

THE SPORTS LAW  
REVIEW

EIGHTH EDITION

Editor  
Claude Ramoni

THE LAWREVIEWS

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REVIEW

EIGHTH EDITION

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This article was first published in September 2022  
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**Editor**  
Claude Ramoni

THE LAWREVIEWS

PUBLISHER

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Published in the United Kingdom

by Law Business Research Ltd

Holborn Gate, 330 High Holborn, London, WC1V 7QT, UK

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ISBN 978-1-80449-110-2

Printed in Great Britain by  
Encompass Print Solutions, Derbyshire  
Tel: 0844 2480 112

# ACKNOWLEDGEMENTS

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

ALLENDE & BREA

ANDERSON MÔRI & TOMOTSUNE

AR SPORTS & LAW

ARNECKE SIBETH DABELSTEIN

BIRD & BIRD

CONLEGAL SPORTS

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SPORTSGENERATION SRL

STADLER VÖLKEL ATTORNEYS AT LAW

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# PREFACE

*The Sports Law Review* is intended to be a legal guide for all stakeholders in the field of sport, including legal practitioners, academics, sports business entities, sports federations, clubs and athletes. It aims to provide an overview of the relevant legal framework in a wide range of selected jurisdictions, with an emphasis on the most significant developments and decisions of the past year. It shows that sports law – despite having an international dimension that culminates in the adoption of the regulations of international sports federations under the ultimate imprimatur of the Court of Arbitration for Sport – remains both interdisciplinary and subject to state authority. Local laws are particularly relevant in all areas that are not covered by sports regulations or that are subject to sovereign powers and mandatory provisions of state law.

*The Sports Law Review* is of particular interest to sports lawyers who intend to act internationally on behalf of sports federations, clubs and athletes, and must, therefore, be familiar with not only international private norms and the *lex sportiva* but also domestic laws, in a globalised world. The *Review* also allows comparative law and sports law lecturers to obtain a general understanding of the situation in the field of sport worldwide without having to undertake time-consuming research. It can be consulted as a hard copy or on The Law Reviews website, thus providing a unique and specialised resource, and one which is widely disseminated.

The *Review* chapters are traditionally structured in 10 sections, thereby treating all the countries examined similarly, to facilitate comparisons. It opens with the legal structure and organisation of sports clubs and governing bodies, and the dispute resolution system applicable to sports matters. It then presents issues related to the organisation of sports events, such as liability for injuries and riot prevention, and provides a description of the legislative framework governing the commercialisation of sports events, labour, antitrust and taxation. It also addresses topics specific to sports, including doping, betting, match-fixing and grey market sales, and it concludes with a review of the year, outlining recent decisions of courts or arbitral tribunals of interest to an international audience, as well as a summary and outlook for the coming period.

This eighth edition covers the period from July 2021 to July 2022. It gathers 18 chapters written by renowned sports law practitioners and experts based in key countries across all five continents. The year under review was far from being usual in the world of sport. Although the covid-19 outbreak was still present, sporting competitions could be resumed, under specific conditions. Two editions of the Olympic Games, the Summer Olympic Games in Tokyo (23 July–8 August 2021) and the Winter Olympic Games in Beijing (4–20 February 2022) took place within a time span of six months. Each of these Games gave rise to disputes,

notably in relation to athletes' qualification to compete, following numerous disruptions and last-minute adaptations caused by the covid-19 pandemic and the cancellation of the vast majority of the qualification events that were planned initially.

Immediately after the end of the Beijing Winter Olympic Games, Russia invaded Ukraine – during the period of the Olympic Truce. This triggered numerous reactions from national governments and sporting bodies, with significant effects on sport, particularly as Russia was a key actor in terms of the organisation of sporting events, the number of participating athletes and teams, and monetary investments in sport. The reaction of the sporting world to the invasion of Ukraine – with coordinated bans on Russian athletes and teams, and the cancellation not only of all events scheduled in Russia but also of most sponsorship deals with Russian companies – has resulted in numerous actual or potential legal disputes, the vast majority of which remain unresolved as this book goes to publication. Measures adopted at national level in reaction to the Russian invasion have sometimes contradicted the position adopted by international sports governing bodies, with unfortunate negative effects on athletes. Particularly noteworthy was the decision by the United Kingdom not to accept Russian and Belarusian players at the Wimbledon tournament, and the subsequent decision by the Association of Tennis Professionals and the Women's Tennis Association to strip the English Grand Slam tournament of its world ranking points.

International sport has entered a period of uncertainty. Since the end of the Cold War, sport had become a global market, with competitions taking place on all five continents, drawing athletes and investments from around the entire world. The situation has now changed. The Russian invasion of Ukraine, and the resulting decisions by governments and sports governing bodies, effectively mean that Russia (and Belarus) are now completely excluded from the worldwide sports system. In addition, the covid-19 crisis is not over and numerous countries still have restrictions in place, with consequences for the organisation of international competitions all over the globe. It could be said that the combined effect of the war in Ukraine and the covid-19 pandemic means the world of sports now has much less 'global' reach than in the recent past, because participation in international competitions now depends not only on sporting merit but also on the nationality or origin of the athletes, their vaccination status or the travel restrictions in place in their country of residence.

Even when dealt with at an international level, to a certain extent, these issues and their legal consequences will undoubtedly have jurisdiction-specific answers in each case, and this only confirms the interest of the *Review*.

As the editor of this publication, I would like to thank all the authors for their contributions. I also extend my gratitude to all the people involved at all stages of this process, from proofreading to production and distribution. I trust that readers will find this global survey informative.

**Claude Ramoni**

Libra Law

Lausanne

August 2022



# SWEDEN

*Karl Ole Möller*<sup>1</sup>

## I ORGANISATION OF SPORTS CLUBS AND SPORTS GOVERNING BODIES

### i Organisational form

Almost 3.5 million of Sweden's 10 million inhabitants are members of a sports club (as competitors, managers, trainers, coaches, supporters, etc.). Some 2.45 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). 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.<sup>2</sup>

Local sports clubs are the foundation of the sports movement in Sweden. There are more than 20,000 local sports 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 an organised form to meet a common, non-profit purpose (organising sport activities). The actual agreement must be legalised in the form of a statute. A non-profit association can only engage in commercial activities in support of its non-commercial purpose, and not to enrich its members. Sports clubs are, thus, governed by their statutes, which require democratic forms such as annual general meetings and executive committees. 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.

Sweden's National Sports Confederation is an umbrella organisation consisting of 72 dedicated sports federations and 21 district sports federations, which organises more than 250 different sports and about 22,000 sports clubs, which are all members of the Confederation. Membership is only available to non-profit associations. Legally, the National Sports Confederation is itself a non-profit association that is regulated by the statutes agreed

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1 Karl Ole Möller is a partner at Nordia Law.

2 The National Sports Confederation – Sport in Sweden, available at [www.rf.se](http://www.rf.se).

by its members.<sup>3</sup> 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 and so on.

Sports clubs hold participating licences to take part and compete in sports activities arranged by their respective sports federations. Clubs are, however, allowed to transfer these rights to a wholly or partly owned limited liability company under certain conditions; for instance, on condition that the sports club holds 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.<sup>4</sup> 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 in Swedish sports in all Olympic matters is the Swedish Olympic Committee (SOC). It comprises 41 national Olympic sports federations as well as 15 federations of sports recognised by the International Olympic Committee. The main responsibility for developing individual sports rests with the appropriate dedicated 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 have historically received substantial state support, but the governance of sports has been semi-autonomous in relation to the state and, therefore, self-regulation has been the norm rather than regulation by the state. However, sports governance has been subject to professionalisation, commercialisation and globalisation, as in the rest of the world. Therefore, sport governance in Sweden (including corporate governance) has gone through a period of transformation. If an organisation is incorporated as a limited liability company, it will need to comply with the Limited Liability Companies Act (2005:551) (the Companies Act). Listed limited liability companies are also subject to specific rules and recommendations on corporate governance, such as the Swedish Corporate Governance Code.<sup>5</sup> The Code may 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 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, management of assets and financial situation of the organisation in other respects are monitored in a safe manner. The board is also the organisation's official representative organ and has the power to sign on behalf of the organisation.

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3 The statutes of the National Sports Confederation 2021, available at [www.rf.se](http://www.rf.se).

4 Chapter 11 of the National Sports Confederation statutes 2021.

5 The Swedish Corporate Governance Code, available at [www.corporategovernanceboard.se](http://www.corporategovernanceboard.se).

A member of the board or an officer of a non-profit association may be liable for damage 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 Companies Act apply for those sports clubs organised as limited liability companies. Pursuant to the Companies Act,<sup>6</sup> an incorporator, a member of a board of directors or a managing director may be liable for damage that he or she causes the company (or a shareholder) intentionally or negligently in the performance of his or her duties. Board members are primarily responsible for the acts and omissions within the scope of the board's responsibility. 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 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 reason to suspect that the information is incorrect.

A member of the board and an officer of an organisation are similarly liable for damage to a third party that he or she intentionally or negligently causes 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 or environmental matters. 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 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 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. Generally, public courts are restrictive with challenging decisions from sport governing bodies related to the specific rules of the sport and there are very few legal cases on this issue.<sup>7</sup> 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, public courts have

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6 Chapter 29(1).

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

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, venue or merchandising agreements.

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 this case, the court will dismiss the legal proceedings, unless the arbitration agreement is invalid.<sup>8</sup>

## 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. The 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.<sup>9</sup> As mentioned, 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.<sup>10</sup>

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

During the pendency of a dispute before arbitrators or prior thereto, and irrespective of the arbitration agreement, a state court may issue decisions in respect of security measures that fall within its jurisdiction.<sup>12</sup>

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

## iii Enforceability

A Swedish arbitration award is enforceable as a court judgment after a decision of the Swedish Enforcement Service.<sup>14</sup> Swedish arbitration awards can be challenged on certain formal grounds only (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).<sup>15</sup>

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8 Section 4 of the Act (1999:116) on Arbitration (the Arbitration Act); Chapter 10(17a) of the Swedish Code of Judicial Procedure.

9 See the Arbitration Act.

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

11 Chapter 2(8) of the National Sports Confederation statutes 2021.

12 Section 4 of the Arbitration Act.

13 Sections 34–36 of the Arbitration Act.

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

15 Sections 33–34 of the Arbitration Act.

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.<sup>16</sup>

### **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 (1915:218) (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 the 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 of refusing access to the event for security reasons, imposing restrictions on resale of the ticket and 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 any person from the venue 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.

#### **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 dedicated 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 sports events; for instance, international sports 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 sports event in a professional manner in accordance with the standards expected for such an event, and providing a suitable and safe venue for the event. The primary obligations on the part of the athlete and clubs will usually include participation

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16 Sections 33–34 of the Arbitration Act.

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 of the organiser

An event organiser's civil liability is governed by the Tort Liability Act<sup>17</sup> and Swedish case law.<sup>18</sup> 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 the case of criminal behaviour.<sup>19</sup>

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 sports event. If the event organiser has 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.<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup> Individuals acting for an event organiser may also incur criminal liability for a number of offences under the Criminal Code, such as credit fraud, embezzlement, breach of trust and bribery. Authorities will generally have to investigate criminal matters *ex officio*.

### iv Liability of the athletes

The statutes of the National Sports 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 National Sports Federation and the corresponding international rules; for instance, the World Anti-Doping Agency (WADA) Code.

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17 Tort Liability Act (1972:207) (the Tort Liability Act).

18 Only a few relevant cases have been decided by the 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).

19 Pursuant to Chapter 1(2) of the Tort Liability Act, 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.

20 Chapter 3(1) of the Tort Liability Act.

21 Chapter 6(1) of the Tort Liability Act.

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

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, *volenti non fit injuria*. 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.<sup>23</sup> Some actions that occur in the context of sporting activities can be attributed criminal liability by juridical argumentation; however, it may be significantly more difficult to attribute criminal liability to other actions. If a clear distinction cannot be made, an assessment of the sport concerned needs to be made. As long as an athlete adheres to the relevant sporting rules, his or her actions will be unlikely to incur any civil or criminal liability. However, violence that takes place on the playing field other than in the game itself will face a greater risk of prosecution and conviction.<sup>24</sup> Offences against personal reputation may also occur. Sports-related violence is subject to public prosecution. Authorities will generally have to investigate criminal matters *ex officio*.

#### **v 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 for 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.

#### **vi Riot prevention**

Following tragic incidents related to hooliganism at Swedish football grounds, legislation was introduced in 2005 regarding access to sporting events.<sup>25</sup> According to the Act, an individual may be prohibited to enter a venue where a sporting event is going to be held. A banning order from a public prosecutor can be made against, for instance, a violent supporter,<sup>26</sup> for up to three years. This order can be imposed owing to the individual's previous violence at sports 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. In March 2017, new anti-hooligan legislation was introduced for a ban against covering one's face at sporting events. The new rules mean that, with some exceptions, people inside an arena who cover their face in a way that prevents identification may be sentenced to a fine or maximum of six months' 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.

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23 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.

24 NJA 1957 C 676 and RH 2011:62.

25 Act (2005:321) on Denial of Access to Sporting Events.

26 Sections 1–3 of the Act (2005:321) on Denial of Access to Sporting Events.

## IV COMMERCIALISATION OF SPORTS 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 sports event is not protectable under Swedish intellectual property laws. However, the sports event organiser can usually protect the sports 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 sports 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 commercialisation 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 (1960:729) on Copyright in Literary and Artistic Works (the Copyright Act) can 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.<sup>27</sup> 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 would not be protectable in itself, but any recording (sound, visual and audiovisual recordings), broadcast and footage of that performance may be protectable under the Copyright Act.

#### *Trademarks*

Pursuant to the Trademarks Act (2010:1877) (the Trademarks Act), a trademark (i.e., 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

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27 See Chapters 4 and 5 of the Act (1960:729) on Copyright to Literary and Artistic Works.



period).<sup>28</sup> The owner of the mark can bring an action against anyone making unauthorised use of the mark. A name or logo 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, in 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.<sup>29</sup> 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 Names Act gives fundamental protection against tradepersons' use of an individual's name or picture in marketing without the explicit permission of the individual.<sup>30</sup> Nevertheless, many recognised professional athletes in Sweden choose to protect their names as trademarks in accordance with the Trademarks Act. The Names Act may be applied to most types of trademark uses 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 contracts of this kind. As mentioned in Section IV.i, sports events will usually require several different agreements, such as broadcasting, sponsorship, ticketing and merchandising contracts. Sometimes these contracts can be very short and simple, depending on the size of the sports event and the extent and value of the commercial rights packages offered to, for instance, a sponsor. However, large-scale sports events usually involve 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 to naming and title rights, official supplier rights, advertising rights or presentation rights), the use of trademarks or logos, the financial arrangements and the warranties from the parties (e.g., that the event organiser owns or controls all rights in and to the sports event).

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28 Chapter 2(3233) of the Trademarks Act (2010:1877) (the Trademarks Act).

29 Chapter 1(4) of the Trademarks Act.

30 Section 1 of the Names Act.

## 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.<sup>31</sup> Whether an athlete is considered an employee is determined according to principles of Swedish employment law and not according to the definition of an amateur or professional sportsperson, although the definitions of an employee and a professional athlete often overlap.<sup>32</sup> 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, and from which the direct benefit goes to the employer, and for 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. However, 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.<sup>33</sup> 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.<sup>34</sup> 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 clubs) before the fixed date, unless a material violation of the contract has occurred<sup>35</sup> or if the parties mutually agree to terminate the contract. According to Swedish employment law, it is possible to terminate the employment relationship with immediate effect if the employee has grossly violated his or her liabilities according to the contract (i.e., grounds for dismissal, such as the athlete having committed a serious doping offence) or if the sports club has materially 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.

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

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

33 Section 5 of the Employment Protection Act.

34 Collective Bargaining Agreement for Football Players (2019) and General Employment Terms and Conditions for Ice Hockey Players in SHL (2019).

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

## ii Free movement of athletes

Sweden is a member of the European Union and, as such, subject to EU rules regarding the free movement of labour, cross-border competition and discrimination. After the *Bosman* case of 1995,<sup>36</sup> sports were recognised as an employment market in Sweden, where athletes were entitled to more extensive employment law protection. Thus, one consequence of the *Bosman* case has been that Swedish sport clubs and associations have adjusted their internal rules and regulations 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 a 'home-grown' player rule.<sup>37</sup> A home-grown player is one who has been registered with a Swedish football club for at least three years between the ages of 12 and 21 years. This specific rule applies to the elite divisions within Swedish football and, therefore, at least half of the players on a 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. These regulations would, however, be considered invalid and unenforceable if they 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 the 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 television 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); this 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 decision against the Swedish Automobile Sports Federation (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 considered neither necessary nor proportionate to

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36 European Court of Justice, judgment of 15 December 1995 – C-415/93 (*Bosman*).

37 The Swedish Football Association representation conditions 2021.

achieve their legitimate objectives.<sup>38</sup> The Market Court judgment received much attention in the media, with the National Sports Confederation primarily strongly disputing that competition law could be applied. However, as was already established at EU level, the Market Court ruling further shows that no sector is free from competition law review. This case may be followed by others in which the conduct of sports clubs will be challenged from a competition law perspective.

## VII SPORTS AND TAXATION

The general Swedish tax rules<sup>39</sup> 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. Most Swedish sports clubs, however, are non-profit associations and, as such, most of their activities are tax-free. A non-profit association can only engage in commercial activities in support of its non-commercial purpose, and not to enrich its members. 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.<sup>40</sup> 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 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 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.

Payment of remuneration to non-resident athletes and others may be made on particularly favourable tax terms for a limited period in accordance with the rules of the Act (1991:591) on Special Income Tax for Non-resident Artists and Others.<sup>41</sup>

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38 Case MD 2012:16.

39 For example, the Income Tax Act (1999:1229).

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

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

## 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 a 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.

In 2004, the National Sports Confederation implemented the WADA uniform and global World Anti-Doping Code in its own Anti-Doping Regulations. The Anti-Doping Regulations generally apply to all athletes under the National Sports Confederation who engage in competitive sports. Doping in sports was previously monitored by the National Sports Confederation's internal organisation (the Doping Commission). As from 1 January 2021, a separate national anti-doping organisation has been established, Anti-Doping Sweden (ADSE). ADSE has taken over all the responsibilities previously handled by the Doping Commission. All positive doping results are investigated by ADSE, which decides whether the matter should be reported for disciplinary action. The first instance decision on disciplinary actions for all sports in Sweden is made by the Doping Panel of the National Sports Confederation. The decision may be appealed to the national Supreme Sports Tribunal. The Court of Arbitration for Sport in Switzerland is the ultimate arbitrator for all doping matters.

### **ii Betting**

The Swedish gambling market changed on 1 January 2019 when the new Gambling Act (2018:1138) (the Gambling Act) entered into force. Some parts of the gambling market will be exposed to competition and more operators will, therefore, be able to apply for licences. The Swedish Gambling Authority has overall responsibility for licensing and supervision within the field of gambling, and monitors compliance with the Act. Its role is to increase state control of the gambling market. In recent years, there has been a trend towards increased online gambling through operators without permits in Sweden. The new regulation has made it possible for these operators to apply for gambling licences in Sweden. This will create better opportunities for controlling the market and establishing a higher level of consumer protection, while gambling operators without licences will be excluded.

### **iii Manipulation**

Swedish sporting associations, the gambling industry, the justice system and the media have paid increasing attention to match-fixing in recent years, mainly within football. The number of cases is growing and the consequences are serious. Individual teams and athletes are the primary victims of manipulated matches but, in the long run, such manipulation 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. Efforts to prevent match-fixing are complicated when operators are based in different countries.

Match-fixing and other manipulation of sports activities had previously no specific and separate penal provision in the Criminal Code. A specific new criminal provision with regard to the manipulation of sports activities has now been introduced in the new Gambling Act. Those who take inappropriate actions to manipulate the outcome of a game that is subject to licence requirements under the new Gambling Act shall be imprisoned for a maximum of two years for cheating (gambling fraud). The Gambling Authority has also created a special council to deal with match-fixing and may halt or prohibit specific types of betting (or it may do both). In 2015, the National Sports Confederation adopted a general code to fight the manipulation of sporting competitions.<sup>42</sup> According to the code, it is prohibited to wilfully or negligently take part in the betting and manipulation of sports activities in the ways described in the code. The code applies to all members of the National 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 of 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 guilty of taking bribes (including three former footballers), to manipulate the outcome of a football match in Division 1, the third level of the Swedish football league system. The Supreme Court of Sweden denied leave to appeal.

#### **iv Grey market sales**

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

## **IX THE YEAR IN REVIEW**

Swedish sports governing bodies, the police and the government face continued pressure to tackle the manipulation of sports competitions. Integrity is critical for sport, and match-fixing strikes at the very heart of it. The introduction of the new Gambling Act will, hopefully, lead the betting companies involved in online betting to cooperate with sports governing bodies to investigate match-fixing. Gender equality in Swedish sport is also a matter of great importance for Swedish stakeholders. The National Sports Confederation wants women and men to have equal power to shape sports and their participation in the sports movement. The esports industry continues to grow both in popularity and in the number of viewers,

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42 The National Sports Confederation regulations on prohibited betting and manipulation of sports activities (match-fixing).

and the Nordic countries are in an excellent position to dominate this new arena in the near future. The Nordic region's reputation for producing some of the world's best-selling games is based on a huge gaming community. Sweden has more professional esports players than any other country, followed closely by Denmark, Finland and Norway. However, the Swedish E-Sports Association has not yet been successful in becoming a member of the National Sports Confederation.

## **X OUTLOOK AND CONCLUSIONS**

At present, the Swedish sports movement is trying to mitigate the losses caused by the covid-19 pandemic. Many sports clubs lost several of their members during the pandemic and the sports industry, together with the government, is working hard to restart sporting activities. The National Sports Confederation recently decided on an additional financial package (500 million kronor) to support this restart. Furthermore, in a crackdown on match-fixing, the government has proposed new tougher legislation, which is expected to enter into force on 1 July 2023.

## ABOUT THE AUTHORS

### **KARL OLE MÖLLER**

#### *Nordia Law*

Karl Ole Möller is a partner and head of the sports sector at Nordia Law, a Scandinavian commercial law firm with offices in Sweden, Denmark, Norway and Finland. He has contentious experience in sports disciplinary, integrity and regulatory matters. His sports law practice also encompasses several main transactional areas within the sports sector, including sponsorship agreements, mergers and acquisitions in sport, governance, rules and regulations, transfers, player contracts and image rights. He has acted for numerous high-profile professional Swedish athletes within different sports, such as ice hockey, football, track and field, tennis and golf. He regularly advises top global sports management companies, international and national sports governing bodies, national teams, sports clubs and intermediaries.

He recently acted for former world 1,500 metre champion Abeba Aregawi in her doping proceedings against the International Association of Athletics Federations, and currently represents one of the world's most successful football coaches in a monetary dispute before the FIFA Dispute Resolution Chamber. He has also been selected by the UEFA legal division to assist individuals and clubs in UEFA disciplinary proceedings.

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 mainstream media as a sports law expert.

He is admitted to practise in Sweden.

### **NORDIA LAW**

World Trade Center  
Kungsbron 1  
Entrance F, 4th Floor  
SE-111 22 Stockholm  
Sweden  
Tel: +46 8 563 08 100  
karlole.moller@nordialaw.com  
www.nordialaw.com



ISBN 978-1-80449-110-2