

THE SPORTS LAW REVIEW

Second Edition

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CONTENTS

Editor's Prefacev
	<i>Andr�s Gurovits</i>
Chapter 1	ARGENTINA 1
	<i>Pablo A Palazzi and Marco Rizzo Jurado</i>
Chapter 2	BELGIUM 14
	<i>Sven Demeulemeester</i>
Chapter 3	BRAZIL 26
	<i>Adolpho Julio Camargo de Carvalho</i>
Chapter 4	DENMARK 36
	<i>Lars Hilliger</i>
Chapter 5	ENGLAND AND WALES 52
	<i>Jon Ellis, Ian Lynam, Paul Shapiro and Ben Rees</i>
Chapter 6	FINLAND 69
	<i>Pia Ek and Hilma-Karoliina Markkanen</i>
Chapter 7	FRANCE 81
	<i>Romain Soiron and Aude Benichou</i>
Chapter 8	GERMANY 91
	<i>Dirk-Reiner Martens and Alexander Engelhard</i>
Chapter 9	ITALY 114
	<i>Maria Laura Guardamagna</i>
Chapter 10	NETHERLANDS 125
	<i>Kees Jan Kuilwijk</i>

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

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Chapter 16

SWEDEN

*Karl Ole Möller*¹

I ORGANISATION OF SPORTS CLUBS AND SPORTS GOVERNING BODIES

i Organisational form

Almost 3.5 million of Sweden's nine million inhabitants are members of a sports club (as competitors, leaders, trainers, coaches, supporters, etc.). Some 2.4 million of these compete regularly. For historical reasons, voluntary non-profit associations play a major role in Sweden. The right to participate in clubs and societies is guaranteed by the Swedish Constitution. Sport in Sweden is historically organised as an independent voluntary movement (generally known as the 'Scandinavian' or 'Nordic' model). A long experience of collaboration with central government and local authorities has led to the sports movement being entrusted with the task of organising sport in Sweden with the help of financial support from the state and local authorities.²

Local sport clubs are the foundation of the sports movement in Sweden. There are more than 20,000 local sport clubs in Sweden registered as non-profit associations with the purpose of organising sport activities, having elite sports and sport-for-all under the same umbrella. A non-profit association becomes a legal entity from the moment it is set up. For a non-profit association to exist in the legal sense, it is necessary for a number of individuals to have entered into an agreement to act jointly in organised form to meet a common, non-profit purpose (organising sport activities). The actual agreement must be legalised in the form of statutes. A non-profit association cannot engage in commercial activities in order to enrich its members, but only in support of the non-commercial purpose. Sport clubs are thus governed by their statutes, which require democratic forms such as annual general meetings, executive

1 Karl Ole Möller is a partner at Advokatfirman NORDIA.

2 The Swedish Sport Confederation – Sport in Sweden, available at www.rf.se.

committees, etc. A sports club is 'owned' by its individual members, who determine, at the sports club's annual meeting, what activities the club shall do and how the club is to allot its financial resources, etc. The basic principle is that each member has one vote.

The Swedish Sports Confederation is an umbrella organisation consisting of 71 special sports federations, which organises more than 250 different sports and 20,000 sports clubs, who are all members of the Confederation. Membership is only admitted to non-profit associations. Legally, the Swedish Sports Confederation is itself a non-profit association that is regulated by the statutes agreed by its members.³ The Confederation has the task of supporting its member federations and, in an official capacity, representing the whole Swedish sports movement in contacts with the authorities, politicians, etc.

The sport clubs hold participating licences to take part in and compete in sports activities arranged by their respective special sport federation. The sport clubs are, however, allowed to transfer these rights to a wholly or partly owned limited liability company under certain conditions; for instance, that the sports club hold the majority of the votes at the general meeting of the limited liability company (the '51 per cent rule') and that the limited liability company is prohibited from transferring the sporting rights to a third party.⁴ Many sports clubs with elite professional sport activities, such as the top-level clubs in football and ice hockey, have used this opportunity to have their elite teams in a separate legal entity, which may attract financial investors from private business. So far, only one of these limited liability companies, AIK Fotboll, has listed its shares on the public market.

The supreme authority of Swedish sports in all Olympic matters is the Swedish Olympic Committee (SOC). It comprises 35 national Olympic sports federations (about half of the special sports federations mentioned above) as well as 12 federations of sports recognised by the International Olympic Committee. The main responsibility for developing individual sports rest with the appropriate special sports federations, but the SOC aims to strengthen the work of these federations.

ii Corporate governance

Swedish law does not provide for specific corporate governance rules for sports clubs or sport governing bodies. Sports in Sweden have historically received substantial state support, but the governance of sports has been semi-autonomous of the state and therefore self-regulation, rather than regulation by the state, has been the norm. However, in recent years, sport governance in Sweden has been subject to the effects of professionalisation, commercialisation and globalisation, as in the rest of the world. Therefore, sport governance in Sweden (including corporate governance) will most probably be going through a period of transformation. Listed companies are subject to various rules and recommendations on corporate governance, such as the Swedish Corporate Governance Code.⁵ The Code may also be applied voluntarily by non-listed companies.

iii Corporate liability

Swedish law does not provide any specific statutory provisions for liability of managers and officers of sport clubs or sport governing bodies. Most sports organisations are structured

3 The statutes of the Swedish Sport Confederation 2013, available at www.rf.se.

4 Chapter 11, Section 3 of the Swedish Sport Confederation's statutes.

5 The Swedish Corporate Governance Code, available at www.corporategovernanceboard.se.

as non-profit associations and, in some cases, as limited liability companies. The board is responsible for the organisation and management of the organisation's business. The board shall continually assess the financial situation of the organisation and ensure that the organisation of the association or company is structured in such a way that the accounting, the management of assets and the financial situation of the organisation in other respects are monitored in a safe manner. The board is also the organisation's organ, which represents the organisation officially and has the power to sign on behalf of the organisation.

A member of the board or an officer of a non-profit association or company may be liable for damages that he or she causes the organisation (or its members or shareholders) intentionally or negligently in the performance of his or her duties. The general rules of the Swedish Companies Act (1975:1385) apply for those sports clubs that are organised as limited liability companies. Pursuant to the Companies Act,⁶ an incorporator, a member of a board of directors or a managing director may be liable for damages that he or she causes the company (or a shareholder) intentionally or negligently in the performance of his or her duties. The board members are primarily responsible for the acts and omissions within the scope of the board's area of responsibility. The members of the board may be liable for acts taken by an officer of the organisation within the day-to-day management if they have neglected their duty to supervise. The level of care expected of the board members depends on various factors such as the type of business, the allocation of work between the board members and the qualifications and experience of the board member in question. Generally, board members are required to keep themselves informed of the association's financial situation and make decisions based upon sufficient information. They shall also respond to warning signals, such as liquidity problems. Board members are often entitled to rely upon information assembled by officers and others, provided that they have no reasons to suspect that the information is incorrect.

A member of the board and an officer of an organisation are similarly liable for damages that he or she intentionally or negligently causes a third party by violating the statutes of the association or the provisions in the Companies Act. A board member may also be subject to a wide range of further provisions in specific legislation, for instance, related to bookkeeping, annual accounts, tax payments, environmental matters, etc. Board members and officers of an organisation may also incur criminal liability under certain provisions of the Companies Act and for a number of offences under the Swedish Criminal Code, such as credit fraud, embezzlement, breach of trust and bribery.

Insurance policies against liability exposure for board members and officers may be obtained in Sweden and are quite common. The coverage, limit and premium of the insurance policies may differ between different insurers and most insurance policies are usually 'claims made' policies.

II THE DISPUTE RESOLUTION SYSTEM

i Access to courts

There are no established principles in Sweden regarding when the public courts can examine and decide on lawsuits in relation to decisions of sport governing bodies, for instance, decisions on disciplinary sanctions, etc. Generally, the public courts are restrictive with

6 Chapter 15, Section 1 of the Swedish Companies Act.

challenging decisions from sport governing bodies related to the specific rules of the sport and there are very few legal cases on this issue.⁷ However, a public court can set aside a decision from a sports governing body if the decision involves at least some financial consequences for the athlete or if the decision is based on obvious unreasonable circumstances, such as discrimination because of race or religion. In the absence of an agreement to arbitrate, the public courts have jurisdiction over all disputes outside the specific rules of the sport, such as employment law disputes or disputes related to commercial agreements, such as sponsorship agreements, venue agreements or merchandising agreements.

As will be further outlined, arbitration outside the public court system is the preferred method of dispute resolution in the Swedish sports sector. A public court may not, over an objection of a party, rule on an issue that, pursuant to an arbitration agreement, shall be decided by arbitrators. A party must invoke an arbitration agreement on the first occasion that a party pleads its case on the merits in the court. In such a case, the court will dismiss the legal proceedings, unless the arbitration agreement is invalid.⁸

ii Sports arbitration

Disputes concerning matters in respect of which the parties have an unrestricted right of disposal may, by an agreement, be referred to arbitration. Such an arbitration agreement may relate to future disputes pertaining to a legal relationship specified in the agreement. The dispute may also concern the existence of a particular fact.⁹ As mentioned above, a public court may not, over an objection of a party, rule on an issue that, pursuant to an arbitration agreement, shall be decided by arbitrators.¹⁰

The use of arbitration is very common in the Swedish sports sector. By the Swedish Sports Confederation's statutes the sports federations, clubs and athletes are bound to resolve their disputes by arbitration and disputes may not be arisen in an ordinary court. Each special sports federation has its own arbitration board, with the Supreme Sports Tribunal as the last instance.¹¹ The Supreme Sports Tribunal deals with appeals against sport-related decisions and disciplinary sanctions handed down by the special sports federations. The Supreme Sports Tribunal also serves as the second instance of appeal for decisions made by the Doping Panel based on the Regulations for Anti-Doping.

During the pendency of a dispute before arbitrators or prior thereto, a state court may, irrespective of the arbitration agreement, issue such decisions in respect of security measures as the court has jurisdiction to issue.¹²

An arbitral award can only be declared invalid or wholly or partly set aside by a public court under certain specific conditions.¹³

7 For instance, NJA 1990 p. 687, NJA 1998 p. 717, NJA 2001 p. 511 and RH 1997:111.

8 Section 4 of the Arbitration Act; Chapter 10, Section 17a of the Swedish Code of Judicial Procedure.

9 See the Swedish Arbitration Act (1999:116).

10 Section 4 of the Arbitration Act; Chapter 10, Section 17a of the Swedish Code of Judicial Procedure.

11 Chapter 2, Section 8 of the Swedish Sports Confederation's statutes.

12 Section 4 of the Arbitration Act.

13 Sections 34–36 of the Arbitration Act.

iii Enforceability

As stated above, a Swedish civil court may not, over an objection of a party, rule on an issue that, pursuant to an arbitration agreement, shall be decided by arbitrators.

A Swedish arbitration award is enforceable as a court judgment after a decision of the Swedish Enforcement Service.¹⁴ Swedish arbitration awards can be challenged on certain formal grounds only¹⁵ (e.g., if it includes determination of an issue that, in accordance with Swedish law, may not be decided by arbitrators, or if the award is clearly incompatible with the basic principles of the Swedish legal system).

In accordance with the 1958 New York Convention, to which Sweden is a party, arbitral awards are recognised and enforceable in most countries. Foreign arbitration awards may be enforced in Sweden upon application to the Svea Court of Appeal. Enforcement may only be denied on the basis of certain formal grounds. Where the Court of Appeal grants the application, the award shall be enforced as a final judgment.¹⁶

III ORGANISATION OF SPORTS EVENTS

i Relationship between organiser and spectator

The sale of a ticket to a sports event is a legal contract between the spectator and the sports event organiser. This contractual relationship is governed by the Contracts Act and the general principles of contract law. It is important that the ticket terms and conditions are brought to the attention of the spectator at the time he or she is purchasing the ticket. Access may be granted to the spectator on certain specified terms and conditions, which are usually reflected on the ticket itself, by notices placed at and outside the venue, or if the ticket is purchased on internet, with clear notice to the purchaser that specific ticket conditions apply, which should be listed in full on the website. For major sports events, it is often necessary and desirable for an event organiser to impose specific terms and conditions of entry, such as the possibility to refuse access to the event for security reasons, imposing restrictions on resale of the ticket, taking film or recording footage of the event, restricting access to the event to certain specified areas of the venue, and specifying the ticket holder is over a certain age. The purchase of the ticket will be deemed to be an acceptance of these terms and conditions, so that a contract will exist between the event organiser and the purchaser of the ticket. Breach of these terms and conditions would render the ticket void and the event organiser will usually reserve the right to eject from the venue any person who fails to comply with the ticketing conditions or who represents a security risk, nuisance or annoyance to the staging of the event.

The event organiser's main obligation is to organise and stage the event. If the event is cancelled or postponed prior to the start of the event, the spectator shall normally be entitled to a refund in the amount of the face value of the ticket or be able to attend the event at the rearranged date.

14 Chapter 3, Section 15 of the Swedish Enforcement Code (1981:755).

15 Sections 33–34 of the Arbitration Act.

16 Sections 54–59 of the Arbitration Act.

ii Relationship between organiser and athletes or clubs

The legal relationship between the event organiser and the athletes or clubs is primarily governed by the statutes of the relevant special sports federations and general principles of contract law and the Contracts Act. In large sporting events the relationship may also be subject to rules and regulations imposed by international governing bodies. The contracting issues may be very complex in large-scale sport events, for instance, international sport events, where the event organiser is contracting with a number of participating athletes, clubs, teams or representative bodies.

The primary obligations on the part of the event organiser will usually include the organising and staging of the sport event in a professional manner and in accordance with the standards expected for such an event and to provide a suitable and safe venue for the event. The primary obligations on the part of the athlete and clubs will usually include participation in the event in accordance with the terms and conditions of the participation contract, the event or tournament rules, the rules and regulations of governing bodies (such as rules regarding doping and disciplinary infringements) and the laws of the game.

iii Liability

Liability of the organiser

An event organiser's civil liability is governed by the Swedish Tort Liability Act (1972:207) and Swedish case law.¹⁷ Under Swedish law, damage in non-contractual liability normally covers personal injury and loss of or damage to property. Compensation for pure financial loss is excluded, except in case of criminal behaviour.¹⁸

Liability for damages arises only when the event organiser acts intentionally or negligently. If a claim is made as a result of an incident, an event organiser that has taken all reasonable steps to manage the risks at the event would be more likely to successfully defend a claim or minimise the amount of damages awarded against the event organiser. The event organiser shall take all reasonable steps to prevent incidents from occurring at the sport event. If the event organiser had done what could be considered reasonable in the circumstances, a court would probably find that there was no negligence on the part of the event organiser.

An event organiser may be liable to compensate injury caused by an employee in the course of his or her employment.¹⁹ It is a general principle of Swedish tort law that damages can be reduced if the plaintiff has contributed, by fault or negligence, to the injury sustained.²⁰ Damages are assessed on the basis of the injury suffered by the plaintiff. Damages are awarded only for injury actually sustained. However, there are no formal limitations as to the level of damages. Punitive or exemplary damages are not available under Swedish law.

An event organiser that acts as an employer will also be subject to various statutory duties imposed by legislation to ensure the health, safety and welfare of its employees.²¹

17 Only a few relevant cases have been decided by the Swedish Supreme Court so far, all related to failure to secure a safe venue (NJA 1950 p. 550, NJA 1959 p. 280 and NJA 1993 p. 149).

18 Pursuant to Chapter 1, Section 2 of the Swedish Tort Liability Act (1972:207), pure financial loss means economic injury arising without any person having concurrently sustained loss of life, personal injury, or loss of or damage to property.

19 Chapter 3, Section 1 of the Tort Liability Act.

20 Chapter 6, Section 1 of the Tort Liability Act.

21 See, for example, the Swedish Work Environment Act (1977:1160).

Individuals acting for an event organiser may also incur criminal liability for a number of offences under the Swedish Criminal Code, such as credit fraud, embezzlement, breach of trust and bribery. Authorities will generally have to investigate criminal matters *ex officio*.

Liability of the athletes

The statutes of the Swedish Sport Confederation include, *inter alia*, provisions regarding dispute resolution with sanctions that can be imposed on member organisations and individuals (including athletes). Athletes bind themselves contractually to comply with the rules of their club, their district and national federations, the Swedish Sport Federation and the corresponding international rules, for instance, the new World Anti-Doping Agency (WADA) Code.

An athlete's civil liability is governed by the Tort Liability Act and Swedish case law. Liability for damages arises only when the athlete acts intentionally or negligently. Athletes may be held liable for damage or injury caused to other athletes, spectators, etc.

Athletes have normally accepted the risks inherent in the specific sport, *violenti non fit iniura*. In some sports, violence is a natural part of the exercise. However, violence between athletes may constitute a criminal case even in sports where more violence than normal remains allowed (e.g., ice hockey and boxing). The question of civil and criminal liability for athletes has been dealt with by Swedish public courts in several cases.²² Some of the actions that are happening in the context of sporting activities can by juridical argumentation be given criminal liability. Other actions can be significantly more difficult to call criminal liability. If a clear distinction cannot be found, an assessment of each sport itself needs to be done. As long as the athlete adheres to the relevant sporting rules, his or her actions will most likely not incur any civil or criminal liability. However, violence that takes place in a different part of the playingfield than the game will meet with a greater risk of prosecution and conviction.²³ Sports-related violence is subject to public prosecution. Authorities will generally have to investigate criminal matters *ex officio*.

Liability of the spectators

A spectator's civil liability is governed by the Tort Liability Act and Swedish case law. A spectator may be held liable in respect of damage to property or personal injury caused to the event organiser, other spectators or athletes. Liability for damages arises only when the spectator acts intentionally or negligently. Spectators may also incur criminal liability for a number of offences under the Criminal Code.

iv Riot prevention

Following tragic incidents related to hooliganism at Swedish football grounds, legislation was introduced in 2005 relating to the access to sport events.²⁴ According to the Act, an individual may be prohibited to enter a venue where a sport event is going to be held. A banning order from a public prosecutor can be made against, for instance, a violent supporter,²⁵ for up to

22 For instance, NJA 1951 p. 79, NJA 1957 C 676, NJA 1974 p. 585, NJA 1993 p. 149, RH 2011:62 and RH 2012:56.

23 NJA 1957 C 676 and RH 2011:62.

24 Act (2005:321) on denial of access to sport events.

25 Sections 1–3 of the Act (2005:321) on denial of access to sport events.

three years. Such an order can be imposed owing to the individual's previous violence at sport events, previous convictions for sports-related violence, etc. Anyone breaking the banning order will be sentenced to a fine or maximum of two years' imprisonment. Currently, only clubs organised as limited liability companies have to make a financial contribution for measures taken by the police to prevent riots at sports events, which has been much debated within the Swedish football sector.

IV COMMERCIALISATION OF SPORT EVENTS

i Types of and ownership in rights

Swedish law does not recognise independent proprietary rights to an event *per se*. The idea or concept for a sport event is not protectable under Swedish intellectual property laws. However, the sport event organiser can usually protect the sport event and the commercial rights to the event through a combination of real property law, contractual provisions, intellectual property law and tort law. The event organiser often controls access to the venue in which the event is going to be held. The event organiser may restrict third-party access to the venue and ensure, through various agreements, that the spectators, athletes and others admitted to the event are not entitled to benefit commercially from their attendance. The control over the venue is based on the laws of real property, contract and tort law. Tort law generally makes a trespasser of anyone who enters onto the land without permission, or enters with permission but then violates the terms and conditions of that permission. The event organiser can also protect and commercially exploit the various commercial rights in the event through agreements regarding the entry to the event (ticketing), sponsorship, broadcasting, merchandising, catering, hospitality, etc. Broadcasting agreements are regarded as the most valuable source of revenue to the sport event organisers and the development of the internet and other media as additional broadcasting mediums will have an impact on the business of broadcasting in the coming years.

ii Rights protection

Rights related to exploitation and commercialising of sports-related rights can be protected through a variety of intellectual property rights listed below.

Copyright and database rights

In Sweden, no particular form of copyright covers sports events specifically and an athlete's performance during a sports event would not be protectable in itself, but the provisions of the Act on Copyright in Literary and Artistic Works (1960:729) (the Copyright Act) can anyway successfully be applied to the sports industry. The Copyright Act protects the expression of an original work, such as literary, dramatic, musical, artistic works, broadcasts and sound recordings, with a protection ranging from 50 to 70 years.²⁶ The protection will arise automatically on the expression of the work. The compilation and use of sports databases for commercial reasons may also be protectable under the Copyright Act under certain conditions (such as substantial investment in the obtaining, verifying or presentation of the contents of the database). As mentioned, an athlete's performance during a sports event

26 See Chapter 4 and 5 of the Swedish Copyright Act.

would not be protectable in itself, but any recording (sound recordings, visual recordings and audiovisual recordings), broadcast and footage of that performance may be protectable under the Copyright Act.

Trademarks

A trademark (a mark that denotes the nature or origin of goods or services) can be registered for a period of 10 years in the Trademark Register kept by the Swedish Patent and Registration Office and can be renewed (each time for a period of 10 years from the expiry of the previous registration period).²⁷ The owner of the mark can bring an action against anyone making unauthorised use of the mark. A name or logotype that is subject to trademark protection grants exclusive rights to the proprietor and prevents all third parties from unauthorised use of the name, or any sign confusingly similar with that name, within the course of trade. A trademark may consist of words (e.g., the name of a well-known athlete), signatures, symbols, emblems, numerals, patterns or the shape of goods or their packaging, provided that the signs are distinctive.²⁸ The trademark registration is territorial in nature (i.e., enforceable in Sweden) and may be infringed by conduct that takes place in Sweden, but it will not be infringed by conduct that takes place in a foreign jurisdiction, unless it has also been registered in that jurisdiction's trademark registry (or as an EU trademark).

Image rights or rights of publicity

Swedish law recognises an independent right to protect a recognised athlete's personal name or picture against exploitation in commercial contexts by the Act (1978:800) on Names and Images in Advertising (the Names Act). The Act gives fundamental protection against tradesmen's use of well-known athlete's name in marketing without the explicit permission from the athlete.²⁹ Nevertheless, many recognised professional athletes in Sweden choose to protect their names as trademarks in accordance with the Trade Marks Act. The Names Act may be applied on most types of trademark use as well. The two Acts are therefore applicable in many corresponding situations.

iii Contractual provisions for exploitation of rights

The sports industry is massive and fast-growing, both abroad and in Sweden. As a general rule, Swedish law does not require that any mandatory statutory provisions are to be incorporated into commercial agreements regarding the exploitation of sport-related rights or apply under such contracts. As mentioned in Section IV.i, *supra*, sport events will usually require several different agreements, such as broadcasting contracts, sponsorship contracts, ticketing contracts and merchandising contracts. Sometimes such contracts can be very short and simple, depending on the size of the sport event and the extent and value of the commercial rights packages offered to, for instance, a sponsor. However, large-scale sport events usually include a complex collection of rights and obligations, and the contracts tend to be comprehensive and detailed. Key deal terms for these contracts will usually be the term and duration of the contract, the territory in which the sponsor can exploit the sponsorship rights, the nature and scope of the sponsor's rights (such as exclusive or non-exclusive rights

27 Chapter 2, Section 32-33 of Swedish Trade Marks Act (2010:1877).

28 Chapter 1, Section 4 of the Swedish Trade Marks Act.

29 Section 1 of the Names Act.

to naming and title rights, official supplier rights, advertising rights or presentation rights), the use of trademarks or logos, the remuneration to be paid for the rights and warranties from the parties (e.g., that the event organiser owns or controls all rights in and to the sports event).

V PROFESSIONAL SPORTS AND LABOUR LAW

i Mandatory provisions

Swedish employment law is generally applicable to the relationship between clubs and athletes within all sports.³⁰ Whether an athlete is considered as an employee or not, is determined on principles according to Swedish employment law and not on the sporting definition of amateur or professional, although the definitions of an employee and a professional athlete often overlap.³¹ The characteristics of an employment agreement are that one person (the employee) carries out work for another (the employer) under the supervision and management of the employer from which the direct benefit goes to the employer; and from which the employee receives financial compensation. If these requirements are fulfilled, the labour legislation sets the minimum level for the conditions of employment. It has been well established that athletes in the most commercialised team sports (e.g., football and ice hockey) are regarded as employees. On the other hand, individual athletes (such as tennis players, golfers, track and field athletes) who perform sports activities for a sports club are usually not considered to be employees of the club, especially if they perform their activities through wholly owned legal entities, such as limited liability companies.

According to Swedish employment law, the general rule regarding form of employment is an indefinite employment, although, temporary employments up to a fixed term of two years are accepted.³² However, exceptions from the temporary employment rule are possible, by agreeing on permission for longer temporary employment in a collective bargaining agreement, such as the collective bargaining agreements currently existing in elite football and ice hockey.³³ The collective bargaining agreement for football allows temporary employment for up to five years, while in ice hockey the general principle is one or two years at a time.

The general principle regarding temporary employment states that the contract may only be terminated upon expiry of the contract or by mutual agreement. Most athletes have a temporary employment without any provision regarding premature termination. This means that the parties cannot terminate the contract (or the athlete switch club) before the fixed date, unless a material violation of the contract has occurred³⁴ or if the parties mutually agree to terminate the contract. According to Swedish employment law, it is possible to terminate

30 For instance, the Swedish Employment Protection Act (1982:80), which is to a large extent compulsory to the benefit of the employee. It is, however, possible for the parties on the labour market to deviate from parts of the Employment Protection Act by way of collective bargaining agreement.

31 Johan Lindholm, 'Idrottsjuridik', *Norstedts Juridik AB* 2014, pp. 142–143.

32 Section 5 of the Employment Protection Act.

33 Collective Bargaining Agreement for Football Players (2016) and General Employment Terms and Conditions for Ice Hockey Players in SHL (2013).

34 AD 1976 No. 52, AD 1979 No. 152 and AD 1991 No. 81.

the employment relationship with immediate effect if the employee has grossly violated his or her liabilities according to the contract (i.e., ground for dismissal, e.g., if the athlete has committed a serious doping offence) or if the sports club materially has violated its liabilities according to the contract (e.g., by violating its payment obligations towards the athlete).

There are no mandatory provisions in Swedish law with regard to salary protection for employed athletes. Salary and other employment benefits are subject to individual negotiations between the sports club and the athlete.

ii Free movement of athletes

Sweden is a member of the EU and, as such, subject to the EU rules regarding the free movement of labour, cross-border competition and discrimination. After the *Bosman* case of 1995,³⁵ sports were recognised as an employment market in Sweden, where athletes were entitled to a more far-reaching employment law protection. Thus, one consequence of the *Bosman* case has been that Swedish sport clubs and associations have adjusted their internal rules and regulation to comply with EU law. In team sports, operations that restrict the number of players from EU Member States are prohibited, but the number of non-EU players may be limited to some extent. The Swedish Football Association has adopted rules whereby the 'home-grown' rule is introduced.³⁶ A 'home-grown' player has been registered for a Swedish football club for at least three years from the ages of 12 to 21 years. This specific rule applies to the elite divisions within Swedish football, meaning that at least half of the players noted in the football club's player list are required to be home-grown players.

iii Application of employment rules of sports governing bodies

Swedish athletes are often bound by regulations of (international) sports governing bodies by agreement or in their employment agreements. Such regulations would, however, be considered invalid and unenforceable if such regulations violate mandatory provisions in Swedish employment law. Subject to the requirement to incorporate mandatory provisions, the parties are free to decide upon the terms of employment agreements.

VI SPORTS AND ANTITRUST LAW

The competition law regime has at EU level, for a long time, been applied to different sports contracts and agreements. During the 1990s, the *Bosman* ruling on transfer rights for football players was in focus. Since then, issues such as TV rights to football broadcasts have been tried several times. Swedish sports currently have a considerable economic dimension, in addition to the social dimension and public health considerations. Clubs and sport governing bodies, to the extent that they engage in economic activity, must respect the rules of the Competition Act (2008:579). The Competition Act applies to the business activities of sports event organisers and sports governing bodies when they hold a dominant position in relation to the business activities in question.

In Sweden, the first competition law case regarding sports contracts and agreements was tried in 2012. In 2011, the Swedish Competition Authority (SCA) adopted a much debated

35 ECJ, judgment of 15 December 1995 – C-415/93 (*Bosman*).

36 The Swedish FA's representation conditions 2016.

decision against the Swedish Automobile Sports Federation, Svenska Bilspportförbundet (SBF). The decision concerned SBF's statutory rules, which contained duty of loyalty clauses preventing licensed drivers and stewards from participating in races other than those organised by SBF or its member clubs. The SCA found that these duty of loyalty clauses amounted to an illegal restriction of competition that could not be objectively justified and ordered SBF to change its rules. The intention was to make it possible for drivers and officials to participate in competitions organised by independent operators. SBF chose to appeal the decision, after which the Swedish Market Court in 2012 sided with the SCA and stated that notwithstanding the specific nature of the sport, the rules were neither considered as being necessary nor proportionate in order to achieve their legitimate objectives.³⁷ The Market Court's judgment received much attention in the media where the Swedish Sports Confederation primarily strongly disputed that competition law could be applied. The Market Court's ruling shows, as was already established at the EU level, that no sector is free from competition law review. This case may be followed by other cases where the conduct of sports clubs will be challenged from a competition law perspective.

VII SPORTS AND TAXATION

The general Swedish tax rules, for example, the Income Tax Act (1999:1229), apply to athletes, sports clubs and sport governing bodies. As far as national income tax is concerned, Swedish legal entities are subject to an unlimited tax liability (22 per cent). Most Swedish sports clubs, however, are non-profit associations and, as such, most of their activities are tax-free. A non-profit association cannot engage in commercial activities in order to enrich its members, but only in support of a non-commercial purpose. A non-profit association can therefore, under certain circumstances, enjoy relief on payment of income tax and it is therefore only liable for taxation on income from business relating to real property and business activities. Consequently, such an association enjoys exemption from taxation on regular income from capital and capital gains, membership dues, contributions to the public service activities, donations and testamentary dispositions, while income from real property and business activities is in principle liable to taxation.³⁸ Tax-privileged non-profit associations that pay taxable remuneration and benefits to its employees (e.g., its athletes, trainers) shall, like other employers, pay social security contributions on the remuneration and the benefits.

Individual athletes living in Sweden permanently are taxed under the Income Tax Act for all income received. Taxable income includes cash payments or other forms of remuneration for sporting activities which are performed in Sweden or abroad. A non-resident athlete who derives taxable income from Sweden must, as a rule, also pay tax in his or her country of residence. The same double taxation problems occur when Swedish athletes and taxable sports clubs participate in sports events abroad. To avoid double taxation of the same income, Sweden has entered into double taxation treaties with other countries. In some cases, the provisions of the double taxation treaty can mean that special income tax does not need to be paid. Double taxation is usually eliminated by deducting the tax paid abroad when counting the annual gross income of an athlete or club.

37 Case MD 2012:16.

38 See the Swedish Tax Agency's guide SKV 324 regarding tax rules for non-profit associations of public utility, March 2016.

Payment of remuneration to non-resident athletes and others may be made on particularly favourable tax terms for a limited period of time in accordance with the rules of the Act on Special Income Tax for Non-resident Artists and Others (SFS 1991:591, A-SINK).³⁹

VIII SPECIFIC SPORTS ISSUES

i Doping

The Doping Act (1991:1969) covers certain specific doping substances that are criminalised: synthetic anabolic steroids, testosterone, growth hormones, and chemical substances, which enhance the production or release of testosterone and its derivatives or of growth hormones. These substances may not be imported, transferred, manufactured, acquired for transferal purposes, offered for sale, held or used. Anyone wilfully breaking the Act will be sentenced to a maximum of two years' imprisonment. If a violation is considered to be a misdemeanour, a fine or a sentence of maximum six months' imprisonment will be imposed. However, if a violation is considered to be serious, a sentence of minimum six months and maximum six years' imprisonment is imposed for a serious felony. When judging the seriousness of the crime, it shall be heeded whether it has formed a part of activities carried out on a large scale or commercially and comprising a particularly large amount of doping preparations, or otherwise been of an especially dangerous or ruthless nature.

The anti-doping programme within the Swedish sports movement is led and coordinated by the Swedish Sports Confederation and its Doping Commission.⁴⁰ In 2004 the Swedish Sports Confederation implemented the WADA uniform and global World Anti-Doping Code in its own Regulations for Anti-Doping. The Regulations for Anti-Doping generally apply to all athletes under the Swedish Sports Confederation who engage in competitive sports. All positive doping results are investigated by the Doping Commission, which decides if the matter should be reported for disciplinary action. The primary instance of decision on disciplinary actions for all sports is the Doping Panel of the Sports Confederation. The decision may be appealed to the Swedish Supreme Sports Tribunal.

ii Betting

Betting on sports events in Sweden is regulated in the Lotteries Act (1994:1000). The Swedish Gambling Authority has overall responsibility for licensing and supervision within the field of gambling and monitors compliance with the Lotteries Act. Organising and advertising of betting on sport events is strictly prohibited in Sweden, except for two selected companies. The first, ATG, runs the horse racing industry in the country. The second, Svenska Spel, is owned by the state and controls all other sports gambling, as well as the country's lotteries, casinos and most forms of online gambling. These companies have a statutory obligation to prevent abuse or crime, as well as harmful social and health effects of gambling and betting. In order to uphold the Swedish gambling regime the Lotteries Act contains a prohibition on promoting participation in lotteries arranged outside Sweden and unlawful lotteries. The

39 See the Swedish Tax Agency's guide SKV 520B regarding payment of remuneration to non-resident artists, athletes and others, October 2015.

40 Chapter 13 of the Swedish Sports Confederation's statutes.

prohibition of participation in foreign or unlawful lotteries covers such activities as selling lottery tickets, receiving stakes or passing on prizes and advertising. A fine or a maximum of two years' imprisonment may be imposed on persons who unlawfully arrange a lottery or promote participation in gaming arranged outside Sweden. Foreign companies, along with private Swedish companies, have long tried to gain a foothold on the Swedish sportsbook industry. Unibet, Sweden's largest private sportsbook operator has been battling against Svenska Spel's monopoly for many years, but success does not appear to be imminent.

iii Manipulation

Swedish sporting associations, the gambling industry, the justice system and the media have paid increasing attention to match-fixing in recent years. The main focus has been on football and basketball, since these are the sports that have been affected. The number of cases is still relatively low, but the consequences may, nevertheless, be serious. Individual teams and athletes are the primary victims of manipulated matches, but, in the long run, they can also damage the credibility of the sports movement, cause losses to gambling companies and their customers, and contribute to diminished societal trust in general.

Match-fixing and other manipulation of sports activities has so far no specific and separate penal provision in the Criminal Code. However, penalty may be imposed for fraud, under which a person committing fraud shall be liable to imprisonment of up to two years, and in particularly serious cases up to six years.⁴¹ A penalty may also be imposed for corruption (bribery) in connection with match-fixing and other manipulation of sports activities. The sentence for bribery varies from fines to imprisonment of up to two years, and in particularly serious cases up to six years.⁴²

In 2015, the Swedish Sports Confederation adopted a general code to fight the manipulation of sporting competitions.⁴³ According to the code, it is prohibited to wilfully or negligently take part in betting and manipulation of sports activities in the ways described in the code. The code applies to all members of the Swedish Sports Confederation (such as sports federations, clubs or individual athletes who participate in sport activities under the auspices of a federation or a club). Sanctions may be imposed in the form of a temporary ban for individuals for up to 10 years, fines (for sports federations and clubs) and cancellation of results achieved in competitions, etc.

In 2015, a court of appeal in Sweden rendered Sweden's first landmark decision in match fixing and found six people, including three former footballers, guilty of trying to influence the outcome of football games in Division 1, the third level of the Swedish football league system. The court found the three former footballers guilty of taking bribes to manipulate the outcome of a match.⁴⁴ The Swedish Supreme Court denied leave to appeal.

41 Chapter 9, Sections 1–3 of the Swedish Criminal Code.

42 Chapter 10, Section 5 a-c of the Swedish Criminal Code.

43 The Swedish Sports Confederation's Regulations on prohibited betting and manipulation of sports activities (match fixing).

44 www.hovrattenskanoblekinge.domstol.se/Om-hovratten/Nyheter-och-pressmeddelanden/Hovratten-domer-alla-de-sex-personer-som-atalats-for-inblandning-i-malet-om-matchfixning/.

The Swedish Sports Confederation has recently proposed to the government that a specific criminal provision with regard to the manipulation of sports activities shall be introduced in the Lotteries Act.⁴⁵

iv Grey markets sales

In Sweden, there are, at present, no laws against ticket touting, and it is very common at online outlets and has been much debated in Sweden. Ticket resale by scalpers above face value is, however, still legal in Sweden regardless of limitations imposed by the event organiser. Official ticket sellers have tried to prevent grey marketing by including a prohibition against reselling the tickets in its sale agreements or on the tickets themselves. Thus, reselling the ticket would be considered a contractual breach. Also ticket quotas per customer and designating tickets for specified customers who can identify themselves have been used to prevent grey market sales.

IX THE YEAR IN REVIEW

One of the most recent decisions in Swedish sports law has been the anti-doping allegations against the former world 1,500m champion Abeba Aregawi. Ethiopia-born Aregawi won gold at the 2013 World Championships and 2014 World Indoor Championships. She tested positive for the substance meldonium on 12 January 2016. The substance was made illegal by WADA on 1 January 2016. The Swedish Doping Commission brought doping charges against Aregawi during the spring of 2016 and Aregawi was subject to interim suspension pending the National Anti-Doping Panel hearing. But new guidelines issued by WADA in spring 2016 confirmed that it was not scientifically known for how long the substance can stay in the athlete's body. Therefore, the suspension was lifted in July 2016 with immediate effect as it had not been proven that Aregawi had taken the substance after it was banned.

X OUTLOOK AND CONCLUSIONS

The sports sector is continuing to grow rapidly in Sweden and the awareness of laws affecting sports and the sports industry has therefore increased. It can be assumed that antitrust laws will continue to influence the way sport is organised in Sweden, since the professionalisation, commercialisation and globalisation of the sports sector is growing, both abroad and in Sweden, and the economic and financial interests is becoming more complex.

45 www.rf.se/Allanyheter/2016/Skarptlagmotmatchfixing?

Appendix 1

ABOUT THE AUTHORS

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Karl Ole Möller is a partner and head of the sport sector at Nordia. He has vast expertise in a wide range of areas within the sport sector, including dispute resolution, sponsorship agreements, mergers and acquisitions in sport, governance, rules and regulations, transfers, player contracts and image rights. His recent experience includes acting for former world 1,500m champion Abeba Aregawi in her doping proceedings. He also advises numerous other Swedish high-profile athletes within ice hockey, football, tennis and golf, including Daniel Sedin and Henrik Sedin (Vancouver Canucks of NHL), Edwin Hedberg (KHL Zagreb of KHL) and former hockey player Mats Sundin (Toronto Maple Leafs of NHL). Other clients he regularly advises include IMG, CAA Sports, International Stadia Group and sport governing bodies, including the Swedish Athletics' Association and the Swedish National Team of Athletics.

He regularly contributes to legal journals on sports law issues and writes columns for the Swedish sports business sector. He regularly speaks at conferences and appears in the main stream media as a sports law expert.

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