

Beiträge zum Sportrecht

Band 42

Lex Sportiva

Herausgegeben von

Klaus Vieweg



Duncker & Humblot · Berlin

KLAUS VIEWEG (Ed.)

Lex Sportiva

Beiträge zum Sportrecht

Herausgegeben von
Kristian Kühl, Udo Steiner
und Klaus Vieweg

Band 42

Lex Sportiva

Edited by

Klaus Vieweg



Duncker & Humblot · Berlin

Bibliographic information published by the Deutsche Nationalbibliothek

The Deutsche Nationalbibliothek lists this publication in
the Deutsche Nationalbibliografie; detailed bibliographic data
are available in the Internet at <http://dnb.d-nb.de>.

All rights reserved. No part of this book may be reproduced, translated,
or utilized in any form or by any means, electronic or mechanical,
without the expressed written consent of the publisher

© 2015 Duncker & Humblot GmbH, Berlin

Printing: Meta Systems Publishing & Printservices GmbH, Wustermark
Printed in Germany

ISSN 1435-7925

ISBN 978-3-428-14540-9 (Print)

ISBN 978-3-428-54540-7 (E-Book)

ISBN 978-3-428-84540-8 (Print & E-Book)

Printed on no aging resistant (non-acid) paper
according to ISO 9706 ☺

Internet: <http://www.duncker-humblot.de>

*Dedicated to the memory of my wife,
Cornelia Maas-Vieweg,
who supported the conference in
many ways and was the perfect host in
the beer garden in Bräuningshof*

Preface

On June 24th and 25th, 2011, the twelfth Interuniversity Sports Law Conference, which was also the second conference of The Hague Academy for International Sports Law (HISLAC II), took place in Erlangen. The conference was, therefore, particularly noteworthy as, along with “young sports lawyers”, we were also able to attract very renowned experts from the worlds of academia and practice, both from Germany and further afield. This volume is comprised of the lectures delivered in Erlangen and is enriched by several additional papers that keep with its theme. Most of the papers relate to international or transnational topics and demonstrate one of the peculiarities of sports law: the frequent occurrence of similar problems worldwide and the need for unified rules and harmonized practices. The title, “Lex Sportiva”, refers to this. All of the papers delivered at the conference will be published in English. In addition, many lectures that were originally delivered in German will be published in their original form.

The sports law team at the Institute for Law and Technology (IRuT) with its connected research centre for German and international sports law provided vital assistance in the editing and translation of the papers and in the necessary preparations for the printing process. For this, I am most thankful.

Erlangen, June 2014

Klaus Vieweg

Contents

<i>Klaus Vieweg</i>	
Words of Welcome	11
<i>Janez Kocijančič</i>	
The Hague International Sports Law Academy	13
<i>Klaus Vieweg and Paul Staschik</i>	
The Lex Sportiva. The Phenomenon and its Meaning in the International Sporting Arena	17
<i>Burkhard Hess</i>	
The Development of Lex Sportiva by the Court of Arbitration for Sport	59
<i>Robert C.R. Siekmann</i>	
Sports Law, Lex Sportiva and Lex Ludica. A Reassessment of Content and Terminology	77
<i>Franck Latty</i>	
Transnational Sports Law	107
<i>Alexandre Miguel Mestre</i>	
States and the Olympic Movement. The Twin Face of a Legal Subordination: The Portuguese Case	121
<i>Andreas Wax</i>	
Public International Sports Law and the Lex Sportiva	145
<i>James A.R. Nafziger</i>	
Defining the Scope and Structure of International Sports Law: Four Conceptual Issues	161
<i>Andreas Zagklis</i>	
Lex Sportiva – From Theory to Practice: Lessons to be Learned from the Jurisprudence of the Court of Arbitration for Sport (CAS) and of the Basketball Arbitral Tribunal (BAT)	179

Rudolf Streinz

Boundaries upon the Jurisdiction of Federations under EU Law. The Area of Sport is not a Vacuum in which EU Law does not Apply	189
--	-----

Jacob Kornbeck

The First EU Contribution to the Revision of the World Anti-Doping Code (WADC).....	211
---	-----

Robert Sieghörtner

International Sporting Accidents and the Rome II Regulation.....	227
--	-----

Contributors.....	253
-------------------	-----

Words of Welcome

By Klaus Vieweg

Dear friends of sports law,

I would like to welcome you very heartily to Erlangen on the occasion of the twelfth “Interuniversitäre Sportrechtstagung” which usually takes the form of a conference with participants from various German universities. This year, 2011, is a special year, as we are celebrating the 20th anniversary of the Institute for Law and Technology (IRuT), known in the world of sports law as the Erlangen Institute. For this reason, we are extending our circle of speakers and participants and, in addition, we will continue a tradition which had its starting point in Jakarta last year, where we founded the Hague International Sports Law Academy (HISLAC). Our colleague, Janez Kocijančič, will inform us in detail about the Jakarta Declaration on Lex Sportiva, which came into being on September 22nd 2010.

Allow me some words on the history of the Interuniversitäre Tagungen Sportrecht. They were initiated by my colleague Burkhard Hess, who at that time had a chair at Tübingen Law School. The first seminar with students from Tübingen and Basel took place in the legendary Deutsches Olympisches Institut at the “Kleiner Wannsee” in Berlin in the year 2000. I was invited to participate by Burkhard Hess and we had the idea of holding a seminar every year at this marvellous place. The following year, the seminar took place with students and young sports lawyers from three universities (Tübingen, Cologne and Erlangen) in attendance. I remember very well that the three professors (Burkhard Hess, Peter Tettinger, and myself) enjoyed the break from our positions as deans of our faculties immensely. At that time, we developed the idea of bringing doctoral candidates, those who had just received their doctoral title and well-known experts in the area of sports law together, which led to very fruitful discussions. In the years that followed, Volker Röhrich and Walter Seitz – among others – were very welcome participants. In 2003, we combined the conference with an evaluation of the project “Legal Comparison and the Harmonisation of Doping Rules” which was carried out by IRuT and the Asser Institute in The Hague for the European Commission. For this reason, we had quite a number of experts from Germany and abroad who contributed greatly to discussions with the young sports lawyers. The unique atmosphere at the “Kleiner Wannsee” re-

grettably came to an end when the Deutscher Sportbund was forced to sell the property. We then decided to change the venue every year, so the conferences which followed were held in Cologne (2004), Heidelberg (2005), Erlangen (2006), Rauschholzhausen near Gießen (2007), Schloss Thurnau (2008), Paderborn (2009) and Oberhaching (2010).

To date, we have published the contributions of 67 speakers in four volumes: *Spektrum des Sportrechts* (2003), *Perspektiven des Sportrechts* (2005), *Prisma des Sportrechts* (2006) and *Facetten des Sportrechts* (2009), and now the next book-baby is on the way: *Akzente des Sportrechts*. I'm very pleased that our publisher, Dr. Florian Simon, has honoured us with his presence on several occasions and also that he has found his way back to the town of his youth. We intend to publish this year's contributions in a separate book with the title *Lex Sportiva*. On this occasion, it is not just the young sports lawyers who will speak, but primarily those sports lawyers who, in Bob Dylan's words, remain "forever young". Burkhard Hess – the founder of the seminar – is one of our speakers and he is returning to Erlangen, where he was professor before he took the chair in Tübingen.

Others, unfortunately, could not make it due to business or family commitments. Thomas Bach, the vice president of the IOC who is living nearby in Weisendorf, is obliged to attend a conference of the DOSB in Frankfurt, and therefore regrets that he is unable to come to Erlangen.

In total, we have colleagues here from 11 countries. The lectures, discussions and handouts, which have been translated by the IRuT assistants, will be in English and German. .

Finally, allow me to make some organisational remarks:

At 5 p.m., we will meet in order to drive to the Fraunhofer Institute IIS for a technical demonstration of super slow-motion and 3D. The Fraunhofer Institute is well-known as the inventor of mp3 and for its leadership of various technical developments. After the presentation, we will have dinner there and afterwards, we will drive to the village of Bräuningshof – where my wife and I live – to have refreshments in our beer garden.

The Hague International Sports Law Academy

By Janez Kocijančič

The idea which gave rise to The Hague International Sports Law Academy (HISLAC) has its roots in several meetings between a group of sports lawyers – the most prominent of these being Professors Robert Siekman, Klaus Vieweg, James Nafziger and myself. We had met at several international congresses, conferences and meetings where we discussed various aspects of sports law on both a national and an international level. Based on our discussions and shared criticism of the various problems which we perceived to exist in the area of sports law, we came to the conclusion that the scholarly study of international sports law and its expansion should be elevated onto a higher level. Gradually, we came to the conclusion that we shouldn't just “go with the flow” and reduce our role in this area to that of mere spectators of recent developments. We therefore decided to establish a new body: the Hague International Sports Law Academy. We chose this name, reasoning that The Hague is the legal capital of the world, and, for this reason, we were of the opinion that our Academy belonged there; in particular, because the famous Asser Institute also has its headquarters in that city.

- It is important that we understand that sport is a very significant phenomenon within modern society. There are several reasons for this:
- It strengthens several basic human values; e.g. it establishes a strong foundation for sporting ethics such as fair play, and it enhances social cohesion and solidarity. It is of benefit to the well-being of society in general, and I would go so far as to say that it is one of the constituent elements of democracy.
- It brings people – especially young people – together, regardless of any differences which may exist between them, be they social, religious, political, gender-related or otherwise. Moreover, it assists them in overcoming these differences.
- It is an increasingly important economic activity. According to the White Book on Sport of the EU Commission, which was published in 2006, sport represents 3.7 % of EU GDP.