

# The Greek Constitution Concerning Sport and Sports Federation

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*The Sport, as a physical activity taking place out of school environment, is consecrated in a formal way as an institution within the Constitution in force, through which citizens' participation in sports action as well as in sport .*

*In this work field of research is, the institutional existence of Sport and the people's participation in sports activities, as a social activity forms, which achieved, under state supervision and protection.*

*The sports reality of the existence of a federation contributes to the determination of its particular nature, as the only supreme authority of a sport, governing all relevant clubs and developing that specific sport.*

*In Greece, the administration controls, according to the law which regulates the operation of sports federations, if their operation is in accordance with the Constitution, that constitutes the fundamental state rule on sport.*

*The Greek sports federation presents a particular legal status, since it is not only an administrative body but also a legislative and a disciplinary one.*

**Key words:** Physical Education, Greek Constitution, physical activity, Lex Sportiva, sports law, institutional autonomy, Sports Legal Order, sports federation, regulations, Sports Disputes, Sports Jurisdiction

## Introduction

The Greek constitutional legislator, influenced by the Greek sports tradition, has included very early in the Greek Constitution (article 16) some provisions which refer to the participation in a physical activity, under the form of Physical Education, as well as in the sports action. Paragraph two

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(2) of the article 16 deals with Physical Education, as a form of physical activity involved in the educational process; its content is the following: *“Education is one of the State main tasks. It is focused on the moral, spiritual and physical education of the Greeks, on the development of their national and religious conscience and on their shaping as free and responsible citizens”*. In paragraph nine (9) the sports system is regulated as follows: *“...Sport is placed under the protection and the highest supervision of the State. The State funds, by means of subventions, and controls all forms of sports clubs, as stipulated by law. It is a Law that also determines the allocation of the funds distributed to the sports associations in accordance with their purpose...”*.

We shall, therefore, presently examine the attitude of the Greek legislator towards the Physical Education and Sport issue, taking into consideration their distinction, as well as the institutional existence of Sport and of people’s participation in sports activities.

### **Institutional Guarantee of Sport**

The Greek Constitution article 16 par. 9 provisions constitute the institutional guarantee of the right to the free development of sports activities; it indicates to the Greek legislator that he must proceed to establishing the necessary regulations so as to create a well organized and competitive sports reality. These regulations establish a context for the exercise of the constitutional right to the free individual and collective sports action under state supervision and protection.

In this sense, Sport, as a physical activity taking place out of school environment, is consecrated in a formal way as an institution<sup>1)</sup> within the

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1) Greek Constitution 75/75, Article 16, paragraph 2 and Article 16, paragraph 9, compare with Venizelos El. (1993), «Η Συνταγματική υποδοχή του Αθλητισμού» (“The Constitutional Reception of Sport”), in: Proceedings of the International Congress, The Olympic Games Institution - interdisciplinary approach, Olympia, 3-7 September 1991 and Pandektis ISLR, 1:2, 1992, p. 212-214, by the same author (1993), «Αθλητισμός και κράτος δικαίου - τα όρια της νομικής απορρύθμισης και επιστροφή στο Σύνταγμα» (“Sport and State of Law - the limits of the legal deregulation and the return to the Constitution”), in:

Constitution in force, through which citizens' participation in sports action as well as in sport, as a social activity form, is achieved, under state supervision and protection.

In this context, under the terms and conditions established by the constitution, the following questions need to be answered:

- (1) Under the constitutional rules and Sports Law, in which way is determined Sport, physical exercise and workout for the citizens?
- (2) Which is the internationally accepted way in which the right to participate in sports practice, in the physical exercise and workout is met? How is the right to physical wellbeing as well as to sports workout and activity guaranteed? And which are the indicated spaces and bodies which allow the exercise of these rights?
- (3) Should this right be satisfied by schools, sports clubs or by local authorities and especially Municipalities, since they are the most vibrant molecules of society's democratic structure?
- (4) Which can be nowadays the structure and the organization of sports and physical activity in general, as well as of the physical activity taking place in special facilities destined to sports practice aiming to high results and high physical education?

These are only a few of the questions that need to be answered in the context of this research, which are examined in the relevant chapter.

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Proceedings of the 1st International Congress of Sports Law, Athens of 11-13 December 1992, ΕΚΕΑΔ (Hellenic Center of Research on Sports Law): Athens, p. 125-130. Compare with D. Panagiotopoulos (1993), "Le Droit du Sport Selon la Constitution" in: *Revue Juridique et Economique du Sport*, No 25:2, p. 109-116, Loberdos A. (1993), ), «Η προστασία του αθλητισμού ως ατομικό και κοινωνικό δικαίωμα» ("The protection of sport as an individual and a social right") in: Proceedings of the 1st International Congress on Sports Law, December 11-13, Athens 1992, ΕΚΕΑΔ: Athens 1992, p. 171-175, as also: Dimitropoulos A. (1996), *Ζητήματα Συνταγματικού Δικαίου* ("Issues of Constitutional Law"), Athens, by the same author (1998), *Συνταγματικό Δίκαιο* (Syntagmatiko Dikaio, Constitutional Law), Athens p. 594 as well as the bibliography and the case-law mentioned.

## Institutional Autonomy and Administrative Control

The establishment of sports clubs, associations and federations, as a special expression of people's right to associate themselves<sup>2)</sup>, indicates that Sport has an institutional autonomy<sup>3)</sup>. This autonomy is also manifested in the Constitution, where the freedom of the private initiative to lead to the creation of sports clubs is mentioned. In German Law, sports clubs' and associations' autonomy exists within the framework of state laws establishing limits on doping and prohibitions<sup>4)</sup>. Sports federations are controlled by the State, as provided by law, on the basis of the principle that they are the unique high sports authorities in every sport, giving them a monopoly and dominant position<sup>5)</sup>. The undisputable domination of sports federations and especially the one of international federations, such as the

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- 2) D. Panagiotopoulos (1993), "Ζητήματα επιστημολογικής οριοθέτησης και εφαρμογής του Αθλητικού Δικαίου" ("Questions of epistemological delimitation and application of Sports Law"), 1st International Congress on Sports Law, in: ΕΚΕΑΔ (H.C.R.L.S): Athens, p. 63-88 and Yearbook of Sports Law, I.1994, p. 37, compare with E. Venizelos, "Αθλητισμός και κράτος Δικαίου – τα όρια της νομικής απορρύθμισης και επιστροφή στο Σύνταγμα" ("Sports and the State governed by Law –the limits of legal deregulation and return to the Constitution) op. cit., p. 125-130, compare with A. Loberdos, "Η προστασία του Αθλητισμού ως ατομικό και κοινωνικό δικαίωμα" ("The protection of Sports as a personal right") op. cit., p. 171-175, compare with Dimitrios P. Panagiotopoulos (2011). Sports Law: Lex Sportiva –Lex Olympica: theory and praxis N. Sakkoulas: Athens., pp. 18-105.
- 3) Dimitrios P. Panagiotopoulos (2004), "Theoretical foundation of sports law" (1<sup>st</sup> Part: Sports Law: A Special Scientific Branch, Sports Legal Order in Sports Activities, Sports Regulation and Law Limits, Institutional Autonomy and Economic Freedom in Sports Activities), in: Sports Law [Lex Sportiva] in the World (D. Panagiotopoulos Ed.), Ant. N. Sakkoulas: Athens, p. 19-80.
- 4) The legal base of this autonomy of German associations is the Article 9, I of the German Constitution (Grundgesetz - GG), according to which the all Germans have the right to form associations and companies that operate and enjoy protection. The article 25 of the German Civil Code stipulates that a sports association is not only governed by the previous provisions, but also by its own statutes' provisions, Vieweg Kl. (1999), "Basic liberties and autonomy in sports - from the perspective of German and European law", in: The Sports Law in the 21st Century: Professional Sports Activity D. P. Panagiotopoulos H.C.S.L.R., Trikala, 4-6 June 1999, Ion: Athens p. 166-187, compare with: same author (1990), "Normsetzung und - anwendung deutscher und internationaler Verbände", Berlin, p. 154 and following.
- 5) On this issue, as far as European Law is concerned, Articles 104 and 106 TFEU (ex Articles 84 and 86 TEC)

FIFA or the UEFA, have been contested for the first time in the Bosman case<sup>6)</sup>. The International Sports Federations are generally associations of a non-profitable purpose, governed by national laws<sup>7)</sup>.

The domestic associations are considered to be “businesses” by Article 102 TFEU (ex Article 82 TEC) since it is stipulated by the international federations’ statutes that they are bound to participate in events organized by them<sup>8)</sup>. These domestic federations contribute a percentage of the gross earnings of every international event to the international ones and they are acknowledged to be, in accordance with the international federations’ statutes, the owners of the exclusive broadcasting rights of the events in question; all these elements indicate that a genuine financial activity, involving sports events, has developed<sup>9)</sup>.

In the same way, the international federation, as an entity uniting all domestic federations<sup>10)</sup>, constitutes an “*association of undertakings*” in the

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6) D. P. Panagiotopoulos (1997), "Ελεύθερη Κυκλοφορία Εργαζόμενων- Επαγγελματίες Ποδοσφαιριστές, Υπόθεση C-415/1993 (Bosman)" ("Freedom of movement for workers - Professional Footballers, Affair C- 415/1993 (Bosman)"), in: Νομικό Βήμα (Nomiko Vima, Legal Podium), vol. 45/97 (ECJ Case law), p. 681-683.

7) Basketball Federation is a German association, having its seat in Munich. The International Federation of Football (F.I.F.A.) is a Swiss association, having its seat in Geneva. The first sports federations were created in England. Thus, the “Football Association” was founded in 1863 and the “Football-Rugby Association” in 1871 (when the first international rugby games took place). In Germany, a “Confederation of German Sports” (Deutscher Sportbund) was founded and it assembles nowadays more from 65.000 Clubs and Associations. In Switzerland, having a population of 6.000.000 residents, are established 30.000 Clubs and Associations approximately, K. Chrisostomidi 1997, op. cit, p. 237.

8) Moreover, as it was previously stressed, the unilateral characterization, operated by an association or a sports federation, of athletes or groups, as being “amateur” ones, is not sufficient so as to consider them as amateur athletes and clubs and not professional ones, if they have financial activities, in the sense of the article 2 of the European Community Treaty. Compare with relevant decisions of the ECJ of April the 11th 2000: C-51/96 and C-191/97, Deliège, Collection 2000, p. I-2549, paragraph 46.

9) Also, First Instance Court decision of 9 November 1994, T-46/92, Scottish Football vs Committee, Collection 1994, p. II-1039

10) As the International Federation of Football (F.I.F.A.), The international Federation of Basketball (FIBA), the Marine Ski, the Classic Sports of Volleyball and others, Decision in Piau affair CJEC T-193/02, op. cit., relevant chapter. Lex Sportiva and European Community Law.

sense of Article 101 TFEU (ex Article 81 TEC)<sup>11)</sup>. This provision also applies to the domestic federations, since their activity and the one of the businesses that they join aims to the goals described in this specific article<sup>12)</sup>.

On the basis of the unique representation principle, all domestic and international federations have monopoly characteristics<sup>13)</sup>, just like the Domestic Olympic Committees. The character of the domestic sports federation, in the legal context in force, is, therefore, a dual one: On a basis level, a sports club substantially contributes to Sport's development, in the framework of the private initiative development. On a higher level, this initiative is particularly limited and operates under the supervision of the State, by means of the control of one and exclusive federation. The existence of one and only sports federation, situated in a dominant position<sup>14)</sup>, serves the following purposes:

a) Maintaining control and a uniform operation at the basis level of

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11) Decision of Court of Justice of 30<sup>th</sup> January 1985, 123/83, BNIC, Collection 1985, p. 391, thought 17.

12) Decision of Court of Justice of 15<sup>th</sup> May 1975, 71/74, Frubo vs Committee, Collection vol. 1975, p. 181, thought 30.

13) The article 1 of the F.I.F.A. statutes, the article 4 of the I.A.A.F statutes and the article 42 of the F.I.B.A statutes declare that only one member can be acknowledged by them for each country or geographic region and this member will be recognized by the International Federation to be the only body having the right to manage football or amateur sports or basketball in this country or region. According to K. Chrysostomidi "This rule however has some noticeable exceptions: In the United Kingdom's football exist more than one operating bodies: the Football Association for England, the Football Association of Wales for Wales, the Scottish Football Association for Scotland and the Irish Football Association for Ireland. Rugby is also traditionally represented by two international bodies: the International Federation of Amateur Rugby (Federation Internationale Du Rugby Amateur), having its seat in France and the Rugby Association (Rugby Union) assembling all four British Associations and the Associations of Australia, New Zealand and South Africa. In some sports pure financial interests break the sports monopoly; Formula 1 has left the International Federation of Cars Sports (Federation Internationale Du Sport Automobile). Boxing, golf and professional tennis are other such examples. Despite these exceptions, however, monopoly remains the rule in sports", K. Chrissostomidis, op. cit., p. 238.

14) Relevant decisions of the ΕφΑθ (Athen's Court of Appeal) 5722/1996 and 10383/96, according to which recognition of only one overlying association on each branch of exercising is not contrary to the Constitution.

- sports activity, namely all sports clubs, and
- b) Maintaining a united form of operation of the sports action at the top level, leading to the determination of the total sports and competitive action as being a national and domestic issue.

The uniform operation at the basis level of sports action is the result of the relevant constitutional provisions, which consider Sport to be part of a nation's culture and find it necessary, given this specific belief, for sports to take place through society's participation and through the accumulation of specific cultural characteristics and particularities of social groups, which are related to their own perception of Sport.

Furthermore, the organized structure of the private law sports entities, such as the sports Club, the Sports Association and the Sports Federation, which all form a pyramidal hierarchy, serves and guarantees -amongst others- *“the use of the funds made available to associations, through subventions, in accordance with their purposes of constitution”*<sup>15)</sup>, as allowed by the Constitution and by special law, in accordance with the relevant Constitutional approval<sup>16)</sup>.

## Sports Federations

### The nature of the Sports Federation

The sports federation, in accordance with the law, is the highest form of organization of the sports clubs practicing the same sports or being active in the same sector of sports activity. It serves the purpose of the development of a sport or of a sports sector in a specific country<sup>17)</sup>, on a national level. It operates in accordance with the sports law and with the Civil Code's provisions on unions in general<sup>18)</sup>. So as to determine, in an absolute

15) Greek Constitution article 16, paragraph 9, 2. The use of state's financial support provided to the federations should take place in accordance to their purposes.

16) Ibid, article 16, paragraph 9 and Law 2725/99, in ΑΘΛΚ (Sports Code, 2009).

17) Id, paragraph 1 of article 19 Law 2725/99, in ΑΘΛΚ (Sports Code, 2009), p. 22 and following.

18) Id, paragraph 1 of article 19 and ΑΚ (Astikos Kodikas, Civil Code), articles 78 and

manner, the nature of the sports federation, as a legal entity, there is more than the private law governing it that need to be examined<sup>19)</sup>.

The nature of a sports federation, as a private law entity, is determined by the fact that:

- a) It results from an association of private entities and persons and has private powers,
- b) It manages the financial issues of private entities, namely the clubs which have joined it, and
- c) It serves, as a sports federation, the private interest that its members share, which is sports oriented, namely the development of the free physical culture of people and entities which have joined it.

In its inner administration, its relations with the clubs and with third parties, a sports federation is a private law entity, governed by the special provisions of the Sports Law in force<sup>20)</sup>. Furthermore, a federation manages, as the unique authority for each sport, in accordance with the law<sup>21)</sup> and on the basis of this monopoly situation; the clubs sport activity on a domestic level. It also internationally represents the sport that it develops, in accordance with the regulations of the relevant international bodies (International Federation - IOC)<sup>22)</sup>. It constitutes national teams, composed by athletes who are its members. These national teams, although their member come from sports clubs, operate on a different level than theirs, so as to promote the national participation in events. They are considered to serve the national interest and the satisfaction of a nation's national pride, through wining in sports games and competitions. An athlete belonging to a

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following.

19) AK (Civil Code) articles 78 and following, as well as its own statutes.

20) P. Dionissatos, D. Panagiotopoulos (1994), "The nature of the athletic federation's decisions", in: Yearbook of Sports Law I, An]. N. Sakkoulas: Athens, p. 96-100. The void, that is created, is supplemented with the Civil Codes's provisions with an adaptation to the athletic associations' special nature and aim. ΕιρΑθ (Peace Court of Athens) relevant decision 3154/1976, EEN (Greek Law Practitioners Journal), 43, p. 642, ΕιρΛαμ (Peace Court of Lamia) decision 13/1981, ΕΛΔ/νη (Greek Justice Journal) 1981, p. 274 and ΕιρΑθ (Peace Court of Athens) decision 3154/1976, EEN 43, p. 642.

21) Article 19, op. cit., paragraph 2 Law 2725/1999, also article 14 and Law 75/75 article 13.

22) Ibid paragraph 2, section 2.



national team does not belong to his club anymore, during international sports events; although he comes from it, by participating in the national team, he is considered to act in favour of the Sport and of the presence of his country on the international sports competitive level.

The legislative provisions referring to a federation's constitution, may seem opposed to the individual right of people to associate themselves with others, stipulated in article 12, par.1 of the Constitution. Still, if many federations were created for each sport, they would lead to a chaos; they would be dysfunctional and make difficult the control of sports by the competent bodies of the state administration. It is, therefore, for public interest as well as for this reason, that this legislative regime has been established for sports federations. This regime results in a prohibition, whenever a sports federation of clubs already exists in a sports sector, to create a second one, even if it has been constituted by other clubs, which have not already joined the existing one<sup>23</sup>).

The sports reality of the existence of a federation contributes to the determination of its particular nature, as the only supreme authority of a sport, governing all relevant clubs and developing that specific sport. A domestic sports federation constitutes the only entity representing a country's domestic sports activity at the international level and communicating with the international federations. These international sports federations impose the observation of the rules that they establish to the domestic ones<sup>24</sup>), thus creating a Law that does not belong to any country, the *Lex Sportiva*<sup>25</sup>), which is introduced in the domestic law and many

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23) Πολυπρωτάθ (Athens Multimember First Instance Court) decision 3068/1996, according to which if a second (new) sports Federation is founded, the already existing and functioning Federation is provided with the possibility of asking the cancellation of the judicial decision that recognized the second federation as operating in the same sports sector, by means of a third-party opposition, according to the articles 583,586 and 773 of ΚΠολΔ (Civil Procedure Code).

24) L. Silance (1977), *The Sports Law*, op. cit., p. 79 and following. J. Schroeder (1976), *Symbolik der Olympischen Schunzes*, Doctoral thesis, Mainz, , p. 81, G. Fleuridas (1974), *Ladministration et l' Organisation des Jeux*, Doctoral thesis, Un. De Paris VII, p. 85.

25) D. .P. Panagiotopoulos (2003), "Sports Legal Order in national and international sporting life" in: *International Sports Law Review Pandektis (ISLR/Pandektis)*, Vol.5: 2, p.

times imposed by the domestic federation, on the basis of the transformation and the incorporation theory<sup>26)</sup>. A federation is responsible for all the technical adjustments, which shall take place in its own country whenever international or “Olympic” games<sup>27)</sup> take place in it, according to the IOC rules and to the International Sports Federation.

The Greek sports law, in accordance with a constitutional approval<sup>28)</sup>, situated in the *Lex Sportiva* context, as previously mentioned, acknowledges that a sports federation is the sports supreme authority in the domestic sports clubs hierarchy, fulfilling an administrative, disciplinary and regulating role; it also manages the subventions received for the development of a sport and for the organization of sports events at a domestic and at an international level. The powers of the federation distinguish it as a particular sports club of the highest rank. The general sports reality is not just a clubs issue but also a wider sport order that is situated at the circle of sports activity. This activity presents characteristics of a public interest and some of its elements should, therefore, be governed by public law. Indeed, when a sports activity takes place in an organized state, it provides a service to the public and satisfies a social need, to which the public interest is related.

All the above mentioned, resulting into conferring to this body, namely the sports federation. As far as it's operating administration is concerned, some characteristics that can be met in legal entities of the wider public

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227-242, (2004) " *Lex Sportiva: Sport institutions and rules of law*, in: *ISLR/Pandektis*, p. 316-327.

26) Greek Constitution, article 28 paragraph 1-2.

27) Olympic Charter, I.O.C. 2010, Rule 47. Also, on the participation to the Olympic Games, article 45 of the Participation Code and explanatory provision of the article 45 in the Chart, p. 29-30 and p. 44. Compare with D. Panagiotopoulos, (1991), *Δίκαιο των Ολυμπιακών Αγώνων* (Olympic Games Law), Ant. N. Sakkoulas Editions. Athens, p. 205 and following, same author, (2005), "Ερασιτεχνική και επαγγελματική ιδιότητα των αθλητών και η συμμετοχή τους στους ολυμπιακούς αγώνες" ("Amateur and professional attribute of athletes and their participation to the Olympic Games"), in: *Ολυμπιακοί Αγώνες και Δίκαιο* (Olympic Games and Law), Proceedings of the International Congress of Athens University Faculty of Law (N. Klamaris and others), Ant. N. Sakkoulas Editions: Athens, p. 227 and following.

28) Article 19, paragraph 9 Law N 2725/99 as it is in force. (Sports Code, 2009), p. 23.

sector. Still, the theory of the “award of a public duty” should not apply to sports federations, as it is wrongly suggested by some sports law theoreticians, since the nature of the sports federation is different to the one of public bodies, which are recipients of duties, the powers of which are determined by a public authority or by the state by virtue of a special agreement concluded for this purpose<sup>29</sup>). In the case of federations, which have a similar way of functioning, whether they exist at the European or at the international level<sup>30</sup>), they are entitled to assume tasks of a public interest, such as sports events’ organization; still they maintain a private law body status<sup>31</sup>).

The legal status of sports federations in France is the one of relative autonomy. Under their guidance, a special body is created so as to monitor professional activities. Sport is considered to be an activity of public interest and the federations are entrusted with the task of serving it<sup>32</sup>). In the Italian law, where special and general legal provisions on federations coexist, the jurisdictional control is always operated by court decisions controlling the observation of the general provisions and combining them with the regulations established by the CONI, the Italian Olympic Committee, which establishes rules for the sports activity<sup>33</sup>). The English sports clubs have a substantial autonomy, as long as they do not offend fundamental public interests and they do not jeopardize, for no important reason, the funds allowing athletes to subsist; they maintain a status of private law entities<sup>34</sup>).

The administrative, disciplinary and regulating powers of the sports federation, which serve the public interest purpose of Sport, do not cease to

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29) Ep. Spiliotopoulos (2000), *Εγχειρίδιο Διοικητικού Δικαίου* (Handbook of Administrative Law), Ant. N. Sakkoulas, Athens, p. 388 paragraph 380.

30) On the international sports federation, D. Panagiotopoulos (2005), *Διεθνείς Αθλητικοί και Ολυμπιακοί Θεσμοί...*(International Sports and Olympic Institutions...), op. cit., p. 307-321.

31) On the significance of public interest, Ep. P. Spiliotopoulos (2000), *Εγχειρίδιο Διοικητικού Δικαίου* (Handbook of Administrative Law), op. cit., p. 95 paragraph 2.

32) French Presidential Decree 236/23-2-1985; compare with R. Dondoux, *The Sports Law*, op. cit., p. 162 and following, who reports that the French Law assigns the federations with a real mission of prevention, control and sanctioning (for example, it can decide a temporary or permanent license withdrawal), *Ibid* p. 162.

33) IASL Bulletin Information (1997), “4<sup>1</sup> International Congress on Sports Law...”, op. cit., p.48.

34) Andrew C. Evans (1989), «English Law of Sport», op. cit., p. 91, 95.

manifest themselves exclusively in the Lex Sportiva context, ending up in satisfying the public interest purpose in the same way that Sport does<sup>35</sup>). All other powers, which are related to Sport but are situated out of the Lex Sportiva, are exercised by public authority bodies to which they are entrusted by law or by regulating administrative acts, following a legislative approval. In this case, there can be no reference to the theory of “awarding a public duty” to private entities<sup>36</sup>) since the public duty is entrusted to public bodies.

The management of the financial means by a sports federation, whenever these are legally provided by the State, can be characterized as a sponsorship destined to the achievement of the organization of a sports event. This sponsorship, in this context, contributes to the satisfaction of the public aims served by Sport, on the basis of which takes place the legality control of all management acts of the sports federation, operated by bodies exercising public authority. This control aims to establish if the financial means used by the sports federation, in the context of its disciplinary, agential and administrative power as well as of the Lex Sportiva, have been used for the purpose for which they were given to the federation and not for other purposes, that may also exist in the context of the federation’s operation. This financial control on federations, wherever it takes place, is considered to constitute a loose supervision of the State on Sport. It is the case of Greece. In other countries there is even no control of the state administration, which does not interfere with the world regulated by Lex Sportiva<sup>37</sup>).

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35) R. Dondoux, *The Sports Law*, op. cit., p. 162 and following, who reports that the French Law assigns the federations with a real mission of prevention, control and sanctioning (for example, it can decide a temporary or permanent license withdrawal).

36) Ep. P. Spiliotopoulos, (2000), *Εγχειρίδιο ...* (Handbook...), op. cit., p. 387 paragraph 379.

37) Liberal system: Complete autonomy, Germany, *Free and Independent Sport, Law 1949*, Sechster Sportbericht der Bundesregierung, Bonn 1987. Base of the associations’ autonomy, according to Cl.Vieweg, is the article 25 of German Civil Code, according to the article 91 of the German Constitution, according to which the Germans have the right to found associations, Cl. Vieweg (1999), “Basic Freedom and Autonomy in Sports-from the Perspective of German and European Law”, in: *Proceedings of 1st Pan-Hellenic Congress of Sports Law with International attendance*, Trikala 4-6 June 1999, Ion: Athens p. 166-168. In France, Organization of sports through private

In Greece, the administration controls, according to the law which regulates the operation of sports federations, if their operation is in accordance with the Constitution, that constitutes the fundamental state rule on sport. Given this supervision, the positions of the personnel to be employed by a sports administration are determined by the competent ministry following a proposal of the Board of Administration (BoA) of the federation in question, which assumes the amount of the fees of the specific personnel<sup>38)</sup>.

In all cases, it cannot be considered that a sports federation exercises powers of public authority that have been transferred to it by the State. A law defines the framework of the domestic Lex Sportiva<sup>39)</sup>, which is manifested by the domestic sports federation. Whenever stipulated by law, the administration exercises a legality control on various aspects of a federation's operation, such as the financial management and the regulating role. This control takes place due to the social function of Sport<sup>40)</sup>, in accordance with the constitution, and to the protection of the public purpose of Sport. It is, therefore, very accurately considered that a sports federation is a potential vector of public authority<sup>41)</sup>. The opinion according to which the legislative regulation of the Greek sports field could be based on the public duties award to federations at both a domestic and a federal state level<sup>42)</sup> is contradicted by the Lex Sportiva theory, on which, relies the

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initiative 1975, no report to the Constitution, Italy (AK (Civil Code), CONI).

38) Article 30 Law 2725/1999, ΑΘΛΚ (Sports Code, 2009), p. 37.

39) Dimitrios P. Panagiotopoulos (2013) "Lex Sportiva- Lex Olympica and International Sports law", in: *SPORTS LAW: Structures, Practice, and Justice - Sports Science and Studies* [ Dimitrios P. Panagiotopoulos, Wang Xiaoping (Eds)], EKEAD: Beijing-Athens, pp 20-31. Dimitrios P. Panagiotopoulos (2005), "Lex Sportiva: Sport Institutions and Rules of Law", in: *Sports Law Implementation and the Olympic Games* [Dimitrios Panagiotopoulos Ed.], Ant. Sakkoulas: Athens, pp. 33-45 and in: *International Sports law Review Pandektis (ISLR/Pandektis)*, Vol. 5:3, pp. 315-327.

40) Article 27 Law 2725/1999, ΑΘΛΚ (Sports Code, 2009), p. 30, article 52 Law 2725/1999, ΑΘΛΚ (Sports Code, 2009), p. 115, article 16 paragraph 9 of Greek Constitution, (Sports Code, 2009), p. 3.

41) R. Dondoux, *The Sports Law*, op. cit., p. 157-158, compare with D. Panagiotopoulos (2001), *Αθλητικό Δίκαιο ... (Sports Law...)*, op. cit., p. 277 and following and p. 148.

42) A. Malatos (2005), *Παραδόσεις Αθλητικού Δικαίου (Sports Law Courses)*, Ant. N. Sakkoulas Editions, Athens, p. 245.

whole sports edifice, Sport at the domestic and the international level. According to this theory, the federation represents a sport at the international level, in accordance with the rules of the relevant International Sports Federation and of the IOC<sup>43)</sup> in force. Their members, the athletes take place in international meetings through the federation's participation, since it is the sole supreme body for each sport in and out of a country's territory, following its approval or -in special cases- after a minister's decision<sup>44)</sup>. Through this system a country's sport<sup>45)</sup>, and not the sport practiced by individuals, is presented, via the domestic federations, to the international level. A national team's athlete expresses the common national interest and not his own interest or the one of his club.

*Since a sports domestic federation is the one managing the sport at the national level*, it bears the responsibility of the domestic sport practiced under state supervision and control. This federation needs to operate in the context of the Lex Sportiva, but also in accordance with the public interest. Given all this, a State must provide, in accordance with the Constitution, whenever allowed by law, its protection to Sport, by funding a sports federation, so as for it to fulfil its purpose of constitution. In this manner, the domestic sports federation, for the circle of its activities, namely the domestic sports action and competition and the problems arising from it, is considered to be a vector of public authority for the management of sports issues, of the activities taking place out of clubs and for the so-called "sports order". The federation exercises a power in the public interest and in favour of the domestic sports and competitive activity. It is to this activity that state funding is provided and only for this one a control takes place so as to ensure that this funding is used for the satisfaction of the public interest. And of the public purpose that sport serves. In this context, any state interventionism over the autonomous institutional operation of the sports federation, as a body which is issue of the clubs, which are governed by

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43) Law 2725/1999, article 19, paragraph 2, section 2 and article 33, paragraph 7 and 8.

44) Ibid, article 33, paragraph 7. According to these provisions, in the Greek inter-club championships and the cup games, foreign athletes of Greek origin or other foreign athletes are allowed to participate following a relevant sports federation's proposal and a competent minister's decision.

45) Ibid, article 7, paragraph 6, op. cit., in Sports Code (2005), p. 49.

private law, and is regulated by means of special legal provisions, is justified in the sense that this sports supreme union does not manage only the competitive sport practiced by these clubs but also the sport based on an accumulation of national characteristics, which serves the satisfaction of a public interest. All above mentioned attribute to the sports federation the particular form of a public function service<sup>46</sup>).

### Constitution and Composition

Sports clubs or their associations constitute the core of the sports federation of a specific sport. Moreover, any sports club can join a sports association or a federation by the submission of a formal declaration, along with the name list of its athlete-members and the request for the issuance of an athlete's identification document for these members (athlete's identification card)<sup>47</sup>). The federation which develops a sport, to which this sport belongs in exclusivity, following a central administration decision, being this sport's unique and supreme authority, is the only body entitled to issue athletes' cards for this sport. A basic requirement for this card issuance is that the relevant club observes the statutes and the regulation of this federation<sup>48</sup>). No distinction is allowed to take place between the members of a sports federation, such as regular, novice or presiding ones<sup>49</sup>).

For the constitution of a sports federation to take place, some requirements need to be fulfilled such as:

- a decision of the Boards of Administration and of the General Assemblies of the sports clubs or of the associations involved
- these clubs and associations develop the same sport or operate in the same sports sector.

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46) R. Dondoux, *The Sports Law*, op. cit., p. 157-158 and D. Panagiotopoulos (2001), *Αθλητικό Δίκαιο...* (Sports Law...), op. cit., p. 277 and following, as also p. 148 and following.

47) Article 33, paragraph 9 Law 2725/1999 Health Bulletin, in *ΑΘΛΚ* (Sports Code, 2009), p. 48, compare also with previous Law 75/1975, article 13, paragraph 4 and *ΑΘΛΚ* (Sports Code 2005), p. 63.

48) Article 20 op. cit.

49) In older regulations the members that were registered in a sports club, for the first time, were rendered for one year obligatory as novice or assistants, Law 75/75, Article 1, paragraph 9.

If these requirements are fulfilled, the sports clubs participating in the federation's constitution need to be at least twenty and the sports associations at least five. This minimal number of clubs and associations needs to have already developed a competitive activity<sup>50</sup>). Neither is this activity strictly defined in the law nor the conditions and the mode on the basis of which this activity is established and certified. This is why the opinion that such an activity can even be a virtual one has been expressed. According to the case-law, the number of clubs having founded the federation needs to be established as well as the number of the founding club members that have attended the initial General Assembly of the federation<sup>51</sup>).

In case where the number of the acknowledged clubs that practice the same sport or are active in the same sports sector decreases to less than fifteen and as long as no other sport is also incorporated in the same federation, this sport and the clubs practicing it need to be placed under the authority of another, legally operating federation, following a decision of the competent authority on sports matters<sup>52</sup>).

A member's registration in a sports federation takes place after a federation's board of administration decision. The radiation of a member can only take place by means of a decision of the federation's General Assembly<sup>53</sup>). There can be no distinction or discrimination between the members of a federation, such as distinguishing them to regular members, novice

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50) Law 2725/1999, article 20, paragraph 1.

51) Pre-judgment decision 5014/2005 of the ΜΠρωτΑθ (Athens' One-Member First Instance Court) (not published).

52) Ibid, Article 28, paragraph 4, "Specifically for the sports federations of golf and cricket, the provision of the previous section applies provided that the number of the club members is limited to five (5)", the paragraphs 4 and 5 of article 28 Law 2725/1999 were unified as above-mentioned with the paragraph 5 of article 74 Law 3057/2002. Also: The sport of basketball in wheelchairs, practiced by disabled athletes, is placed under the authority of the already existing Ομοσπονδία Σωματείων Ελλήνων Καλαθοσφαιριστών με Καρότσι (Ο.Σ.Ε.Κ.Κ.) (Federation of Greek Wheelchairs Basketball Players Clubs), which is also member to the International Wheelchair Basketball Federation (I.W.B.F.)", paragraph 4 of article 29 Law 2725/1999, as it was amended and completed by the article 18 paragraph 3 and 4 of Law 2947/2001, the way the last sub-paragraph of paragraph 4 was completed by paragraph 3 of the Law 3262/2004 Article 28.

53) Ibid, article 20, paragraph 2.



members, presiding ones etc<sup>54</sup>). The sports law stipulates that the provisions of clubs' statutes establishing a maximum number of members as well as establishing financial or other discriminations between their members are null<sup>55</sup>). The possibility and the conditions for sports clubs and associations participating in a federation, to exercise a voting right even before receiving their special sports acknowledgement, are determined by the statutes of the relevant federation<sup>56</sup>).

A sports club, by providing to its members more than ones sports and allowing them to practice them, can join more than one federation, which develop a specific sport or, in exceptional cases, more than one special categories sports. This rule is justified by the fact that clubs exist so as to allow their members to practice a sports, while federations exist so as to develop a sport through the clubs' activity, which have joined them and through the athletes' achievements in every sport.

A sports federation has the possibility, in special cases, to incorporate not only its basic sports but also some other sports, under condition that they are not already the object of another federation or union<sup>57</sup>). The law does

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54) In previous regulations the members that had registered for the first time in a sports club were considered to be novice members for one whole year: Law 75/75, Article 1, paragraph 9.

55) The clubs are compelled to modify their statutes according to the provisions of sports law, Law 2725/1999, Article 136, paragraph 2, as 135 paragraph 8, as it was replaced in the above-mentioned way by paragraph 3 of Law 3262/2004 Article 28.

56) Ibid, article 20, paragraph 2, on sports clubs' ability to take part in the General Assemblies.

57) Law 2725/1999, article 19, paragraph 2, and roughly similar provisions in article 13, paragraph 1, section 2 of the Law 75/1975. An example of such a sports association, covering more sports, is the Σύνδεσμος Ελληνικών Γυμναστικών Αθλητικών Σωματείων (Federation of Greek Gymnastics Associations), which, apart from the classic gymnastics sports, had also incorporated some other sports such as the modern gymnastics. Still, after court litigation, this specific sport has been acknowledged to constitute the object of a separate Federation: ΜΠρωτΑθ (Athens One-Member First Instance Court) decision 6458/1996, conditions of constitution of a separate Federation for a sport that is placed under the authority of an existing federation. ΜΠρωτΑθ (Athens First Instance Court) decision 28228, annulment of an interim order (requested due to reasons of direct and irreparable harm that could be sustained), which was awarded until the judgment of a demand for the suspension of the execution of a decision, following a third-party opposition. The ομοσπονδία Κωπηλασίας (Rowing

not clearly indicate when a sport cannot be the object of a separate federation as well as which is the process for its incorporation in an already existing federation of another sport. For a sport or for a sports sector which are not the object of an acknowledged sports federation or the incorporation of which to another federation is contested, the competent minister for sports matters can place it under the authority of an already existing acknowledged by means of a decision of his<sup>58</sup>).

A sports sector which gets differentiated from the federation in which it was initially incorporated, so as to be acknowledged as an independent sports federation, needs to meet the conditions set by sports law, such as the following:

- a) the sport or the sports sector developed by the new federation has to be included in the Olympic Games official program,
- b) an international federation needs to already exist for this sport or sports sector,
- c) this federation has to be acknowledged by the International Olympic Committee (IOC),

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Federation) is another example where a federation had incorporated more than one sports: It had indeed incorporated Rowing as well as Canoe Kayak, which was not the object of any other Federation until the Ministerial Decision 43775/20- 3-1987 officially placed the sport of Canoe Kayak under the authority of the ΕΚΟΦΝΣ (Greek Rowing Federation of Naval Sports Associations). Compare with D. Panagiotopoulos (1991), *Τόρυς η νέας Ομοσπονδίας Αθλήματος που υπάγεται σε άλλη* ("Foundation of a new Federation in a Sport already governed by another"), *Διοικητική Δίκη* (Diikitike Dike, Administrative Trial Journal), 3, p. 25-28, with regard to the issuance of an athlete's card. Consultation, D. Panagiotopoulos (1990) "Έκδοση δελτίου αθλητή αθλήματος νέου, στα πλαίσια ομοσπονδίας άλλου αθλήματος" ("Issuance of a new athlete's card in the context of a federation which develops a different sport"), *ΣΤΑΔΙΟΝ* (STADION, Stadium), 1:1, p. 95-97.

- 58) Paragraph 6 of article 28 Law 2725/1999 as it was again numbered later as being paragraph 5, by paragraph 6 of the article 74 Law 3057/2002. The legislator did the same previously, in a similar case. Article 23 paragraph 4 Law 423/1976 by means of which the paragraph 6 section 1 of the Law 75/1975 and the paragraph 6 section 2 of the article 13 of Law 75/1975 were added; also ΑΘΛΚ (Sports Code), p. 30. More by D. Panagiotopoulos (1991), *Διοικητική Δίκη* (Diikitike dike, Administrative Trial Journal), op. cit., 26 and following and draft of the Ministerial Decision 43775/20.3.1987 on the subordination of the sport of Canoe Kayak to the ΕΚΟΦΝΣ (Greek Rowing Federation of Naval Sports Associations).

- d) all the conditions for the participation of a representative of this new federation to the plenary session of the Greek Olympic Committee have to be met, as well as all the rules of the Constitutive Chart of the IOC have to be observed, and
- e) relevant decisions of the Boards of Administration and of the General Assemblies of more than fifty per cent (50%) of the sports clubs practicing this sport and having received the special sports acknowledgment stipulated by law need to have been taken and their total number must be at least twenty<sup>59</sup>).

All clubs which practice the same sport or operate in the same sports sector, that did not take a decision to leave the previous federation and join the new one, are ipso jure radiated from the previous federation and incorporated in the new one, when it is constituted, unless they decide not to join it, in which case they are only radiated from the previous one upon the new one's constitution<sup>60</sup>).

## Powers

According to a theoretic opinion, sports federations, as legal entities, have operated a major contribution to positive law during the 20<sup>th</sup> century<sup>61</sup>).

59) Law 2725/1999, Article 28, paragraph 3, compare with ΜΠρωτΑθ (One-Member Athens First Instance Court) decision 6458/1996. Third-party opposition of an association that had incorporated more than one sport, against a decision acknowledging the foundation of a federation for one of the sports it had already incorporated. Also compare with 28228/1996: Annulment of an interim suspension order, which was awarded following a third-party's opposition, until the time of the suspension application judgment. Direct and irreparable harm sustained and substantial harm caused to the general operation of organized sports.

60) Ibid, article 28, paragraph 3 section c, in ΑΘΛΚ (Sports Code) (2005) p. 70.

61) R. Dondoux (1979), Law and Sports, op. cit., p. 159. The type of the overlying conjunction of legal persons in sports reveals another situation and an old perception, P.d. Coubertin, "The Olympic Games, in Athens 1896", B' Part., p. 6, compare with N. Muller (1975): "Die Olympische Idee Pierre de Coubertins und Carl Diems", In: Ihrer Auswirkung auf die internationale Olympische Akademie (I. O. A.). Fine guellenge Schichtliche Untersuchung, Doctoral Thesis, Graz, p. 33, I. Chrisafis (1930), Σύγχρονοι Διεθνείς Ολυμπιακοί Αγώνες ("Modern International Olympic Games"), Athens, p. 177. P.

Amongst the powers of sports federations mainly figure the organization of a sport as well as ensuring its competitive presence at the top level.

The Greek sports federation presents a particular legal status, since it is not only an administrative body but also a legislative and a disciplinary one<sup>62</sup>. It therefore has powers which concern the sport itself and its competition, such as the organization and the supervision of all sports events and competitions<sup>63</sup>. It also shapes the principles of a sport and of the clubs operation governing the relations of their members, the sport development and the people implicated in a sport's life. Last but not least, it has controlling powers and a disciplinary authority over all the sport's aspects previously mentioned.

The powers of a sports federation need to be classified as follows:

a) *Organizational powers*, such as the power to constitute and to establish special bodies of a technical, disciplinary, jurisdictional nature and others necessary for the purpose of the federation's existence. Many of the

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Manitakis (1962), 100 χρόνια Νεοελληνικού Αθλητισμού ("100 years of Neo-Hellenic Sports"), Athens, p. 33.

62) D. Panagiotopoulos (1990), *Θεωρία* (Theory), p. 19, same author 1991 in: *Διοικητική Δίκη* (Administrative Trial Journal), p. 20, K. Remelis (1993), "Concept and nature of disciplinary sport", *ΕΚΕΑΔ* (H.C.R.L.S): Athens 1993, p. 325-336, compare with D. Panagiotopoulos (1995), "The Institutional Problem of the Greek Sport Federation", In: *Marquette Sports Law Journal*, vol. 5:2, p.247-249. The imposition of disciplinary sanctions creates private disputes, which, according to the case law, come under the jurisdiction of political courts. Private disputes springs up for example from the imposition of a sentence of prohibition of entry in the gaming space by the Federation as responsible for the particular sport, *ΣΤΕ* (State Council) decisions 619/1983, 3402/1984, 623/1987 and 2359/1987, because these precise relations have as source the rules of internal order of this organization and the free will of its members in the frame of institutional autonomy, compare with Delligiannis-Skouris, *Αρμενόπουλος* (Armenopoulos Journal) 1986, p. 587, as also D. Panagiotopoulos (1993), "Ζητήματα επιστημολογικής οριοθέτησης και εφαρμογής του Αθλητικού Δικαίου" ("Questions of epistemological delimitation and application of Sports Law") in: *Διοικητική Δίκη* (Administrative Trial Journal), 3, p. 973, D. Panagiotopoulos (1995), "The Institutional Problem of the Greek Sports Federation", *op. cit.*, p. 243-250 and *Yearbook of Sports Law III*, Ant. Sakkoulas: Athens.

63) The Board of Administration's decision for the proclamation of games must be based on approved games' organization regulations, *ΑΣΕΑΔ* (Ανώτατο Συμβούλιο Επίλυσης Αθλητικών Διαφορών, High Council for the Resolution of Sports Disputes) decision 109/2002.

decisions of these bodies require ratification by the federation's Board of Administration, like the decisions of the competent committee on transfers within a specific sport<sup>64</sup>).

b) Powers of a regulatory nature.

The sports federation has the power to issue special rules - regulations for its internal operation, which apply to the people involved in the club and in the sport's life circle as well as to the people practicing a specific sport. Any issue that is relevant to the sport is regulated by means of specific rules that are adopted by the federation members' general assembly, by the association or by the union (in the case of a sports sector). The sports federation rules and regulations need to observe the international sports regulations of the relevant international federation and all clubs and associations which are bound by the authority of the domestic federation of a specific sport<sup>65</sup>) need to abide by these international sports regulations too.

The regulations also need to be in accordance with the sports law provisions. All decisions of the IOC on Doping<sup>66</sup>) and drugs use also need to be incorporated to the regulations in question. In this regime, sports federations assume the institutional duty, as supreme sports authorities, to fight against Doping, while a unified regulatory effort to face this problem is attempted on the basis of the international practice<sup>67</sup>), by incorporating the

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64) It is constituted following a Board of Administration's decision, which is notified to the ΓΓΑ (General Secretariat for Sports) and to every federation; paragraph 3 of article 33 combined with the article 27 of Law 2725/99, ΑΘΛΚ (Sports Code) p. 87 and 68; compare with relevant Ministerial Decision 21451, article 9, paragraph 1 and 2(o) in 475/1-7-1991 vol. B). Relevant decision 128/1990 of the ΑΣΕΑΔ (Ανώτατο Συμβούλιο Επίλυσης Αθλητικών Διαφορών, High Council for the Resolution of Sports Disputes). In this decision the virtual registration of a Track athlete was accepted after the expiration of the relevant deadline available for its ratification by the Federation's Board of Administration.

65) Ibid, article 27. Ilia's One-Member First Instance Court decision 1250/2004 on a club's demand for interim measures against a Federation, in order for its athletes to be included in a summer skiing international competition.

66) Id, article 26, paragraph 4, compare with article 27 Law 2725/1999, also Code of International Olympic Committee (I.O.C.), Olympic Chart 1999 -2002, as it is adopted since 1989, compare with European Convention Anti-Doping, ratified by the Law 2371/1996 with an indicative list of substances and doping methods, Sports Code (1997), 370-394, compare also with Anti-Doping Code (WADA) [2003].

unified relevant regulation in the operating regulations of the sports federations. The sports federation is not only a sport's administrative body but also the legislative body for a sports sector, especially on all issues related to the relations established in the sports activity. The federation's legislative work is controlled, as far as its legality is concerned, by the central administration<sup>68</sup>).

c) Disciplinary powers.

The sports federation has also a disciplinary power over the actions and omissions of the people and the bodies implicated in sports life, in the field of the sport that it develops; it also has the right to implement sanctions through decisions of its bodies. It therefore has the power to appoint controlling, disciplinary and technical bodies, so as for the disciplinary authority to be exercised from the federation to its members, to the clubs and to the sports life in general. This disciplinary power has to respect the federation's regulations, which are in accordance with the rules of international Sport, of the IOC and with the principles of fair play<sup>69</sup>). A federation has the right to impose sanctions<sup>70</sup>) on sports discipline issues, on Doping as well as on fair play, honest competition or on games and on

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67) Article 26 paragraph 4 in combination with the article 27 Law 2725/99, Sports Code, I., p. 67-69, compare with ΑΣΕΑΔ (Ανώτατο Συμβούλιο Επίλυσης Αθλητικών Διαφορών, High Council for the Resolution of Sports Disputes) decision 53/2002, with which the sentence of exclusion that was imposed by a sports federation to an athlete in a doping affair in international games was cancelled.

68) After the expiration of two months since its notification for approval to the ΓΓΑ (General Sports Secretariat) it is tacitly considered as having been approved, ΑΣΕΑΔ (High Council of Resolution of Sports Disputes) decision 109/2004 with regard to the disciplinary regulation of Federation of Modern Pentathlon.

69) Olympic Chart, I.O.C., articles 2 and 50, compare with L. Silance, "Sports Law", op. cit., p. 79, and following, D. Panagiotopoulos, Sports Fan Attribute, Ant. N. Sakkoulas, Athens, p. 15-24, same author, Olympia's Moral Horizon and the Branch of the Victory, op. cit., p. 29-33.

70) No 104/1-3-2000 Objections ΕΕ/ΕΠΟ (Appeals Committee /Greek Football Federation) with which an amateur footballer's Objection on an imposed sentence of retraction of the athletic attribute's bulletin and three years exclusion from each game was rejected, because he used factitious justifying for its publication; compare also with ΑΣΕΑΔ (High Council of Resolution of Sports Disputes) decision 124/2002, with which a sentence of suspension of the gaming bulletin and exclusion from the games to an athlete because of infringement of regulations of the sports Federation is decreased.

physical and moral health issues in general. Its power on these issues results from law provisions<sup>71)</sup>, from its statutes and from the games operational regulation<sup>72)</sup>, which all form a domestic *Lex Sportiva*.

In order to take decisions on disciplinary matters, a sports federation does not only need to observe the substance of its statutes or of its regulation<sup>73)</sup>. It also needs to observe the required legal procedure and the proper operation of its own disciplinary bodies.

It indeed has to ensure the following:

a) the lawful invitation of the Board of Administration (BoA) members, as required by law or by the federation's statutes or by its regulation, since the BoA members need to receive a written invitation, to attend the BoA disciplinary meeting, in which the specific issues to be examined must be mentioned and

b) the secrecy of the Board of Administration members' votes during the decisional process, since the voting process is a secret one<sup>74)</sup>.

In the context of the exercise of the powers above mentioned, it has often been observed that their exercise by the same authority results in a confusion of powers and in a lack of objectivity<sup>75)</sup> as well as in the

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71) Article 128 b paragraph 3 in ΑΘΛΚ (Sports Code) (2005), p. 308.

72) ΑΣΕΑΔ (High Council of Resolution of Sports Disputes) decision 99/1997 according to which, the federation of each sport is the only responsible for the conduct of championships in its sport, for the publication of familiar proclamations of games, as well as for the change, the suppression or their replacement in the legal deadlines.

73) ΑΣΕΑΔ (High Council of Resolution of Sports Disputes) decision 85/2002, with which a sentence imposed by a sports federation, after the decision of the familiar jurisdictional committee, because of violation of the principle of prohibition of proportion of the disciplinarily punishable character of the particular behaviour of the persecuted one, is cancelled.

74) Relevant ΑΣΕΑΔ (High Council of Resolution of Sports Disputes) decision 159/1990, with which a federation's decision is cancelled, just because the legal convocation of the Board of Administration and the secrecy of voting were not ensured, as it was necessary. The case-law constantly accepts that the Civil Code's provisions apply on of sports associations' issues that are not explicitly regulated by law: comment of G. Dionisatos in *Pandektis/ISLR*, op. cit., p. 117 and relevant case-law: ΕιρΑθ (Peace Court of Athens) decision 3154/1976, ΕΕΝ (Greek Law Practitioners Review).

75) ΕοΑθ (Court of Appeal of Athens) decision 4243/1997, *Ελληνική Δικαιοσύνη* (Hellenike Dikaioσύνη, Hellenic Justice Journal), 39:1998, p. 410, according to which, in accordance with the dominant law theoreticians' opinion, the disciplinary power of an association

satisfaction of objectives that are not in total accordance with the nature and the morals of Sport. This confusion creates new, more complicated problems<sup>76</sup>), resulting from the infringement of the laws and of the regulations by the bodies constituted by the sports federation.

### Regulating power

In order to ensure the good operation of the sports federation the general assembly of the federation's members adopts general and special regulations, by means of which are established some rules applying to all issues related to the organization of a Sport or of sports incorporated in it as well as every other relevant detail<sup>77</sup>). All international relevant regulations are taken into consideration upon the establishment of a domestic federation's regulations; sports clubs that have joined such a federation are bound to observe its regulations<sup>78</sup>).

The regulations, the rules resulting from them and their amendments, adopted by a federation's General Assembly, in their present or future form, are the object of a legality control operated by the minister within a

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is exercised as a manifestation of its autonomy and its self-government; still, it is not arbitrary and is governed by the general principles applicable to all forms of sanctions, in the framework of the democratically constituted society. Such a principle is the principle "ne bis in idem"; therefore, imposing two separate disciplinary sanctions for the same disciplinary fault is not allowed, compare with D. Panagiotopoulos (1990), *Θεωρία* (Theory), op. cit., p. 49-56.

76) ΣΤΕ (State Council) decision 2426/1986, ΑΣΕΑΔ (High Council for the Resolution of Sports Disputes ) decisions 212/1984,200/1988,188/1991, compare with D. Panagiotopoulos (1993), "Sports law aspects in Implementation", in: Proceedings 1<sup>st</sup> IASL Congress, Athens, p. 77-78, D. Panagiotopoulos (1997) *Αθλητική Δικαιοδοσία* (Sports Jurisdiction), Ant. Sakkoulas Editions, Athens, p. 18 and following.

77) The regulations applying to private legal entities, such as sports clubs and federations, are mandatory and applicable to everyone who participates in sports competitions, exception made of all private law entities that have been constituted by means of a private agreement; all disputes related to these entities, regardless the legal rules which apply to them and the purpose these rules serve, are judged by the court in the geographical district of which the agreement has been concluded, ΣΤΕ (State Council) decision 1738/1986.

78) Article 27 in ΑΘΛΚ (Sports Code) p. 68-69.



two-month period<sup>79)</sup>. The force of the rules established by the federation depends on this legality control operated by the central administration and on having observed the legality control procedure. This specific rule, which figures in the sports law, is a mandatory one.

When the legality control takes place<sup>80)</sup>, if some provisions of the regulation are found to require an amendment, a completion or a harmonization, the federation is invited to operate these modifications within a ten-day period<sup>81)</sup>. If the legal deadline for the legality control of specific regulations ends without their having been controlled, the relevant regulations are considered to have been legally issued<sup>82)</sup>.

All matters concerning the organization, the administration and the operation of a sports federation and of its associations as well as the status of their employees, are dealt with by means of a special regulation adopted by the federation's BoA and approved by the competent sports minister. The obligation for a federation to submit this regulation to the central administration for approval does not apply in case where this federation is partially funded by the General Secretariat for Sports (G.S.S.) or by another body that is supervised by the ΓΓΑ (G.S.S.), to a percentage smaller than fifty per cent (50%) of its total income<sup>83)</sup>. In such a case, the use of this amount, although smaller than 50% of the federation's income, remains uncontrolled by the central administration. Still the funding depends on the way that the funds will be used, regardless the approval of the federation's regulation by the central administration. The control should, therefore, even in such a

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79) Article 27, as it was modified by the paragraph 3 of the Law 3057/2002 article 74. Following their approval, the federations' regulations are published in the Hellenic Official Journal; published regulations and relevant Ministerial Decisions of the Minister of Culture in: Κώδικας Νομικού Βήματος (Kodikas Nomikou Vimatos, Legal Podium Code Journal) 2000, Vol. 48, p. 3066-3068.

80) Issued by the competent Minister: Law 2725/1999, article 27. According to the ΠολιτΑθ (Multi-member Athens First Instance Court) decision 488/1985, the provisions related to sanctions imposed by the ΓΓΑ (Secretary-General for Sports) and applicable to basketball coaches or clubs, are private law ones.

81) The Board of Administration has that power: article 27 Law 2725/99, amended as above mentioned by paragraph 3 of the article 74 of Law 3057/2002, in ΑΘΛΚ (Sports Code) (2005), p. 68-69.

82) Ibid, article 27.

83) Id, article 30, paragraph 1, section 3.

case, be mandatory, sine it is constitutionally necessary; the administration should be forced to exercise its legality control for all funds provided to federations regardless their amount.

In such a regulation are determined:

- a) All organic posts and the federation's inner structure,
- b) the positions' number per object and specialization,
- c) the required typical skills and
- d) the duties related to every position<sup>84</sup>.

All posts described in the regulation and approved by the administration are organic ones to every federation and unique for the whole of the associations incorporated in it. The employment of personnel without the existence of corresponding structural positions is strictly and explicitly forbidden by sports law. Any form of personnel employment needs to take place by means of a procedure similar to the one for the employment of people in the public sector<sup>85</sup>, exception made of all special associates, coaches and trainers, technical consultants, physiotherapists, doctors of all specialties, lawyers, scientific associates, care takers, journalists and public relations consultants. It becomes evident that this state intervention in the affairs of a federation, which is a private law entity, especially the one related to federation's personnel, places the federation under the immediate control of the central administration. This control is also focused on the issues that arise with regard to the remuneration of sports federations' personnel. The implementation of the employment's contract of a sports federation employee, who is included in the federation's regular personnel that follows a General Secretary's for Sport approval, is a particular procedure, since his salaries are subjected to the application of the rules on the uniform remuneration of public servants<sup>86</sup>.

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84) *Id.*, article 30, paragraph 1, section 1.

85) *Id.*, article 30, paragraph 3; compare with the last sections of paragraph 3 of article 30, as they were adopted by means of paragraph 20 of the Law 3207/2003 article 8; according to this provision, all federations' personnel working by virtue of a private law employment contract of an undetermined duration, that proves to be redundant, can be transferred, under the same employment regime, to another federation or to the Greek Olympic Committee, in accordance with the provisions of the sports law.

86) On the uniform wages regime of Law 1505/1984: decision 1137/1991 and article 361 of the AK (Civil Code), as well as ΑΠ (Greek High Court's) decision 854/1986, Νομικό Βήμα

## Conclusion

The Greek Constitution provisions constitute the institutional guarantee of the right to the free development of sports activities;

These regulations establish a context for the exercise of the constitutional right to the free individual and collective sports action under state supervision and protection.

The establishment of sports clubs, associations and federations, as a special expression of people's right to associate themselves, indicates that Sport has an institutional autonomy.

Sports federations are controlled by the State, as provided by law, on the basis of the principle that they are the unique high sports authorities in every sport, giving them a monopoly and dominant position.

The sports reality of the existence of a federation contributes to the determination of its particular nature, as the only supreme authority of a sport, governing all relevant clubs and developing that specific sport. A domestic sports federation constitutes the only entity representing a country's domestic sports activity at the international level and communicating with the international federations. These international sports federations impose the observation of the rules that they establish to the domestic ones, thus creating a Law that does not belong to any country, the *Lex Sportiva*, which is introduced in the domestic law and many times imposed by the domestic federation, on the basis of the transformation and the incorporation theory.

Since a sports domestic federation is the one managing the sport at the national level, it bears the responsibility of the domestic sport to be practiced under state supervision and control. This federation needs to operate in the context of the *Lex Sportiva*, but also in accordance with the public interest. Given all this, a State must provide, in accordance with the Constitution, whenever allowed by law, its protection to Sport, by funding a

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(Nomiko Vima, Legal Podium Journal) 35, p. 1197, Athens; ΕφΑθ (Athens Court of Appeal) decision 5117/1989, Νομικό Βήμα (Nomiko Vima, Legal Podium Journal) 38, p. 825; compare with D. Panagiotopoulos, (1997), ΑθλΚ (Sports Code), p. 91, footnote 28, Ant. N. Sakkoulas Editions, Athens.

sports federation, so as for it to fulfil its purpose of constitution.

The federation exercises a power in the public interest and in favour of the domestic sports and competitive activity. It is to this activity that state funding is provided and only for this one a control takes place so as to ensure that this funding is used for the satisfaction of the public interest. And of the public purpose that sport serves.

All above mentioned, attribute to the sports federation the particular form of a mandate public function service.

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