono. This is an approach that to our knowledge is increasingly applied in basketball and that may facilitate emergence of an international *lex sportiva* in employment matters also in other sports.

Each chapter of this third edition will start by discussing the legal framework of the relevant jurisdiction permitting sports organisations, such as sports clubs and sports governing bodies (e.g., national and international sports federations), to establish themselves and determine their organisational structure, as well as their disciplinary and other internal proceedings. The section detailing the competence and organisation of sports governing bodies will explain the degree of autonomy that sports governing bodies enjoy in the jurisdiction, particularly in terms of organisational freedoms and the right to establish an internal judiciary system to regulate a particular sport in the relevant country. The purpose of the dispute resolution system section is to outline the judiciary system for sports matters in general, including those that have been dealt with at first instance by sports governing bodies. An overview of the most relevant issues in the context of the organisation of a sports event is provided in the next section and, subsequent to that, a discussion on the commercialisation of such events and sports rights will cover the kinds of event- or sports-related rights that can be exploited, including rights relating to sponsorship, broadcasting and merchandising. This section will further analyse ownership of the relevant rights and how these rights can be transferred.

Our authors then provide sections detailing the relationships between professional sports and labour law, antitrust law and taxation in their own countries. The section devoted to specific sports issues will discuss certain acts that may qualify not only as breaches of the rules and regulations of the sports governing bodies, but also as criminal offences under local law, such as doping, betting and match-fixing.

In the final sections of each chapter the authors provide a review of the year, outlining recent decisions of courts or arbitral tribunals in their respective jurisdictions that are of interest and relevance to practitioners and sports organisations in an international context, before they summarise their conclusions and the outlook for the coming period.

This third edition of *The Sports Law Review* covers 23 jurisdictions. Each chapter has been provided by renowned sports law practitioners in the relevant jurisdiction. As editor of this publication I would like to take the opportunity to thank all of the authors for their skilful and insightful contributions to this publication. I trust that you will find this global survey informative and will avail yourselves at every opportunity of the valuable insights contained herein.

András Gurovits
Niederer Kraft & Frey Ltd
Zurich
November 2017

Chapter 21

SWITZERLAND

András Gurovits and Victor Stancescu[1]

I ORGANISATION OF SPORTS CLUBS AND SPORTS GOVERNING BODIES

The Swiss Constitution (BV) protects the principle of freedom of association under which every person has the right to form, join or belong to an association and to participate in the activities of such association.[2] In addition, the BV protects economic freedom, which includes, in particular, the freedom to choose an occupation and the freedom to pursue a private economic activity.[3] These constitutional provisions form the basis of the liberty to set up legal entities in various forms, including associations and share corporations, which are the most commonly used forms of entities in the area of sport. The Swiss Civil Code (ZGB) and the Swiss Code of Obligations (OR) provide a more detailed legal framework for associations and share corporations.

Within the boundaries of the mandatory statutory legislation, parties are free to determine at their discretion all relevant aspects of the organisation and management of a legal entity such as its structure and internal judiciary system. In particular, the statutory framework for associations provided in the ZGB is very liberal, providing not more than 23 articles of rather generic content.[4] This ensures a very friendly environment for sports governing bodies, which make full use of this freedom to enact comprehensive statutes and regulations that fit their organisations' specific goals and needs.

i Organisational form

The ZGB and the OR provide the basic statutory framework permitting the establishment of associations, share corporations and limited liability companies.[5]

In contrast to the corporate world, where businesses operate as share corporations or limited liability companies, most sports federations domiciled in Switzerland (e.g., FIFA, UEFA, the International Handball Federation, the International Cycling Union (UCI) and the World Rowing Federation) are organised as associations. They are established and managed by their members, and have neither any defined share capital nor, as a consequence,

1 András Gurovits is a partner and Victor Stancescu is an associate at Niederer Kraft & Frey Ltd.

2 Article 23 BV.

3 Article 27 BV.

4 Articles 60–79 ZGB; Heini/Scherrer, in Basler Kommentar, Zivilgesetzbuch I, 5th ed. (BSK ZGB I-Heini/Scherrer), preliminary notes to Articles 60 to 79, Paragraph 10 et seq. and Article 64, Paragraph 4; Arthur Meier-Hayoz, Peter Forstmoser, *Schweizerisches Gesellschaftsrecht mit Einbezug des künftigen Rechnungslegungsrechts und der Aktienrechtsreform*, 11th ed., Berne 2012, p. 675.

5 In particular for associations, Article 60 et seq. ZGB; for share corporations, Article 620 et seq. OR; and for limited liability companies, Article 772 et seq. OR.

shareholders. Sports federations organised as associations have a participatory nature. They do not have a defined company capital and quota or shares that can be held by owners. In addition, the decision-making process follows the per capita principle (i.e., each member has, as a rule, one vote in members' meetings).[6] However, this principle is not mandatory and it is permissible to deviate from it if there are valid reasons.[7] According to the statutes of the Swiss Ice Hockey Federation, each first division club has three votes, while the second division clubs have only two votes in the National League assembly. Allocation of voting power according to size and/or sporting performance of a stakeholder has become an increasingly important topic in national and international sports federations.

In contrast to associations, share corporations and, in some limited cases limited liability companies, are the forms used for professional sports teams, and in particular for football[8] and ice hockey teams.[9] These types of entities have a capitalistic structure and provide a defined company capital divided into specific quota, usually shares, held by the company's owners (i.e., the shareholders). In principle, the more stock a shareholder holds, the stronger his or her influence will be on the decision-making process at the shareholder level (i.e., at shareholders' assemblies). Share corporations are often used in Switzerland to operate a sport club's professional team (e.g. in football or ice hockey). The junior teams and, if any, the recreational teams remain part of the club (or association) that maintains a close contractual relationship to the share corporation operating the professional team. According to a more recent trend, sports clubs hold a group of separate legal entities to which certain business areas or outsourced.[10]

Despite the above differences, share corporations and associations have various important aspects in common. Both types of organisations are legal entities with their own legal identity and company name;[11] have different decision-making and management bodies; and have their own personnel performing the required strategic, operational and administrative functions.

ii Corporate governance

The members of associations established under Swiss law enjoy wide discretion in terms of structuring and administering an entity, for instance in respect of establishing its internal governance, the rights and obligations of the members as well as the judiciary instances.[12] It is because of this fundamental liberty that the form of association is very often chosen not only for (non-professional) sports clubs, but also for national and international sports federations. According to a review undertaken by the Swiss Federal Office of Sport in 2017, more than 19,000 sports clubs forming part (through their relevant national federations) of Swiss Olympics were organised as associations.[13] The form of association is chosen for

6 Article 64 ZGB in conjunction with Article 67 ZGB.

7 Meier-Hayoz, Forstmoser, footnote 4, p. 677.

8 For example, FC Basel 1893 AG, Neue Grasshopper Fussball AG.

9 For example, EHC Kloten Sport AG.

10 For example, EVZ Sport AG, EVZ Holding AG, EVZ Management AG, EVZ Gastro AG, EVZ Nachwuchs AG; The Hockey Academy AG.

11 Article 52 et seq. ZGB.

12 BSK ZGB I-Heini/Scherrer, footnote 4, preliminary notes to Articles 60 to 79, Paragraph 10 et seq.; Meier-Hayoz, Forstmoser, footnote 4, p. 675.

13 Markus Lamprecht, Rahel Bürgi, Angela Gebert, Hanspeter Stamm, 'Sportvereine in der Schweiz, Bundesamt für Sport BASPO', Magglingen 2017, p. 7.

small sports clubs with less than 100 members (68 per cent of all sports associations) as well as for large clubs with more than 300 members (8 per cent of all sports associations).[14] Once an association is operating a trading, manufacturing or other type of commercial business, it is obliged to enter it in the commercial register.[15] This duty typically applies to national and international sports governing bodies that generate material income through the commercialisation of the sports events organised under their auspices.[16] The obligation of an association to register itself in the commercial register also triggers a duty to keep accounts in compliance with the statutory requirements on commercial accounting and financial reporting.[17]

In light of the economic and (sport)political power of major sports bodies (such as FIFA, UEFA or the IOC) corporate governance within, and organisation of, such sports bodies has also become a topic of scrutiny by the legislator. While in 2017 the Swiss National Counsel (one of the two chambers of the Swiss parliament) turned down three parliamentary interventions that requested a thorough review and revision of the current legal framework for sports federations, the Swiss Federal Council (Switzerland's government) announced that it would closely monitor developments in this area with a view of proposing changes to the law if deemed appropriate.[18]

iii Corporate liability

The rules on the corporate liability of sports organisations as well as their managers and directors are set out in the OR (in respect of share corporations and limited liability companies) and the ZGB (in respect of associations).

In respect of the corporate liability of associations, the relevant statutory framework is rather simple. It provides that persons acting on behalf of an association bind it by concluding legal acts as well as by other actions, and that an association's managers may become personally liable for their wrongful acts.[19]

The liability of managers and directors of a share corporation is subject to comprehensive statutory regulation pursuant to the OR.[20] Managers and directors of a share corporation can be held liable in relation to the company, the shareholders and, under certain conditions, the company's creditors for any loss or damage arising from any intentional or negligent breach of their duties.[21]

A legal entity and its managers and directors can also become liable for criminal acts in accordance with the Swiss Penal Code (StGB). If a criminal act has been committed by or in a company during the exercise of a commercial activity, and if it is not possible to attribute this

14 Ibid. p.8.

15 Article 61, Paragraph 2 ZGB.

16 For example, FIFA, the International Olympic Committee and the IIHF.

17 Article 69a ZGB in conjunction with Article 957 et seq. OR; Article 69b ZGB.

18 Motion No. 15.3586, Internationale Sportverbände. Für klare Trennung von Aktivitäten mit ideellen und solchen mit gewinnorientierten Zweck; Postulate No. 15.3660, Den rechtlichen Rahmen von Sportverbänden überprüfen; Postulate No. 16.3471, Internationale Sportverbände. Auswirkungen Rechtsformänderung.

19 Article 55 ZGB.

20 In particular, Articles 752 to 760 OR.

21 Article 754, Paragraph 1 OR.

act to a specific natural person within the company owing to its inadequate organisation, the act will be attributed to the company, which shall be sanctioned accordingly.[22] On the other hand, if the wrongdoer can be identified, he or she will be sanctioned.

For some specific offences (e.g., criminal organisation, financing of terrorism, money laundering, bribery of Swiss and foreign public officials), the company will be subject to criminal sanctions irrespective of the criminal liability of a natural person, unless the company can prove that it has taken all reasonable organisational measures required to prevent the criminal act.[23]

II THE DISPUTE RESOLUTION SYSTEM

i Access to courts

In accordance with Article 30 of the BV, all persons whose case falls to be judicially decided have the right to have their case heard by a legally constituted, competent, independent and impartial court. Further, in accordance with Article 75 of the ZGB, any member who has not consented to a resolution of an association that infringes the law or the articles of association of an association is also entitled by law to challenge such resolution in court within one month of learning thereof, even if the judiciary rules of the association would not foresee such right of challenge.

As already mentioned, a sports governing body, most commonly organised in the form of an association, is free, within the limits provided for by mandatory law, to organise its structure and determine the judicial system that shall apply within the organisation. This includes the setting up of different internal instances that shall determine issues between the association and its members as well as between the members and other stakeholders. Examples of such internal judiciary instances include the FIFA Dispute Resolution Chamber and the UEFA Control, Ethics and Disciplinary Body. This freedom also includes the right to define and apply sanctions in the case of a breach of the statutes, regulations or other rules of the association by its members or officials, and other stakeholders such as players or athletes. Such measures typically include sanctions such as reprimands, fines, suspensions and expulsion.[24] If an association has established such internal judiciary systems, it may foresee that internal sanction decisions may be challenged before an internal higher instance or before a governing body of an umbrella organisation prior to an appeal being lodged before an independent court.[25]

Moreover, freedom of association and economic freedom comprise a sports governing body's right to enact and enforce the rules of the game of its particular sport.[26]

The distinction between the rules of the game and rules of law is of paramount importance. The purpose of the rules of the game is to ensure fair competition, and the rules are aimed at regulating athletes' conduct only during a competition. In other words, they have effect only during the course of the competition, and consequently do not affect the personality or other rights of an athlete. For this reason, it is a widely accepted principle that rules of the game decisions (or field of play decisions) should be and are, as a matter of

22 Article 102, Paragraph 1 StGB.

23 Article 102, Paragraph 2 StGB.

24 BSK ZGB I-Heini/Scherrer, footnote 4, Article 70, Paragraph 18.

25 Hans Michael Riemer, 'Vereinsinternes Verfahren bei Vereinsstrafen', Causa Sport (CaS) 2013, p. 297.

26 Such as, for example, the Laws of the Game of FIFA or the IIHF Official Rule Book.

principle, final and not appealable.[27] On the other hand, decisions of sports governing bodies that affect personality or other rights of an athlete are open to appeal before the state courts or an arbitration court, depending on the dispute resolution mechanism that applies.[28] For example, the awarding of a penalty kick and the sanctioning of an ice hockey player with a five-minute sanction are rules of the game decisions not open to appeal, while, by way of example, suspending a player from five subsequent games or imposing a fine would be a rule of law decision affecting the athlete's rights that would, consequently, be open to appeal.

Internal judiciary instances of sports governing bodies (as described above) normally do not fulfil the criteria of independent and impartial courts, as their members are usually elected and remunerated by the sports governing body itself.[29] For this reason, any member or other stakeholder that has been sanctioned by an association, or is otherwise subject to a decision of such association, has the right to challenge the decision and file an appeal with the competent state court, even if the relevant regulations of the association would not expressly foresee such course of action. Alternatively, an appeal may be lodged with a court of arbitration (that fulfils the requirements of independence and impartiality) if a valid arbitration agreement is in place.

Sport arbitration is of utmost importance in Switzerland given that the Court of Arbitration for Sport (CAS) has its seat in Lausanne, Switzerland. In the landmark *Gundel* and *Lazutina* cases,[30] the Swiss Federal Tribunal confirmed that the CAS is a true arbitral tribunal.

ii Sports arbitration

In Swiss domestic arbitration, the *lex arbitrii* is found in the Swiss Civil Procedure Code (CPC). In international arbitration (i.e., where the court of arbitration has its seat in Switzerland, but where at least one party is not domiciled in Switzerland), the 12th Chapter on the Swiss Statute on Private International Law (PIL) applies. Article 354 of the CPC provides that in domestic arbitration, only claims that the parties may freely dispose of are arbitrable, while pursuant to Article 177 of the PIL, in international arbitration, any pecuniary claim may be subject to arbitration. It is strongly disputed whether claims based on Article 75 of the ZGB (i.e., appeals against decisions of an association), for instance, an appeal by an athlete against a sanction for a doping offence or an appeal by a player against a suspension for unfair behaviour on the field, are of a pecuniary nature and are thus arbitrable. According to prevailing opinion, such appeals are deemed to be of a non-pecuniary nature, which would mean that such cases could not be brought to arbitration (e.g., before the CAS).[31] That notwithstanding, the Swiss Federal Tribunal in its practice usually accepts the arbitrability of appeals against sanction decisions of sports governing bodies brought before the CAS in international arbitration.[32]

In domestic arbitration, arbitrability of employment matters is restricted, as disputes regarding the mandatory rights of an employee in the sense of Article 341 of the OR cannot

27 Official Collection of the Decisions of the Swiss Federal Tribunal (Swiss Federal Tribunal) BGE 108 II 15, cons 3.

28 BGE 120 II 369 cons 2; BGE 118 II 12, cons 2; BGE 103 Ia 410, cons 3b.

29 BGE 119 II 271, cons 3b.

30 BGE 119 II 271 and BGE 129 III 445.

31 For example, BGE 108 II 15, cons 1a.

32 For example, BGE 136 III 345.

be brought to arbitration against the employee's will, even if the employment agreement provides an explicit arbitration clause.[33] These are rights that the parties cannot freely dispose of. In international arbitration, however, admissibility has to be determined in light of Article 177 of the PIL. The Swiss Federal Tribunal holds that an employment issue may be brought before a court of arbitration having its seat in Switzerland such as the CAS if the employment agreement provides for an arbitration clause, even if employment disputes are exempt from arbitration in the domicile country of the employee. According to the Swiss Federal Tribunal, Article 177, Paragraph 1 of the PIL provides that any claim that has a pecuniary or economic interest can be brought to arbitration, and that this rule also applies to monetary claims under a labour contract.[34] When assessing the issue of arbitrability of international employment issues, the Swiss Federal Tribunal also considers the risk that the prevailing party may not enforce the arbitral award in the relevant jurisdiction. However, it holds that when enacting Article 177 of the PIL, the Swiss legislator deliberately accepted the risk that an award may not be enforceable in a given jurisdiction, but that it is the parties' duty when agreeing on arbitration to assess whether a final award will be enforceable.[35]

iii Enforceability

Two basic and fundamentally different avenues of enforceability must be distinguished: the way to enforce decisions of state courts and courts of arbitration, and the path to enforce decisions of internal judiciary bodies of sports associations.

In domestic disputes, decisions of state courts or independent and impartial arbitration courts are subject to enforcement in accordance with Article 335 et seq. of the CPC unless the decision relates to the payment of money or the provision of security, in which case it is enforced pursuant to the provisions of the Federal Act on Debt Enforcement and Bankruptcy. The recognition, declaration of enforceability and enforcement of foreign decisions in Switzerland are governed by said articles of the CPC, as well as relevant international treaties and Article 25 et seq. of the PIL. The recognition of decisions of Swiss state courts and arbitral awards of arbitration courts having their seat in Switzerland is subject to the relevant international treaties such as the Lugano Convention on the Jurisdiction, Recognition and Enforcement of Judgments in Civil and Commercial Matters and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

On the other hand, internal decisions of sports associations are usually not recognised as judgments or awards of a court or an arbitral tribunal, as the requirements of independence and impartiality are usually not met.[36] Therefore, they are not, as such, enforceable in accordance with the international treaties or domestic statutory provisions discussed above. That notwithstanding, such decisions are relevant for the parties concerned, as the decision would still be enforceable at the level of the association rendering the decision. Any non-compliance with the decision could trigger sporting and other sanctions by the relevant association in accordance with its own rules and regulations. If the decision is not appealed with the state courts, or a court of arbitration such as the CAS, it would become final, and the relevant party would become subject to sanctions by its association. Consequently, although

33 For example, Swiss Federal Tribunal 4A_515/2012 of 17 April 2013, cons 4.3.

34 Swiss Federal Tribunal 4A_388/2012 of 18 March 2013, cons 3.4.1; Swiss Federal Tribunal 4A_654/2011 of 23 May 2012, cons 3.4.

35 Swiss Federal Tribunal 4A_388/2012 of 18 March 2013, cons 3.3.

36 Ibid.

such internal decisions of a sports governing body are not enforceable in the manner of decisions of the state courts or courts of arbitration, they are usually complied with by the relevant party as such party would otherwise run the risk of sporting or financial sanctions, or both, of the association that could have a material and adverse impact on that party.

III ORGANISATION OF SPORTS EVENTS

i Relationship between organiser and spectator

The relationship between the organiser of a sports event and spectators is primarily of a contractual nature, with the contract usually becoming effective when a spectator purchases a ticket for the event. The fundamental points of each such spectator contract consist of a spectator being granted admission to the stadium in return for a fee so that the spectator can follow a certain match or other sport event 'live'. The spectator contract may govern additional topics, such as safety, advertising and liability as well as the right – of special importance with a view to the commercial exploitation of a sports event via television broadcasts – to film spectators within the scope of television broadcasts.

ii Relationship between organiser and athletes or clubs

The relationship between an organiser and athletes or clubs participating at a certain sports event can, on the one hand, be based on a specific agreement on participation. On the other hand, it can be based on membership to an association, and thus on obligations pursuant to a sports association's statutes and regulations (e.g., competition regulations defining the criteria for being eligible for participation as well as the rights and obligations of the participating athletes or clubs).

iii Liability of the organiser

If a person (e.g., a spectator or another third party) suffers damage because of the conduct of other spectators or athletes before, during or after a sports event, the organiser may, in principle, become liable either for breach of contract or, if no agreement with the damaged party is in place, for tort.

If the damage-causing event took place outside the arena and the surrounding private property, liability (if any) would typically be based on tort. Under Swiss law, liability for tort necessitates, *inter alia*, that the damaging party be charged with unlawfulness through inflicting damage in an appropriately causal manner (Article 42 of the OR). Pursuant to the established legislation of the Swiss Federal Tribunal, the causing of damage is unlawful when it breaches a general statutory obligation by either impairing an absolute right of the damaged party or effects pure financial damage through breach of a rule that by its purpose aims to protect against such damage.[37] Since, in this instance, the organiser has not itself caused the damage, it also has not itself breached such protective standard. For this reason, liability from forbearance may be conceivable. A non-contractual liability because of forbearance necessitates, pursuant to the Swiss Federal Tribunal, non-action despite the existence of a legal obligation to act.[38]

37 BGE 133 III 323, cons 5; BGE 132 III 122, cons 4.1; BGE 123 III 306, cons 4.

38 BGE 115 II 15, cons 3b.

Pursuant to the established legislation, however, unlawfulness can only develop when a protective standard in favour of the damaged party explicitly requires action. Such protective standard can first arise from some part of objective law and secondly from general legal principles.[39] If an absolute right is at risk (such as ownership), according to an unwritten legal principle a capacity to act exists for the person who has created a dangerous circumstance or otherwise is responsible for it in a legally binding manner.[40] This 'danger clause' provides that the person who creates or maintains a dangerous circumstance must take the protective measures necessary to avoid damage.[41] According to the Swiss Federal Tribunal, such clause is suitable, in the event of a breach of absolute legal assets, for establishing unlawfulness in the event of a lack of a specific protective standard.[42] When applied to the question of the possible liability of an organising club for damage caused by rioting 'fans' outside a stadium, these principles confirmed by the Swiss Federal Tribunal mean that an organiser could only be held liable for an unlawful action if a third party suffers damage to an absolute right (such as to his or her property, but not solely his or her assets) and if the circumstances reasonably require action by the organiser to avoid such damage. Whereas a breach of an absolute right will be regularly recognised when a car, house or another item is damaged, in the opinion of the authors, obliging the organiser to compensate such damage would, however, regularly fail in that the organiser cannot take any effective measures in the first place to avert damage outside the stadium, and is not even authorised to do so owing to the monopoly to use force lying with the state.

On the other hand, if a spectator suffers damage in the stadium because of the conduct of another spectator or other person, the liability of the organiser (if any) would typically be contractual. The decisive aspect when assessing the organiser's liability is whether the organising club has an obligation to protect spectators from rioting 'fans'. According to general principles under Swiss law and in light of the nature of the business and the hypothetical will of the parties under a spectator contract, one must assume that the organiser's duties include the obligation to protect the spectators from damage. However, the crucial question is how far this obligation of protection extends. Maximum protective measures protecting against all possible incidents do not exist, and comprehensive protection can also not be expected from an organising club that has acted in good faith. However, it can be demanded that the organiser takes the objectively appropriate protective measures.[43] The event organiser, thus, must take the security measures that the spectator can reasonably expect. When examining the specific circumstances, such as the quality of the stadium, the type of match (friendly, championship-deciding match, etc.) as well as any known willingness to use violence on the part of own fans and those of the visiting club need to be taken into account. In this regard, important indications are also offered by the relevant regulations that the responsible sports association has issued on the topic of safety and safety measures in stadiums. If such regulations exist, a court that has been called upon to assess an incident of damage will

39 Heierli/Schnyder, in *Basler Kommentar zum Obligationenrecht I*, 6th ed. (BSK OR I-Heierli/Schnyder), Article 41, Paragraphs 18, 19a and 37; BGE 115 II 15, cons 3b et seq.; Swiss Federal Tribunal 4A_520/2007 of 31 March 2008.

40 BGE 121 III 358, cons 4.

41 BGE 124 III 297, cons 5b.

42 Swiss Federal Tribunal 4A_104/2012 of 3 August 2012, cons 2.1; Swiss Federal Tribunal 4A_520/2007 of 31 March 2008, cons 2.1; Swiss Federal Tribunal 4C.119/2000 of 2 October 2000, cons 2b.

43 András Gurovits, 'Die zivilrechtliche Haftung für Zuschauerverhalten', CaS 2014, p. 271 et seq.

then also orient itself to these regulations. If an organising club does not comply with these regulations, it could only in exceptional cases assert that the specified measures were excessive or not expedient, and that it therefore did not comply with them.

iv Liability of the athletes

Athletes may also become liable either for breach of contract or for tort. In both cases, the athlete may be held liable for compensation of the damage caused. In cases of tort liability, the damage is caused unlawfully when the athlete breaches a general statutory obligation by either impairing an absolute right of the damaged party or effects pure financial damage through breach of a rule that by its purpose aims to protect against such damage.[44]

In respect of sport injuries incurred during participation in a sports event, in general, the principle of 'acting at one's own risk' applies, at least as far as the rules of law have been complied with or have not been breached by the damaging party in a serious manner. In the case of an excess violation of the appropriate standard of care or the rules of the game, or both, the damaging athlete may be not only be held liable for compensation of damages but may also expose him or herself to sanctions under criminal law.

v Liability of the spectators

Express written terms may be scarce in a spectator contract. For this reason, the generally recognised principles under Swiss law that contractual content is not solely determined by the wording of the contract, and that other obligations exist that result in good faith from the nature of the contract and correspond to the hypothetical will of the parties, are also important in the case of the misconduct of a spectator. In the authors' opinion, such other non-written or implied obligations undoubtedly include, for example, an obligation on the spectators not to let off any firecrackers and, more generally, their obligation not to disturb the course of the event and not to jeopardise the health of the other spectators and the players. From a legal dogma perspective, these are ancillary obligations of spectators (i.e., additional obligations to the payment of the admission price). Such ancillary obligations cannot always be claimed independently, but when they are breached they nevertheless result at least in an obligation of the breaching party to pay compensation. If a spectator breaches a primary or ancillary obligation under the spectator contract, he or she becomes liable for compensation pursuant to the general regulations under Article 97 et seq. of the OR if he or she cannot prove that he or she is not culpable.

vi Riot prevention

The Concordat on Measures to Combat Violence during Sports Events (Concordat) was introduced in Switzerland as an inter-cantonal set of rules aimed at reducing acts of violence at sports events, and in particular at games featuring professional football teams in 2007 and was amended in 2012 (as of today 24 of 26 cantons acceded to the amended Concordat). Measures under the Concordat include, for actual and potential wrongdoers, the designation of off-limit areas, the requirement to report to the police at certain dates and times, and police custody. The Concordat also makes provision for authorising private security firms commissioned by the organiser of the event to perform admission checks and to conduct

44 In respect of liability in general: BGE 133 III 323, cons 5; BGE 132 III 122, cons 4.1; BGE 123 III 306, cons 4.

clothed body searches for prohibited items, irrespective of a specific suspicion.[45] The Concordat can also result in an obligation for clubs to request that spectators show proof of their identity in order to ensure that no persons are admitted who are subject to a stadium ban or to other measures pursuant to the Concordat.[46] However, while, as a matter of principle clubs are responsible for ensuring security within a stadium and in any surrounding private area, in the case of a violent dispute inside or outside a stadium pursuant to the monopoly of the state on using force, the police must intervene. Clubs thus have their hands tied with regard to effective measures to curb violence within arenas.[47]

In order to compensate the state for security measures implemented before, during and after a sports event, the cantonal laws foresee an organiser's duty to contribute to the costs incurred.[48] This cost contribution is usually determined by taking into account the entire cost incurred, the purpose of the event and the interest of the general public in such event.[49]

IV COMMERCIALISATION OF SPORTS EVENTS

i Types of and ownership in rights

From a legal viewpoint, the organisation and realisation of a sports event, such as a tournament or a championship, presupposes a complex system of contractual arrangements. This is owing to the fact that the organisers of a sports event work together with a multitude of different partners, and must guard against contractual and non-contractual risks to the extent possible and justifiable.

From an organisational viewpoint, the hub of this complex system consists of the organisation agreement that is, as a rule, entered into between the sports association under whose auspices the sports event will be held and the host. In terms of commercial exploitation, television agreements and sponsoring agreements are of substantial importance. Spectators who wish to watch a sports event live in a stadium (or at another event location) are located at the other end of the organisational chain. A separate contract (the spectator contract, discussed in Section III) is entered into with each individual spectator or ticket purchaser. Additional contractual relationships arise with owners or operators of stadiums or other competition sites. As a primary matter, these agreements govern the right on the part of a host or sports association, or both, to use a stadium (or other competition site) for the purposes of the relevant sports event. Depending on the situation, other parties involved in this system may include merchandisers and caterers. Caterers are responsible for supplying competition sites, or certain VIP zones or both, with food, beverages and other resources necessary for catering to the public, provided that this activity is not assigned to a sponsor within the scope of the sponsoring agreement. Merchandisers are responsible for the production and delivery of products (e.g., balls, T-shirts, caps, watches and other fan articles) bearing the logo or the trademark of the sports event or sports association, or both. Finally, the host or the sports association, or both, will have to conclude insurance policies that primarily cover risks of personal injuries and property damages.

45 Article 3b, Paragraph 2 of the Concordat.

46 Article 3a, Paragraph 3 of the Concordat.

47 Gurovits, footnote 40, p. 273 et seq.

48 Article 58, Paragraph 1, Letter (a) Police Act of the Canton of Zurich.

49 Gurovits, footnote 40, p. 275 et seq.

Within the above-described contractual framework, a number of different rights are involved that must be appropriately secured or assigned, or both. In this chapter, the discussion is limited to a description of the most relevant rights involved and their protection, i.e., the domestic authority, the rights on the athlete's own image, copyrights, and trademarks.

ii Rights protection

Domestic authority

The holder of the domestic authority has the power of decision regarding access to the premises. It may, for example, enter into contracts with spectators and vendors as well as with broadcasting companies to grant the right to access and install the necessary materials for emitting signals to register and broadcast the sport event.[50]

Right to one's own image

The right of athletes and spectators to their own image is protected from unlawful infringements by Article 28 of the ZGB. However, as athletes are usually public personalities, their right to claim protection is limited. They are, as a rule, considered to have accepted that they will be filmed and photographed during events.

However, the reproduction of recordings and pictures is, as a matter of principle, only allowed in relation to a specific event; for any other use, consent is required. For interviews, a tacit consent can be assumed.[51]

Copyright

Sport events are, as a rule, not protected by copyright because they are not works pursuant to the Copyright Act (URG).[52] However, recordings of sports events are considered works pursuant to the URG[53] as long as they have an individual character, which may be the case if specific techniques are applied such as, for instance, special picture direction, specialised commentary or slow motion replays.[54] Copyrights are protected intellectual property with *erga omnes* effect. They do not require any specific registration. The URG provides protection of related rights (or neighbouring rights) of the producer, allowing the reproduction and distribution of recordings,[55] and allowing the broadcasting organisation to retransmit and distribute its broadcasts.[56]

Trademarks

Trademarks need to be registered in the trademark registry in order to be protected.[57] Trademarks are protected intellectual property and have *erga omnes* effect. They can either

50 See Heinz Tännler, Tanja Haug, 'Kommerzielle Verwertung von Sportveranstaltungen', CaS 2007, p. 139.

51 Heinz Hausheer, Regina E Aebi-Müller, *Das Personenrecht des Schweizerischen Zivilgesetzbuches,* 4th ed., Berne 2016, p. 221.

52 Article 2, Paragraph 1 URG.

53 Article 2, Paragraph 2, Letter (g) URG.

54 Thomas Hügi, *Sportrecht*, Berne 2015, p. 195.

55 Article 36 URG.

56 Article 37 URG.

57 Articles 5 and 6 of the Trademark Protection Act.

be assigned, or their usage can be granted through licences. The legal remedies set out in the Trademark Protection Act are similar to those provided in the URG. Trademarks are typically used to designate specific sports events.

V PROFESSIONAL SPORTS AND LABOUR LAW

i Mandatory provisions

Under Swiss law, an employment agreement does not need to be in writing or to be signed in order to come into force. If a party can otherwise demonstrate that an agreement has been concluded, it is valid and binding.

Employment relationships are subject to a number of mandatory provisions that are to be found in the OR as well as in the Swiss Employment Act (ArG). While the former sets out mandatory rules in respect of the content of agreements, such as, for instance, terms, termination, holidays, sickness leave, non-compete clauses and intellectual property rights, the latter contains provisions on employee protection, including health protection, overtime work and work during nights and on weekends. While these latter provisions are, in principle, mandatory and applicable to all employees in Switzerland, they are considered as inappropriate in respect of the activities of professional athletes.[58]

In addition, mandatory provisions can be found in the Federal Act on Employment Services and the Hiring of Services (AVG) and its implementing ordinances is relevant for agents of athletes who, on a regular basis, provide their services in Switzerland.[59] Pursuant to the AVG, such agents need to be Swiss residents and need to obtain a licence from the competent public authority. Furthermore, the agent fee is restricted to a maximum of 5 per cent of the gross annual salary for the first year of the employment contract of the athlete.[60] In the case of infringements the agent may become subject to criminal sanctions.[61] In the authors' experience, this law is disregarded in many cases.

ii Free movement of athletes

The treaty on the free movement of individuals between the European Union and Switzerland (FZA) grants the citizens of contracting states the right to freely choose their place of work and residence. The FZA is also applicable to professional athletes.[62] In accordance with Article 2 of the FZA, discrimination because of citizenship is forbidden.

The system under the FZA also applies to citizens of the European Free Trade Association countries (Norway, Iceland and Liechtenstein). Citizens of third countries are subject to the Swiss Foreign Nationals Act, which provides, in general, higher burdens regarding admission to employment and residence, but also provides some exceptions in respect of professional athletes.[63]

58 Hügi, footnote 51, p. 276 et seq.

59 Article 2, Paragraph. 1 AVG.

60 Article 3, Paragraph 1 GebV AVG.

61 Article 39, Paragraph 2, Letter d and Paragraph 3 AVG.

62 Kurt Rohner/Adrian Wymann, 'Das Freizügigkeitsabkommen mit der EU und der Schweizer Sport – Konsequenzen für die Arbeitsverhältnisse', *CaS* 2004, p. 5.

63 Article 23, Paragraph 3, Letter (b) AuG.

Swiss sports associations may, however, voluntarily restrict the free movement of athletes. They did so, for instance, in ice hockey based on a gentlemen's agreement pursuant to which not more than four foreign players shall be on the roster for a particular game.

iii Application of employment rules of sports governing bodies

Employers and employees are free to determine the terms of their employment contract within the limits of mandatory Swiss law. This includes their right to agree that standard terms of a national sports association shall form an integral part of the agreement. Such standard terms are enacted, for instance, by the Swiss Football League.

VI SPORTS AND ANTITRUST LAW

The Swiss Federal Act on Cartels and other Restraints of Competition (CartA) applies to private and public undertakings that are parties to cartels or to other agreements affecting competition, that exercise market power or that are part of a concentration of undertakings.[64] In accordance with the CartA, agreements that significantly restrict competition in a market for specific goods or services and that are not justified on grounds of economic efficiency, and all agreements that eliminate effective competition, are unlawful.[65] Further, dominant undertakings are seen to behave unlawfully if they, by abusing their position in the market, hinder other undertakings from starting or continuing to compete or disadvantage trading partners.[66]

Undertakings in the sense of the CartA are consumers and suppliers of goods and services regardless of their legal and organisational form if and as far as they are active in commercial activities. Thus, sports governing bodies and other sports organisations are bound by the CartA as they participate in commercial activities such as the sale of broadcast and marketing rights. On the other hand, the activities and regulations of a sports governing body are traditionally considered to be outside the scope of the CartA if and to the extent they are related to the organisation, governance and administration of their particular sport. The rules of the game, eligibility provisions, regime of sanctions, internal dispute resolutions systems and similar provisions are, therefore, usually excluded from scrutiny from an antitrust law perspective.

However, as sports governing bodies may be seen as having a dominant position on the relevant sports market or markets, the above dichotomy of rules falling within and those falling outside the scope of the CartA is subject to growing criticism, and it is also argued that the organisational and administrative rules of a sport governing body may be in violation of cartel law if they significantly impact an athlete's (commercial) rights.

64 Article 2, Paragraph 1 CartA.

65 Article 5, Paragraph 1 CartA.

66 Article 7, Paragraph 1 CartA.

VII SPORTS AND TAXATION

The Swiss taxation system is complex, and any comprehensive discussion thereof would go far beyond the scope of this chapter. Therefore, the following discussion shall be limited to those Swiss tax aspects that are relevant for foreign (professional) athletes that participate at sports events held in Switzerland.

The income of employed and self-employed athletes who are non-Swiss residents is subject to source tax in respect of the income generated from their participation at sports events in Switzerland. Taxable income consists of all gross earnings, including allowances and value in-kind contributions, and it also includes earnings that are not paid to the athlete but to a third party, such as an organiser, manager or agent. The applicable tax rates and allowed deductions depend on the canton of performance. In the canton of Zurich, for instance, a lump sum of 20 per cent of the gross earnings may be deducted for costs incurred in respect of the performance in Switzerland. If the athlete elects to deduct (higher) actual costs, he or she must evidence such higher costs by producing the relevant receipts. Currently, the relevant source tax rate in the canton of Zurich covering federal, state and municipality tax ranges between 10.8 per cent for daily earnings up to 200 Swiss francs and 17 per cent for daily earnings in excess of 3,000 Swiss francs. The source tax becomes due at the date of payment of the taxable income to the athlete. The host of the event must pay the tax to the tax authority of the municipality where the event took place within 30 days of the beginning of the month following the payment. The social security consequences must be reviewed on a case-by-case basis.

Most double taxation treaties entered into by Switzerland follow Article 17 of the Organisation for Economic Co-operation and Development Model Tax Convention and do not alter the rules discussed above.

VIII SPECIFIC SPORTS ISSUES

i Doping

Article 19 *et seq.* of the Federal Law on the Promotion of Sports (LPS) and Article 73 et seq. of its implementing ordinance provide the legal framework for the fight against doping. Measures include restriction of the supply of prohibited substances, the execution of doping controls and the authorisation of private bodies to perform such controls, as well as the sanctioning of certain violations of the LPS. Criminal sanctions for violations of the law include penalties or imprisonment for a period of up to five years, or both.

Criminal sanctions may be imposed on anyone who produces, purchases, imports, exports, transports, distributes, acts as an agent for, prescribes or possesses prohibited substances, or applies prohibited methods to other persons. The ordinance includes a list (annex to the ordinance) of the forbidden substances and methods. This list does not fully correspond with the doping list of the World Anti-Doping Agency (WADA). In case that a substance or a method is not listed in the annex to the ordinance, it is from a criminal perspective not relevant (*nulla poena sine lege*). According to the LPS, the production, purchase, import, export, transportation or possession of prohibited substances for a person's own consumption are not subject to criminal sanction pursuant to the LPS.

In addition, doping is banned by the relevant doping regulations of the various sports governing bodies and WADA. Violations of these rules will, however, not be sanctioned based on statutory public law, but rather in accordance with the relevant sanction regime of the sports governing body and WADA.

ii Betting

Under the Federal Lottery Act, commercial betting in the area of sports is, as a rule, forbidden. This ban is to be understood broadly, and it prohibits offering to act as an agent for bets, the operation of a betting provider as well as any form of advertising and promotion of betting activities. Anyone who violates the law may become subject to criminal sanctions, which could include imprisonment for a period of up to three months or a fine, or both. According to the Lottery Act, the cantons may authorise exceptions and grant licences to specific betting providers.

The provisions of the Lottery Act are also of practical relevance in the international context, in that advertising on jerseys (e.g., jerseys worn by football players) is not allowed, and that this ban would also extend to foreign teams playing in Switzerland during, for example, the UEFA Champions League or Europa League. If a betting provider is a sponsor of such foreign team and its logo is displayed on the players' jerseys, the team would not be allowed to play in Switzerland wearing these jerseys.

The Lottery Act shall be replaced by the Federal Gaming Act, which is currently being discussed in the Swiss parliament.

iii Match-fixing and manipulation in sports

At present, Swiss law does not provide specific statutory provisions aimed at banning match-fixing or manipulation in sports. While in specific cases a delinquent may become liable under the current legislation for fraud or corruption if the requirements of proof are fulfilled, the statutory framework currently in force does not provide any comprehensive and proper protection of clean sports in general.

A recent decision of the Swiss Federal Criminal Court[67] attracted public attention for holding that football players allegedly involved in match-fixing could not be subject to criminal sanctions because unlike human beings, the electronic betting systems used in that particular case could not be deceived, and thus the players could not have committed any fraud in the sense of the StGB.

The Swiss Federal Council has launched an initiative to amend the current law and to introduce sanctions for a new crime called 'sports fraud'. Among other things, the Swiss parliament decided on 29 September 2015 to tighten the criminal legislation on private corruption (known as Lex FIFA). The provisions on private corruption have been moved from the Unfair Competition Act to the StGB, which means that corruption offences committed in the private sector in the course of professional or commercial activities are punishable irrespective of whether they influence competition. In addition, private corruption is an *ex officio* crime, except in minor cases, where a complaint must be filed. The new legislation (Article 322 *octies* et seq. StGB) entered into force on 1 July 2016.

In addition, the Swiss parliament is currently discussing the new Federal Gaming Act, which shall replace the existing Federal Law on Lotteries and the Federal Law on Games of Chance and Casinos. As part of the revision, among others, the following measures shall be considered: Manipulation of sports results shall be classified as a criminal offence; requirements shall be imposed on sports betting operators to combat the manipulation of sports results; and the exchange of information shall be ensured between authorities, sports organisations and betting operators. As the legislation project turns out to be complex and

67 Decisions Nos. SK.2011.33 and SK.2012.21 of 13 November 2012.

politically controversial the new law has not come into force yet. As a result, certain acts of manipulation cannot be sanctioned as the *nulla poena sine lege* principle requires that criminal sanctions can only be imposed if the wrongdoer commits an act that is clearly specified in the law. The courts are not allowed to apply provisions of the penal code by analogy. This is perfectly illustrated by a recent decision of the Swiss Federal Criminal Court that had to acquit an individual of fraud, in particular, because in that case manipulated bets had been placed through electronic betting systems and Article 146 of the Swiss Penal Code on fraud requires that an individual (and not a machine) is deceived.[68] As long as the new law has not been set into force, Swiss authorities are also prevented from granting judicial assistance in criminal matters to foreign prosecuting authorities because the Federal Act on International Mutual Assistance in Criminal Matters (IMAC) requires that the relevant act is punishable not only in the relevant foreign jurisdiction, but also in Switzerland.[69]

iv Grey market sales

In the past few years, three parliamentary interventions in the National Council addressed the issue of grey market sales, asking the Swiss Federal Council to evaluate the situation.[70] The Swiss Federal Council, however, held that the legislation already provides efficient means to combat grey market sales. It also held that technical and contractual measures are available for organisers to prevent or limit grey market sales.[71] For these reasons, the Swiss Federal Council did not propose any new measures in this context. The National Council shared this opinion and renounced recently again initiating a legislation process.[72]

IX THE YEAR IN REVIEW

On 16 September 2016, the Swiss Federal Council opened the consultation procedure on the approval of the Convention on the Manipulation of Sports Competitions (Convention) that the Member States of the Council of Europe signed in 2014. The purpose of the Convention is to combat the manipulation of sports competitions in order to protect the integrity of sports and sports ethics in accordance with the principle of the autonomy of sport. Pursuant to Article 3, Paragraph 4 of the Convention, 'manipulation of sports competitions' means an intentional arrangement, act or omission aimed at an improper alteration of the result or the course of a sports competition in order to remove all or part of the unpredictable nature of the sports competition with a view to obtaining an undue advantage for oneself or for others. The Convention proposes a number of measures that the signatory states shall implement, including measures on domestic cooperation, risk assessment and management, education and awareness raising, and information exchange. The Convention, subject to ratification, shall enter into force on the first day of the month following the expiration of a period of three months after the date on which five signatories, including at least three Member States of the Council of Europe, have expressed their consent to be bound by the Convention. The

68 Swiss Federal Criminal Court, SK. 2016.48 of 14 April 2017.

69 Article 64, Paragraph 1 IMAC.

70 Postulate No. 15.3397, Wiederverkauf von Veranstaltungstickets zu überhöhten Preisen. Sanktionen; Motion No. 14.3478, Weiterverkaufte Tickets dürfen nicht teurer werden; Interpellation No. 10.3078, Graumarkt für Tickets für Konzert- und Sportveranstaltungen.

71 Interpellation No. 10.3078, Graumarkt für Tickets für Konzert- und Sportveranstaltungen.

72 Postulate No. 15.3397, Wiederverkauf von Veranstaltungstickets zu überhöhten Preisen. Sanktionen.

necessary amendments with respect to the implementation of the Convention are included in the latest draft of the new Federal Gaming Act, which is currently being discussed in Parliament.[73]

In December 2016 the Swiss Federal Tribunal dismissed an appeal against an award that the CAS had rendered in respect of an 'Economic Rights Participation Agreement' that proved to be problematic under UEFA's TPO (third-party ownership) rules.[74] In that case a transfer of a player had been financed by an investment company that, in exchange, was entitled to receive 75 per cent of the profit of a future transfer of the player. As a result of his performance in the 2014 FIFA World Cup the value of the player increased significantly and he was ultimately transferred to a Premier League club for an amount that was four times higher than the initial transfer price. As the club refused payment of the investment company's share of 75 per cent of the transfer amount the investment company lodged a claim with the CAS that decided in favour of the investment company. The club did not accept the CAS decision and filed an appeal with the Swiss Federal Tribunal. As the Federal Tribunal's power to review international arbitral awards is limited and the Swiss Private International Law Act does, in particular, not allow the Federal Tribunal to fully review an award on its merits, the club claimed that the CAS decision was incompatible with Swiss public order (order public) arguing that treating a player like a pure object of speculation is incompatible with 'public morals' that shall have a specific and more independent meaning in the area of sports. While the Swiss Federal Tribunal acknowledged, in principle, the need to consider the particularities of sports, it nonetheless refused to give 'public morals' an independent meaning in the sense of a specific *lex sportiva* and, therefore, rejected the appeal lodged by the club.[75]

On 2 February 2017, the CAS upheld a decision made by the FIFA Dispute Resolution Chamber (DRC) in the case *Calhanoglu vs. Trabzonspor*. In 2011, the football player Hakan Calhanoglu – at that time 17 years old – signed a contract with the Turkish club Trabzonspor, which he could not fulfill as he had simultaneously signed up with the Bundesliga club Karlsruher SC. The CAS confirmed the sanctions imposed by the DRC on the player (four month ineligibility and a fine of 100,000 Swiss francs). As a matter of fact, the sanctions became final and legally binding six years after the issue occurred with the consequence that the player's current club, Bayer Leverkusen, could not make use of the player's service although it had not been involved in the transactions causing the dispute.

On 9 August 2017, the Swiss Federal Criminal Court convicted a football fan to a 36-month imprisonment because of serious physical assault. During the match between FC Lucerne and FC St. Gallen of 21 February 2016 the wrongdoer threw firecrackers on the pitch and caused a permanent hearing damage of another spectator. This was the first case ever handled by the Office of the Attorney General of Switzerland that usually only deals with criminal cases where explosive material is used if national interests are affected, thus demonstrating that cases of fan violence and misuse of pyrotechnic will forthwith be prosecuted as serious criminal matters.

73 BASPO (the Federal Office of Sport) press release) www.baspo.admin.ch/de/aktuell/themen--dossiers-/korruption-und-illegale-wetten.detail.news.html/2016/uebereinkommen-gegen-manipulation-sportwettbewerbe-bundesrat-eroeffnet-vernehmlassung.html (last visited on 8 September 2017). www.coe.int/fr/web/conventions/full-list/-/conventions/rms/09000016801cdd7e (last visited on 8 September 2017).

74 Swiss Federal Tribunal 4A_116/2016 of 13 December 2016.

75 Swiss Federal Tribunal 4A_116/2016 of 13 December 2016, cons 4.2.3.

In September 2017, UEFA announced a formal investigation into the 222 million Euro transfer of Brazilian forward Neymar from FC Barcelona to Paris Saint-Germain Football Club. The investigation will focus on the compliance of Neymar's new club with FIFA's break-even requirements (financial fair play [FFP] rules). The outcome of the investigation is not yet known.

X OUTLOOK AND CONCLUSIONS

Swiss law does not provide a comprehensive set of rules for sports-related legal issues. Sport is, rather, subject to the general statutory framework, and the relevant rules can be found in codifications such as the OR, the ZGB, the StGB, the PIL, the CPC and many others. The current statutory framework provides appropriate solutions for most topics that are of relevance in the sports sector. Issues that are not covered, and where a loophole in the law could be identified, include certain methods of manipulation and betting. A first result was achieved with the new provisions on private corruption (Lex FIFA). In addition, the Federal Council started the consultation procedure regarding the approval of the Convention and the new Federal Gaming Act, which shall implement certain provisions of the Convention. Presently, it cannot be predictes if and when the new law may enter into force.

Sports governing bodies and other sports organisations established in Switzerland enjoy a broad autonomy in regulating their internal affairs. In addition, Swiss law and the jurisprudence of the Swiss Federal Tribunal are 'arbitration-friendly'. This is particularly important for the impressive number of international sports associations that are domiciled in Switzerland as well as for the CAS, which has its seat in Lausanne. The judiciary system in the world of sports that provides that the CAS shall act as final instance in sports matters is based on pertaining arbitration clauses mostly set out in the statutes and regulations of the sports governing bodies to which athletes are bound through their affiliation to the relevant association.

Corporate governance within (major) sports federations is likely to remain a hot topic and the subject matter of further review by the Swiss legislator, although the Swiss parliament has just recently turned down three interventions requesting a change to the regime governing international sports federations domiciled in Switzerland.

Appendix 1

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Dr András Gurovits is a partner at Niederer Kraft & Frey Ltd, Zurich, Switzerland. His main areas of practice are arbitration and litigation, sports, TMT and corporate governance.

He is a listed arbitrator with the Court of Arbitration for Sport (CAS) in Lausanne, a member of the legal committee of the International Ice Hockey Federation and a member of the board of directors of Grasshopper Fussball AG, the corporation operating the professional football activities of the Swiss multisport club Grasshopper Club Zurich.

Dr Gurovits regularly advises clients in civil and commercial disputes before state courts and arbitral tribunals, as well as in administrative proceedings before the relevant state authorities. Further, he regularly acts as sole arbitrator, member of a panel or chairman in arbitration proceedings before the CAS. His corporate governance experience includes, in particular, the planning and implementation of organisational regulations, codes of conduct and similar instruments to ensure the proper conduct of commercial entities, sports governing bodies and sports organisations. His sports practice covers all aspects of sports-related issues, such as commercialisation of sports rights, organisation of sports events and management of sports organisations.

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Mr Stancescu regularly advises corporations and other entities of different sizes active in various industries on a broad range of matters of corporate and commercial law as well as mergers and acquisitions. He is a member of the player safety committee of the International Ice Hockey Federation and a member the board of the Swiss Association for Sports Law.

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