The Sports Law Review

Second Edition

Editor
András Gurovits

Law Business Research
THE LAW REVIEWS

THE MERGERS AND ACQUISITIONS REVIEW
THE RESTRUCTURING REVIEW
THE PRIVATE COMPETITION ENFORCEMENT REVIEW
THE DISPUTE RESOLUTION REVIEW
THE EMPLOYMENT LAW REVIEW
THE PUBLIC COMPETITION ENFORCEMENT REVIEW
THE BANKING REGULATION REVIEW
THE INTERNATIONAL ARBITRATION REVIEW
THE MERGER CONTROL REVIEW
THE TECHNOLOGY, MEDIA AND TELECOMMUNICATIONS REVIEW
THE INWARD INVESTMENT AND INTERNATIONAL TAXATION REVIEW
THE CORPORATE GOVERNANCE REVIEW
THE CORPORATE IMMIGRATION REVIEW
THE INTERNATIONAL INVESTIGATIONS REVIEW
THE PROJECTS AND CONSTRUCTION REVIEW
THE INTERNATIONAL CAPITAL MARKETS REVIEW
THE REAL ESTATE LAW REVIEW
THE PRIVATE EQUITY REVIEW
THE ENERGY REGULATION AND MARKETS REVIEW
THE INTELLECTUAL PROPERTY REVIEW
THE ASSET MANAGEMENT REVIEW
THE PRIVATE WEALTH AND PRIVATE CLIENT REVIEW
THE MINING LAW REVIEW
THE EXECUTIVE REMUNERATION REVIEW
ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

ADVICE LAW FIRM

ADVOKATFIRMAN NORDIA

AKD

ALLEN & GLEDHILL LLP

ALLENDE & BREA

AL TAMIMI & COMPANY

ALTUS

CASTRÉN & SNEILLMAN ATTORNEYS LTD

CHARLES RUSSELL SPEECHLYS LLP

COZEN O’CONNOR

CUATRECASAS, GONÇALVES PEREIRA

GOLDENGATE LAW FIRM

GUARDAMAGNA E ASSOCIATI

JOFFE & ASSOCIÉS

MARTENS RECHTSANWÄLTE

MINTER ELLISON RUDD WATTS

NIEDERER KRAFT & FREY LTD

P&A GRUPO CONSULTOR

PINHEIRO NETO ADVOGADOS

PINTÓ RUIZ & DEL VALLE
CONTENTS

Editor's Preface ........................................................................................................ V
András Gurovits

Chapter 1 ARGENTINA .................................................................................. 1
Pablo A Palazzi and Marco Rizzo Jurado

Chapter 2 BELGIUM .................................................................................. 14
Sven Demeulemeester

Chapter 3 BRAZIL ...................................................................................... 26
Adolfo Julio Camargo de Carvalho

Chapter 4 DENMARK ................................................................................ 36
Lars Hilliger

Chapter 5 ENGLAND AND WALES ....................................................... 52
Jon Ellis, Ian Lynam, Paul Shapiro and Ben Rees

Chapter 6 FINLAND ................................................................................ 69
Pia Ek and Hilma-Karoliina Markkanen

Chapter 7 FRANCE .................................................................................. 81
Romain Soiron and Aude Benichou

Chapter 8 GERMANY ................................................................................ 91
Dirk-Reiner Martens and Alexander Engelhard

Chapter 9 ITALY ........................................................................................ 114
Maria Laura Guardamagna

Chapter 10 NETHERLANDS ................................................................. 125
Kees Jan Kuilwijk
### Contents

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Country</th>
<th>Page</th>
<th>Authors</th>
</tr>
</thead>
<tbody>
<tr>
<td>11</td>
<td>NEW ZEALAND</td>
<td>136</td>
<td>Aaron Lloyd</td>
</tr>
<tr>
<td>12</td>
<td>PARAGUAY</td>
<td>149</td>
<td>Gerardo Luis Acosta Pérez</td>
</tr>
<tr>
<td>13</td>
<td>PORTUGAL</td>
<td>160</td>
<td>Luis Soares de Sousa</td>
</tr>
<tr>
<td>14</td>
<td>SINGAPORE</td>
<td>171</td>
<td>Ramesh Selvaraj, Tham Kok Leong, Daren Shiau and Sunit Chhabra</td>
</tr>
<tr>
<td>15</td>
<td>SPAIN</td>
<td>185</td>
<td>Jordi López Batet and Yago Vázquez Moraga</td>
</tr>
<tr>
<td>16</td>
<td>SWEDEN</td>
<td>195</td>
<td>Karl Ole Möller</td>
</tr>
<tr>
<td>17</td>
<td>SWITZERLAND</td>
<td>210</td>
<td>András Gurovits and René Fischer</td>
</tr>
<tr>
<td>18</td>
<td>UKRAINE</td>
<td>228</td>
<td>Anton Sotir</td>
</tr>
<tr>
<td>19</td>
<td>UNITED ARAB EMIRATES</td>
<td>242</td>
<td>Steven Bainbridge, Ivor McGettigan and Laila El Shentanawi</td>
</tr>
<tr>
<td>20</td>
<td>UNITED STATES</td>
<td>259</td>
<td>Steve Silton and James Minor</td>
</tr>
</tbody>
</table>

**Appendix 1** ABOUT THE AUTHORS ........................................... 281

**Appendix 2** CONTRIBUTING LAW FIRMS’ CONTACT DETAILS ...... 293
EDITOR’S PREFACE

This second 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 20 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.

Each chapter of this second 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 second edition of *The Sports Law Review* covers 20 jurisdictions. Each chapter has been provided by renowned sports law practitioners in the relevant jurisdiction and as editor of this publication I would like to express my greatest respect for the skilful contributions of my esteemed colleagues. I trust also that each reader will find the work of these authors informative and will avail themselves at every opportunity of the valuable insights contained in these chapters.

András Gurovits
Niederer Kraft & Frey Ltd
Zurich
November 2016
Chapter 2

BELGIUM

Sven Demeulemeester

I ORGANISATION OF SPORTS CLUBS AND SPORTS GOVERNING BODIES

Belgian law clearly supports the autonomy of sports clubs and sports governing bodies to organise themselves as they see fit.\(^1\) The principle of freedom of association is set out in Article 27 of the Belgian Constitution – ‘Belgians have the right to associate; this right cannot be made subject to any preventative measure’ – and Article 27 forms the basis upon which sports federations are established.

Freedom of association is further guaranteed under Article 2 of the Freedom of Association Act of 24 May 1921, which states that ‘Anyone who, at his or her demand, becomes a member of an association, undertakes, through his or her membership, to submit to the rules, decisions and sanctions taken in accordance with such rules; any rule waiving such freedom, is null and void’.

i Organisational form

Belgian laws do not specifically regulate the organisation or legal form of clubs or sports governing bodies.

In practice, the majority of Belgian clubs and sports governing bodies, with the exception of certain more commercially developed professional clubs or leagues, take the form of a non-profit association. Although a non-profit entity may pursue a commercial activity, seek to make a profit (only profit-sharing is prohibited) or hold a stake in a commercial company (e.g., a company operating merchandising or catering activities), a number of clubs have developed commercial activities that are hardly compatible with their legal form.\(^3\)

---

1 Sven Demeulemeester is a partner at Altius.
The tax authorities are known to target sports clubs for that reason, and they do not hold back from disqualifying a sports club as a commercial undertaking if such undertaking has falsely taken the form of a non-profit association. In addition, over the past few years, a large number of clubs have changed their legal form to that of a regular limited liability company, which is often more suited to their economic reality.

At present, no club or association is stock-listed.

ii Corporate governance

Belgian law does not provide for specific corporate governance rules for sport clubs or sports governing bodies.  

Based on the principle of freedom of association, the respective articles of association form the basis of a club or sports governing body’s internal governance, while the club or governing body may specify further rules in internal regulations and decisions. In some cases, Belgian law and the sports governing bodies’ rules and regulations may impose the inclusion of specific rules in a club or sports governing bodies’ articles of association.

In addition to laying down the rules of the game, sports federations as a rule specify the administrative, financial and governance requirements of their members.

iii Corporate liability

Belgian law does not provide specific statutory provisions for the liability of a sports organisation’s managers and officers. The general liability rules apply.

There are several grounds upon which an action concerning the liability of a sports organisation’s managers or officers, or both, can be based. Furthermore, a distinction should be made between civil and criminal liability.

Further distinctions are drawn within the category of civil liability, such as contractual liability, liability claims based on breaches of the articles of association and corporate law provisions, and general tort liability. The joint liability of the managers or officers, or both, may also be considered in some cases.

Although the applicable rules may differ depending on the legal form of the sports organisation and the type of civil liability under consideration, as a general rule, three factors

---

4 Sports federations must of course also comply with the applicable legal rules, such as the legal rules relating to their type of legal organisation (e.g., the rules for non-profit associations).

5 In cases where a legal entity is appointed as the director, its permanent representative will be personally liable for the performance of the directorship as if he or she carried out the directorship in his or her own name and on his or her own behalf. Moreover, the director (legal entity) and its permanent representative will be jointly and severally liable.

6 Managers and officers are liable towards the sports organisation for any shortcoming in the performance of their duties. A company can only bring a lawsuit based on contractual liability (actio mandati) provided that no valid discharge of liabilities was granted to the directors by the shareholders’ annual general meeting. Third parties may also initiate actions if the liability claim is based on breaches of the articles of association and corporate law provisions. The discharge by the shareholders’ annual general meeting of liabilities put on the directors is not a bar to third-party action in this case.
must be proved to establish liability: fault, damage, and a causal link between the fault and damage. Specific liabilities are foreseen by law for unpaid social security contributions and unpaid withholding tax.

Criminal offences, which may give rise to a director’s personal liability, include breaches of general criminal law, such as fraud and the unlawful seizure of corporate assets. In addition, directors are subject to the specific criminal law provisions contained in, and related to, corporate law. The Belgian Company Code sets out various offences that are criminally sanctioned by fines or jail sentences. Some of these breaches require fraudulent intent.

II THE DISPUTE RESOLUTION SYSTEM

Sports organisations set down the rules and procedures for resolving disputes.

Sports federations set out internal procedures to verify compliance with their rules and to settle disputes regarding the application of these rules. As a result, each sports federation has its own sports justice system, some more elaborate than others, and arbitration procedures complement those internal procedures.

Sports federation-imposed disciplinary measures must comply with public order legislation, and a fair trial must be guaranteed. This obligation means that a defendant must have the right to be heard and the right to receive objective treatment. It is generally accepted that Article 6 of the European Convention on Human Rights (ECHR) applies to justice handed down by sports federations. Sports associations must also comply with their own articles of association, rules and regulations.

While sports federations must comply with their own articles of association, rules and regulations, they often have to strike a balance between retaining their autonomous right to take disciplinary measures and avoiding a defendant having the measures annulled or suspended by a civil court, as the latter damages the association’s credibility. This balance means that associations have a real interest in devising disciplinary procedures that respect the fundamental rights of all the parties involved.

i Access to courts

In Belgium, there are no national courts that deal specifically with sports cases, as this is considered to be both financially and politically unachievable.

8 The right to be heard is considered to be a matter of public order (Supreme Court decision of 29 September 1967).
Defendants have the right of recourse before a civil court. As a result, clauses in sports associations’ rules that state that their members can never have their case heard by a civil court are null and void, because a private association can never act as a court of last instance.12

As sports federations must operate within both their own powers and the Belgian legal system, an interesting interaction takes place between sports dispute resolution and ordinary justice.

First, sports federations’ decisions are subject to ordinary courts’ ‘limited judicial review’.13 Courts can reassess decisions made by sports federations if these decisions breach public order legislation or other mandatory legislation or fundamental (procedural) rights.14,15 These rights include, but are not limited to:

- the right to a fair trial;
- the right of appeal;
- the right of defence;
- the right to privacy;
- the freedom to work; and
- anti-discrimination laws.

It is important to note that civil courts cannot be seen to act as an appeal court16 and that, under the principle of subsidiarity, recourse to the civil courts requires that all other remedies available within the association have already been exhausted.17

Secondly, litigation in criminal courts can interfere with18 or run in parallel19 to sports justice. Examples in this respect include allegations of match-fixing, assault and battery, money laundering and human trafficking.

Thirdly, when dealing with the relationship between ordinary justice and sports justice, it is equally important to note that for some kinds of disputes, mandatory law provisions impose exclusive jurisdiction on the ordinary courts. This happens most notably in labour dispute cases.

Finally, the Belgian Council of State may have a role to play, especially in doping matters. More precisely, when a public authority gives decisions, that body’s decisions can be challenged before the Council of State.20

---

12 C Coomans, ‘Het sportrecht: een stand van zaken’, 64.
14 In Belgium, it is generally accepted that Article 6 ECHR likewise applies to sports justice.
15 Namur Employment Court, summary proceedings, 7 September 2007; R Blanpain, De gladiatoren van de sport. In de ban van de sportmafia, Brugge, Die Keure, 1992, 149.
16 Mechelen Court of Appeal, 2 October 2001; Brussels Court of Appeal, 28 November 2000.
17 J De Herdt and S Verhelst, oc, 24.
18 Regarding the Belgian Football Association, the applicability of the adagium has already been accepted (Brussels Employment Court decision of 28 March 1977).
19 As a rule, the non bis in idem adagium does not apply, as criminal law and disciplinary law have a different scope and purpose.
20 For example, the principle of strict liability in doping affairs was challenged in a Council of State judgment of 28 June 2012.
ii Sports arbitration

Arbitration, whether or not in the sense of arbitration as defined in the Belgian Judicial Code, complements the internal sport justice systems of sports federations. The Belgian Court of Arbitration for Sport (BCAS) deals with a wide array of sports cases.

Sports federations, their member clubs, and individual athletes and players, may not be coerced into submitting to arbitration. Under Belgian law, any decision to submit to (international) arbitration must be freely made and, as in many other countries, the issue of what constitutes ‘free choice or consent’ has been debated at great length by legal scholars, in case law and by the sports arbitration panels themselves.

Belgium has a fairly long-standing track record of ‘forum bashing’, especially when it comes to foreign forums such as the Court of Arbitration for Sport (CAS). This track record can be illustrated by a number of cases.

For example, in the Malisse/Wickmayer case, the Brussels court issued an injunction based on a procedural argument that the proceedings prima facie did not offer the athletes concerned the minimal procedural guarantees required by Article 6 ECHR: ‘Ms Wickmayer and Mr Malisse rightly raise the question of whether the appeal possibility against the FDC’s 5 November 2009 decision at the CAS sufficiently guarantees the procedural requirements of Article 6 ECHR,’ questioning the fact that ‘the appeal against a decision of a non-purely disciplinary court is entrusted to a private law entity, where athletes are not judged in their own language, where third parties (read the World Anti-Doping Agency) intervene for the first time in the degree of appeal with a view to claiming higher sanctions, and the decisions are in no way whatsoever submitted to the control of a Belgian judge’ and that ‘the CAS, having its seat in Lausanne, uses French or English as its procedural language, whereby translation and interpreter costs are borne by Ms Wickmayer and Mr Malisse.’

In the Keisse case, the CAS banned a Belgian track cyclist for two years because of an adverse analytical finding. As a result, the cyclist began summary proceedings before the Brussels civil courts seeking an injunction suspending the execution of the ban. As requested, the Brussels Court of Appeal issued an injunction, and added a clause fining the Union Cycliste Internationale (UCI) €100,000 should it challenge the injunction.

22 For example, Brussels Employment Court, summary proceedings, 29 June 1982.
23 For example, Belgian Arbitration Commission for Sports, decision of 10 August 1999.
24 It is no coincidence that the Bosman ruling arose from a Belgian case.
25 CAS/2009/A/2014, overruling the Royal Belgian Cycling Federation’s disciplinary committee decision in which the allegations against Mr Keisse were shown to be unfounded as the forbidden substance was found in a polluted food supplement that had been supplied by the team sponsor.
26 Brussels Appeal Court Decision of 10 November 2010.
27 Moreover, the Court gave the ruling worldwide applicability. In a (criticised) ruling, the Brussels attachment judge ordered the UCI to pay Mr Keisse compensation of €100,000 for having prevented him from participating in the ‘Six Days of Bremen’ event.
III ORGANISATION OF SPORTS EVENTS

i Relationship between organiser and spectator

Organisers of sports events must take precautionary measures to avoid foreseeable harm towards spectators, and must respect specific duties depending on the particular type of sport and the particular circumstances.

Considering the circumstances, the duty of care can imply that organisers may call upon the public authorities. However, this right does not exempt organisers from observing their personal duty of care.

Access to locations with a particular, foreseeable risk for spectators must be prohibited.

Besides taking precautionary measures, organisers must oversee spectators to ensure that they respect these measures. This is a ‘best efforts’ obligation. For certain sports, a safety area or fence between athletes and spectators must be prepared in advance.

ii Relationship between organiser and athletes or clubs

Specific duties apply in the relationship between organisers and athletes or clubs. For instance, an organiser must ensure the quality of the material that is placed at the athletes’ disposal, and must take safety measures to guarantee the safety and appropriateness of the infrastructure.

The organiser must:

a. take into account the athletes’ skill and experience;
b. provide first aid;
c. properly communicate about any risks;
d. properly monitor the event; and
e. if required, call upon the police and other emergency services.

iii Liability

In Belgium, although a person is deemed to accept the normal risks linked to the playing (or, for that matter, the watching) of sport, both civil and criminal liability claims still frequently occur.

Damages before a civil court can be claimed for injuries inflicted on one player by another player to the extent that the latter failed to meet the general standard of due diligence. The action of the player causing the injury is measured against the behaviour that would have been displayed by another reasonable sportsperson placed under the same conditions. Both the injured player and his or her club could claim damages, and both the ‘attacker’ and his or her club could be held responsible. However, arbitration clauses may in some instances hinder the right to bring a tortious liability case before a civil court.

---

29 Brussels, 26 June 1990.
30 Liège, 15 February 1999.
31 Vred Westerlo, 26 July 1995.
32 Antwerp, 12 December; Mons, 21 December 1995.
Unintentional assault and battery is a good example of criminal liability. It is deemed to be proved when the accused has committed a fault that shows a lack of prudence or of taking all necessary precautions (which infringes the duty of care), and if there is a causal link between the fault and the bodily injuries. The practice of sport is not exempt from the application of the Belgian Criminal Code.\textsuperscript{34} Belgian case law and doctrine stipulate that, like any normal, careful and reasonable organiser, a sports event organiser has the duty to take all necessary safety measures regarding the factual context, and to avoid bodily injuries to athletes, spectators and third parties.\textsuperscript{35}

Spectators frequently cause bodily injuries to other spectators during sports events. Case law and doctrine have discussed several situations, such as when a ball goes out of the play area into the area where the public is seated, and a spectator tries to kick the ball back on to the sports field but instead hits the back of the head of another spectator. This situation has been held to be a fault because of a lack of prudence.\textsuperscript{36}

\textbf{iv \hspace{1em} Riot prevention}

Two major events have triggered the adoption of specific legislation aimed at preventing riots at football games. The 1985 Heysel disaster and the (co-)organisation of the European Championships in 2000 led to the 21 December 1998 Law on safety on the occasion of football games (Football Law). The Football Law and its implementing legislation together impose a string of obligations on football match organisers and football’s governing body, including:

\begin{enumerate}
\item an obligation to take precautionary measures;
\item respecting certain security requirements;
\item appointing a security coordinator; and
\item the hiring and training of stewards.
\end{enumerate}

In addition, national match organisers must enter into an agreement with the local public authorities and the police and other emergency services.

\textbf{IV \hspace{1em} COMMERCIALISATION OF SPORTS EVENTS}\textsuperscript{37}

\textbf{i \hspace{1em} Types of and ownership in rights}

In addition to sponsoring and naming rights, broadcasting rights are the best-known rights to be exploited in Belgium regarding sports.

There is no specific legal framework for the exploitation of broadcasting rights. In professional football, for example, rights usually are sold collectively. This means that each football club does not sell the broadcasting rights to their matches individually, but 'transfers'...
those rights to a mutual organisation, such as the Pro League, who will then sell the rights of all the clubs (thus, for the whole competition) to one or more television broadcasting companies, mostly on an exclusive basis.

Broadcasting companies have a right to exploit their broadcasts through the mechanism of the neighbouring rights resting on these broadcasts. Article XI.215 of the Belgian Code on Economic Law grants an exclusive right to the broadcasting companies for:

- broadcasting their broadcasts (both direct and delayed);
- reproducing their broadcasts;
- communicating their broadcasts in a public location accessible by a paid entry fee; and
- making the broadcast available on-demand and online.

ii Rights protection
As mentioned above, there is no specific statutory framework governing sports rights’ exploitation; these are mainly governed by contractual law and the neighbouring rights law.

iii Contractual provisions for exploitation of rights – restrictions
Restrictions on the possibility of freely exploiting these rights follow on from general competition law and the right to information. Following Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services, Belgium has taken measures to guarantee the right of the public to have access to television broadcasts of high-interest sports events (e.g., the final rounds of the football World Cup).

V PROFESSIONAL SPORTS AND LABOUR LAW

i Mandatory provisions
Both Belgian labour law and specific legislation regarding the particular labour relation between athletes and clubs and associations apply.

In sports where labour contracts are not common (tennis, motorised sports, etc.), Belgian labour law does not apply.

The labour law provisions that apply in sports may differ from those applicable to regular employees, most notably in the event of contract termination. However, in practice, players have invoked the application of the severance rules applying to regular employees, as these tend to require the payment of less compensation in lieu of notice.38

In addition, mandatory labour law provisions may trump practices that may be considered common in the world of sport. Option clauses that allow an employer to unilaterally extend a contract’s term are, for instance, considered to be null and void.39 Liquidated damages clauses in the event of a breach of contract are also unenforceable.

38 Antwerp Employment Appeal Court, 6 May 2014.
39 Mons Employment Appeal Court, 8 February 2012; contra Antwerp Employment Appeal Court, 9 February 2005.
Belgian law bans any transfers in breach of contract for players to play in another team in the same league during the same season. Formerly, a more extensive ‘gentleman’s agreement’ existed between the Belgian clubs not to hire players in breach of their contracts with other Belgian clubs. However, this arrangement has not always been observed, and is moreover deemed to be in breach of Belgian employment and competition law.

Specific rules exist for some sports (e.g., cycling), which arise from sports associations’ by-laws and regulations. These rules should, however, comply with higher legal sources to be enforceable, which is unfortunately often not the case.

ii Free movement of athletes

The fundamental rules set out in EU primary law – the Treaty on European Union, the Treaty on the Functioning of the Union and the EU Charter on Fundamental Rights (Charter) – apply and have direct effect in Belgium. These rules mean that, *inter alia*, the principle of free movement applies (including the limitations on the restrictions that the Member States can impose) as well as the general principles of EU law (*inter alia*, non-discrimination) and the rights protected by the Charter. In addition, the Belgian Constitution and primary legislation further support the principle of non-discrimination. In the light of these rules, any limitations on foreign players as, for instance, foreseen by certain sports governing bodies, are problematic.

iii Application of employment rules of sports governing bodies

Sports governing bodies’ rules and regulations generally follow Belgian employment legislation, and they cannot deviate from it. If sports governing bodies try to impose additional clauses and requirements on athletes that are working within the framework of an employment contract, such extra rules would be unenforceable to the extent that such clauses are contrary to the (protective) Belgian employment laws, and to the extent that they would decrease athletes’ rights or increase their obligations.

VI SPORTS AND ANTITRUST LAW

Belgian sports law practice has seen an increasing number of high-profile cases based on antitrust law: whether it has concerned state aid, competition reforms, player release rules, FIFA’s third-party ownership (TPO) ban or UEFA’s financial fair play (FFP) regulations, antitrust law has been invoked. Another example is FIFPro’s challenge of the football transfer system before the European Commission.40 The Belgian Competition Authority recently dealt with different cases in sports.

VII SPORTS AND TAXATION41

Belgian tax law provides a specific tax regime for non-resident athletes. Income arising from activities performed in Belgium is subject to non-resident income tax, regardless of whether

---

41 Written by Daan Buylaert, an associate at Tiberghien.
the income has been paid or granted to the players themselves or to some other individual or legal entity. Tax is to be withheld at source by the taxpayer or intermediary paying the income (generally the club or event organiser) at a flat rate of 18 per cent.

The 18 per cent withholding tax is final for athletes whose activities in Belgium do not exceed 30 days in a 12-month period, unless the athlete opts to use the 'regularisation system'. This system involves taxation at the Belgian progressive tax rates, and allows the athlete to file a tax return in which he or she can deduct the actual expenses. In contrast, the flat-rate 18 per cent system only allows the deduction of a notional lump sum for expenses. Athletes whose activities exceed the 30-day period will always be subject to taxation at the progressive tax rates. The 18 per cent withholding tax will then be deductible from the final tax due.

Domestic tax rules only apply when, under an applicable double tax treaty, Belgium has acquired the taxing rights, or where no treaty applies.42

VIII SPECIFIC SPORTS ISSUES

i Doping
The national Doping Act of 1965, which labels the use of doping in sports a specific criminal offence, was abolished by the Belgian regions when they gained legislative powers over sports competence. However, the use of doping remains a criminal offence under other, more general legislation, such as drug enforcement laws.

Furthermore, sports federations hold disciplinary powers and are entitled to take disciplinary measures, such as temporarily suspending a player.

ii Betting43
The Games of Chance Act of 1999 allows betting, except for betting on events or activities contrary to public order or public morality, or betting when the outcome of the event is already known. Bets may be placed in licensed bricks-and-mortar betting shops, mobile betting shops or online.

Bookmakers and other parties that accept bets must obtain an 'F1' licence, and if they wish to accept online bets, an 'F1+' licence. Only operators holding a land-based licence are allowed to go online. Operators of permanent or mobile betting shops must obtain an 'F2' licence that must be based on an existing 'F1' licence.

Betting is allowed on any sports events as well as on the following types of horse racing, provided that the bookmaker has been duly licensed by the competent Belgian horse racing association: mutual and fixed-odds or conventional bets on Belgian horse races organised by a horse racing association accredited by the competent federation; mutual or fixed-odds betting on foreign horse races; and horse race betting organised inside horse racing tracks.

Finally, as an exception to this rule, the following bets may be collected outside betting shops (although only by a licensed bookmaker): bets on horse or dog races, or on other sports events, taken as a complementary activity in newsagents’ shops, by an individual or a

42 For an in-depth report on Belgian tax regime for incoming professional team sports players, see Global Sports Law and Taxation Reports December 2012.
43 Written by Philippe Vlaemminck, partner at Pharum Legal.
company registered as a commercial company (but not made in pubs or bars); mutual bets on Belgian horse races organised by a horse racing organisation accredited by the competent federation placed within the grounds of horse racing tracks; and mutual betting on foreign horse races placed within the grounds of horse racing tracks.

Any operator providing sports betting to Belgian residents without holding the licences required by the laws on gambling may be subject to criminal prosecution. Furthermore, a person found guilty of any of the following activities may be liable to a fine:

- advertising illegal games of chance or illegal gaming premises;
- participation in games of chance that are known to be illegal;
- recruitment of players for illegal gaming establishments or games of chance;
- breaches of the rules on betting or breaches of the obligation to identify anyone entering a casino or gaming arcade; and
- breaches of the rules related to bonuses paid to customers.

Sanctions may be doubled for second offences, subject to certain conditions. Moreover, the courts are empowered to seize the funds, materials, tools, machines and any other means used to perform the illegal activity. Finally, the courts can also order the closing of the gaming premises or the Gaming Commission’s withdrawal of a licence.

iii Manipulation

Match-fixing as such is not a criminal offence in Belgian law.

However, in spite of the fact that the Belgian Criminal Code does not provide a specific provision sanctioning match-fixing, this practice may fall under the scope of other, more general legal provisions. These provisions, for example, sanction corruption by civil servants within public functions and corruption by persons outside public functions (e.g., bribery of or by sports companies, clubs, associations). There is the expectation that Belgium (including its three regions that hold sports competence) will ratify the Enlarged Partial Agreement on Sport convention on the manipulation of sports events. This development could facilitate further legislative initiatives.

Depending on the gravity of the offence, criminal sanctions include imprisonment, fines, or both. Furthermore, sports federations also hold disciplinary powers and are entitled to take disciplinary measures such as the temporary suspension of a sports club or a player.

iv Grey market sales

The Sale of Event Tickets Act of 2013 bans the organised sale of sports events tickets outside the channels established by the event organiser. The occasional selling-on of tickets is also forbidden to the extent that the price paid is higher than the initial ticket price, with anyone having paid more than the original ticket price being able to reclaim the excess. Criminal sanctions apply.

44 Written by Philippe Vlaeminck, co-head Altius’ sports law practice.
45 Article 246 Belgian Criminal Code.
46 Article 246 Belgian Criminal Code.
IX THE YEAR IN REVIEW

The issue of a club’s liability for the actions of its supporters remains high on the agenda, in relation to both stadium riots and banners.47  

In addition, the new competition format adopted by the Belgian Football Association, which saw clubs fearing a closed league, triggered widely covered legal action.

The Belgian competition authority seemingly accepted the reviewability of an arbitral award’s conformity with EU competition law.48 The Brussels Court of Appeal considered broadcasting of superprestige cyclo-cross to be premium content for which a tendering process was deemed necessary.49 Furthermore, Belgian courts have been (and will continue to be) the battleground for many high-profile international cases occupying the attention of the world of sports law, with the legal challenges of UEFA’s FFP regulations50 and FIFA’s TPO ban51 being probably the best known.52

X OUTLOOK AND CONCLUSIONS

The tension between ‘sports’ and the ‘law’ is increasing and, more specifically, between those that consider sports to be a special case requiring a specific legal and regulatory framework, and those that consider sports to be no different from any other business activity; recent governance and ethics issues in the world of sport seem to have shifted the balance somewhat in favour of the latter.

There has been an increase in litigation between sports governing bodies and stakeholders impacted by those sports governing bodies’ regulations. Referring to the principle of freedom of association and the specificity of sport, sports governing bodies impose rules and restrictions on other sports stakeholders, frequently leaving the latter unhappy and bold enough to undertake legal action. Competition law arguments are never far away.

The sports sector is increasing in importance both economically and financially, and is thus becoming ever more globalised and complex. What sports governing bodies, sports events organisers, clubs and athletes all have in common is that they are faced with legal issues in different jurisdictions and in different fields of law, as is demonstrated throughout this publication.

47 BCAS, 10 December 2014.
48 Ruling of the Belgian Competition Authority of 14 July 2016.
49 Brussels, 7 September 2016.
52 This litigation is also a reminder of the importance of the sound application of international private law and procedural law.
SVEN DEMEULEMEESTER

*Altius*

Sven Demeulemeester is a partner in Altius’ employment and sports law department. *The Legal 500* describes Mr Demeulemeester’s approach as ‘the perfect balance between legal insight and business acumen’. He heads Altius’ sports law practice, advising players, clubs and governing bodies on contentious and day-to-day matters in the sports industry. He is also a member of the International Association of Football Lawyers.

**ALTIUS**

Tour & Taxis Building
Havenlaan – Avenue du Port
86C Box 414
1000 Brussels
Belgium
Tel: +32 2 426 14 14
Fax: +32 2 426 20 30
sven.demeulemeester@altius.com
www.altius.com