

International sport and social law

by *Luc Silance*



We have already introduced Mr Luc Silance on the publication of his article "The Rules of the International Olympic Committee and Law", in Olympic Review No. 50/51.

1. Introduction

A short while before the Games of the XIXth Olympiad, the Mexico National University organised the first International Congress of Sport Law in Mexico.

There is an indication, at least in an embryonic form, that the different aspects of law have their origins in the field of sport:

- constitutional law
- administrative law
- civil law
- penal law

- fiscal law
- intellectual law
- social law

A very large part of the Mexico congress was devoted to sport as a social function, as well as to the problem of amateurism and professionalism which are both facets of social law.

Many of the Congress's participants wanted to help athletes benefit from the advantages of social legislation. Some planned to draw up a contract for athletes, and submit it to the International Labour Office.

This conception is held by supporters of social law in sport, but does not always seem to correspond with that held by supporters of sports law proper.

In the United States, sports at university are organised in such a way that grants and considerable support are given to promising athletes wishing to continue their studies.

The East-bloc countries, following the lead of the USSR, have gone much further in their assistance to athletes. The problem however is different in the so-called "East-bloc" countries to that in the so-called "West".

Indeed, in our part of the world there is often a distinction made between professional sport and amateur sport. The protection of professional athletes should in some way be related to that of other workers. Thus in Belgium a Bill was presented on 18th October 1965 regarding social security for sportsmen, and this was incorporated in 1968 into a Bill concerning the social statute of the sportsman. However these proposals have not yet come into force.

Another more modern conception could however come into being, if we could somehow or other get away from the

severity of the conception of amateurism resulting from the provisions of article 26 of the IOC Rules and Regulations as it stands at present. A distinction could actually be made between high competition sport and sport which is at the same time a competition sport and a leisure sport.

If we study this rule in its present form, we can see that it is applicable to the vast majority of athletes, who are all amateurs in the strictest sense of the word. In the great majority of sports, for almost all participants, there is no question of payment, nor even assistance, as the man more often than not himself pays a subscription and also pays for his equipment to be able to practice one sport he has chosen.

The problem only arises for high competition. The rule, modified in 1971, gives a new definition to the athlete who is allowed to participate in the Olympic Games by determining the amount of aid which his National Olympic Committee or national sports federation or his club may give him. The IOC's definition is sometimes made even worse by an international federation's more restrictive rule.

In effect high competition seems closely related to entertainment, and athletes who devote a large part of their time to training and competition are no longer able, from a material point of view, at the high level of performance which is demanded of them, to undertake a full-time profession or studies, unless they are given considerable help to compensate their hours of work or study lost or neglected on account of practising sport.

In this light the protection of the athlete just by drawing up a contract applicable to professionals is obviously not a reasonable solution; it affects too small a number of the problems which arise.

2. Sport

Before finding justification for international sport and giving it legal and social protection, it would be a good idea to study the problem of the function and justification of the phenomenon of sport. Is sport itself useful to man, and is there any point in promoting it?

A certain ambiguity seems to have slipped into the examination of the problem. Most of the studies concern the beneficial effects of physical activity on one's health; this activity is not necessarily synonymous with "sport".

It all depends on how you define the word "sport".

If we take the definition of a specialist in civil responsibility (Roger Dalcq, *Treaty on Civil Responsibility*, No. 508), it would be: "physical games and exercises practised on one's own or in a group for one's entertainment, for the development of one's body, or in the spirit of competition, conforming to the rules of the game"; it is therefore a question of an *organised* game, respecting certain rules.

Consequently it is in no way what is sometimes called "leisure sport" or physical exercise practised by a large number of people simply for relaxation, without respecting any rules. Organised sport as such is not simply "physical exercise".

It almost necessarily implies competition. Thus almost all the studies and research concerning these things are in reality aimed at physical exercise and not sport proper.

Therefore the different functions of sport were analysed (see Michel Bouet, *Signification du Sport*, Editions Universitaires, Paris, 1968, p. 450 onwards).

Its real justification may, in addition to its functions, be found in different fields.

In a brochure entitled *Sport pour tous, les Activités physiques et la Prévention des*

Maladies, compiled by Doctor P. Réville, the Council of Europe edited an extremely interesting and thorough study in 1970. It covers the majority of sport's aspects, giving many scientific references on the use of physical activity.

From these references, and others we will add, we will justify sport from the point of view of its beneficial effect on physical health:

- Veschi, R.: "Longevity and Sport". *J. Sports Medicine Phys. Fitness*, 1963, 3, 44-49.
- Rook, A.: "An Investigation into the Longevity of Cambridge Sportsmen". *Brit. Med. Journal*, 1964, 1, 773-777.
- Pomeroy, W., White, P.D.: "Coronary heart disease in former football players". *JAMA*, 1958, 167, 711-714.
- Karvonen, M.J., Kihlberg, J., Määttä, J., Virkajrvi, J.: "Longevity of champion skiers", *Duodecim*, 1956, 72, 893-903.
- Letounov, S.: "Importance of physical education and sport as preventive measures for healthy and sick persons", *Journal of Sports Medicine and Physical Fitness*, 1969, 9, 142-151.
- Astrand, P.O.: "Proceedings of the International Symposium on Physical Activity and Cardiovascular Health, Concluding remarks", *Canad. Med. Ass. J.*, 1967, 96, 907-911.
- Saltin, B., Grimby, G.: "Physiological analysis of middle-aged and old former athletes, Comparison with still active athletes of the same ages". *Circulation*, Dec. 1968, 38, 1104-1115.
- Holloszy, J.O., Skinner, J.S., Toro, G., Cureton, T.K.: "Effect of a six months programme of endurance exercise on the serum lipids of middle-aged men" *Am. J. of Cardiology*, 1964, 14, 753-760.

- Pyörälä, K., Karvonen, M.J., Taskinen, P., Takkunen, J., Kyronseppa, H., Peltokallio, P.: "Cardiovascular studies on former endurance athletes". *Am. J. of Cardiology*, 1967, 20, 191-205.
- Canaperia, G.A.: "Les aspects médicaux des activités sportives". *Medicina dello Sport*, 1969, 6, 265.

To this can also be added various studies by lecturers at the International Olympic Academy:

- Thomas K. Cureton: "Basic principles of physical fitness work for adults". *J. Phys. Ed. (YMCA)*, 41, 51, Jan. Feb. 1944.
- Thomas Cureton: "Physical fitness work with normal aging adults". *J. Phys. ment. Rehab.*, 11, 145-149, Sept.-Oct. 1957.
- Thomas Cureton. "Physical training helps to regulate and improve glandular functions". *Res. Quart.*, 30, 266-284, Oct. 1959.
- Ernst Jokl: "The Physiological Effects of exercise programs on adults. *American lectures in sports medicine*.
- Thomas Cureton: "Anatomical, physiological and psychological changes induced by exercise programs (exercises sports and games in adults—Exercise and Fitness". University of Illinois, Colloquium Chicago-Athletic Institute, 1960, p. 152-182.
- Thomas Cureton: "300-500 calories exercise per day, advised for adults". *Medical Tribune Worldwide report*, May 17, 1965.
- Thomas Cureton: "The effect of physical training sports and exercises on weight, fat and tissue proportions. Professional Contributions". *Wash. Amer. Acad. phys. educ.*, Nov. 1958, cfr 25-40.

See also:

- Chailley—Bert and Fabre-Chevalier: "Contrôle à l'échelle des variations du cholestérol sanguin au cours des activités physiques". *Presse Méd.*, 63, 21-9 mars 1955.

Sport may have beneficial effects from the psychological point of view:

- "Influences des activités physiques et sportives sur le développement intellectuel en milieu scolaire", Ministère de l'éducation nationale, Paris, 1957.
- Vitellio, Enzo: "Risultati e prospettive medico-sportive nell' esperimento dell' impiego del mezzo tempo pedagogico-sportivo", *Medicina dello sport*, 1961, 1, 229-233.
- Perie, H., Amiel, R.: "Rôle des activités de type sportif dans la prophylaxie et la thérapeutique des troubles du comportement." *Méd. Educ. Phys. Sport.*, 1964, 4, 305-310.
- Volpicelli, L.: "L'esercizio sportivo per l'uomo moderno". Traguardi, 1963, VII, 3-8.
- Florès d'Arcais, F.: "Sport- Profilassi e Sport-Terapia nella patologia da tempo libero", Traguardi, 1965, XII, 8-13.

From the physical and psychological points of view, that is to say from the psychosomatic point of view, sport may therefore be beneficial, and more often than not it is.

It is also beneficial from the sociological viewpoint, and not only in the field of leisure:

- "Séminaire international sur la gymnastique de pause". Bruxelles, 25-28 avril 1967, 186 pages, Ministère de l'éducation nationale et de la culture.
- Artemov, V.: "Physical Education and Leisure". *International Review of Sport Sociology*, 1966, 1, 75-84.

- Laporte, W.: "The influence of a gymnastic pause on recovery following Post Office Work", *Ergonomics*, 1966, 9, 501-506.
- La Fay, G.: "L'entraînement physique, facteur de mieux-être des ouvriers adultes". *Entr. Phys. monde mod.*, 1960, 26, 9-11.
- "Le rôle de l'éducation physique et sportive dans la formation des apprentis". Strasbourg, Conseil de l'Europe, 1964, 31 pages.
- Verhaegen; M.: "Education physique et formation—sécurité professionnelle." *Educ. Phys. (France)*, 1962, 31, 31-42.

We can compare this problem of work with the incidence of sport on the good physical condition of an old man:

- Hollmann, W., Grunewald, B.: "Der ältere Mensch und der Sport". *Der Landarzt*, 1967, 14, 649-654.
- Longueville, L. and all.: "Le vieillissement et le sport". Secrétariat à la jeunesse et aux sports, 49, rue des Orteaux, Paris 20^e, 63 pages.
- Longueville, L.: "Le troisième âge et les activités physiques". *Cinésiologie*, 1969, No. 33, 86-98.

Let us not forget the role of sport in education and even in the simple pleasure of living:

- Falize, J.: "Le rôle du sport dans l'éducation, théorie et pratique en culture physique". 1964, 1, 2-15.
- La Cava, G.: "Sport as a factor in the formation of the complete modern man". *The Journal of Sports Medicine and Physical Fitness*, 1970, 10, 1-5.
- Bouet, M.: "The function of sport in human relations". *International Review of Sport Sociology*, 1966, 1, 137-140.

These simple bibliographic and scientific references may in our opinion give sufficient justification, even if it is not complete, to the different aspects of sport.

It is not only a physical exercise, it is more than this; and this is why it can give the individual even more than simple muscular, cardio-vascular and respiratory exercise.

3. High competition sport

The beneficial effect of sport as such does not so far justify the existence of high competition sport, and even less professional sport.

If the legislator of interested countries decides to extend social security to high competition sportsmen, or even just professional sportsmen, so that they thus benefit from the protection which workers enjoy, or a specific protection, people may presume that this State' intervention is entirely approved by the public' authorities.

France and Belgium give assistance to selected Olympic athletes.

In addition to this assistance, Italy has organised a complete system of insurance for sportsmen.

West Germany, benefitting from the attraction of the 1972 Olympic Games, has organised a "Sporthilfe" (Sport Aid).

These different State interventions in high competition sport in Western European countries do not however directly concern professional sport, which has, at least in some countries, itself organised a system of protection, notably in England where footballers benefit from insurance, and have benefit matches. The Union belge des sociétés de football Association has also organised its own insurance system. Belgium has made it obligatory for professional cyclists and the Belgian Cycling League to subscribe to social security,

thus covering sickness and accident risks. In our view professional sport is a bad solution because, if in most cases a man embarks on his real career at the age of 30 after assimilating the techniques of his profession, in sport this is precisely the moment when he has to give up high level competition. In our thesis, sport should never be a real profession as it cannot, without exception, be practised on an international level at the age when a man should be able to follow his profession and benefit from experience gained from maturity.

If the athlete has to be protected, it is not by being pushed to professionalism, nor by making him believe that a "social statute" will ensure him of a future. If the athlete has to be protected, it is of course first of all during his sporting career, but also by ensuring him, after practising high competition sport, of a real career, that is, a real profession or trade.

This opinion does not however make us discard high competition sport; professional sportsmen and high level sportsmen form a small category of guinea-pigs pushing the physical training of the human body and exercise of competition to the highest possible degree.

They are an example for the sporting youth, to whom they show the beauties of sport, the benefits and virtues of training, the performances which one can reach and to which human effort may lead.

They are also ambassadors of their country, and this gives them, on an international scale, importance which sometimes takes on political significance.

They should be assisted in every field on account of the efforts to which they devote themselves, not only by trainers who look after them but also by medical care, massage and pharmaceutical attention, etc.

They form an elite which devotes a large part of its time to sports activity: daily training for several hours, followed by massage and health and hygiene care, medical examinations and attention, trips abroad for competitions.

The time thus devoted to sports activity is too great for us to talk about the use of leisure. The high competition athlete must, exactly on account of this great amount of time, receive increased assistance in the form of a payment for loss of earnings, or a credit of hours if the athlete does not want to embark on the path of professionalism. Financial assistance must obviously be organised (see Luc Silance, "Le statut social du sportif", *Journal des Tribunaux*, 1972, p. 237 onwards).

A minimum of protection should be imposed in every country for these sportsmen by the international federation upon which they depend. This seems to be the only way of making sure everybody has sufficient assistance from the social point of view. The International Olympic Committee's role is certainly not minimal, and it could stipulate the minimum of protection which each International Federation should impose on each national Federation in every sport where high competition exists and where it is practised in accordance with the rules and in the care of that International Federation. The IOC should moreover define the statute of the athlete in the form of eligibility conditions to the Olympic Games.

4. Athletes' relations with third parties

The high competition athlete is hardly ever isolated. Even if, reaching a certain stage, he becomes part of the apex of the sporting pyramid, he depends not only on his federation but also on his club, his

trainer, sometimes on those who are interested in him for reasons outside the realm of sport, either for patronage, which is getting more and more rare, or for publicity or other motives.

In its classical form social security makes the worker dependent on an "employer". Even for the professional sportsman, the problem of knowing who the employer is is sometimes difficult to solve. In some cases it is the non-sports firm, sometimes the club, sometimes even, as in Belgium for the social protection of racing cyclists, the law deems the sports federation itself as "employer" for the application of this legislation. For the high competition athlete, the problem is even more delicate. When a training period is organised by the National Olympic Committee only for Olympic athletes, one could even go as far as claiming that the Olympic Committee, through the payment of loss of earnings, could be considered, if not the employer, at least responsible for the application of social security.

This opinion seems exaggerated to us as the national sports federation should settle the case of international or top sportsmen by determining how their security is ensured, in every case, for the whole of their sporting career.

Normally, if a body has to submit a high competition athlete to social security and thus ensure cover against the risks he runs, it is the club, or in the case of professionals, the non-sports firm who pays him and on which he depends.

The top sportsman has, in exactly the same way as the others in the present organisation, to comply with the ruling of the sports federation which organises and manages his sport in the country. This national federation itself has to apply international rulings drawn up by the international federation concerned.

Each one under its responsibility should determine the minimum stipulations of contracts binding top athletes either to their club or to the non-sports firm which pays them, remunerates them or indemnifies them by giving them social or other assistance.

The contract should indicate the length of time for which it is valid, the possibility of giving notice in advance, and the jurisdiction authorised to solve disputes with regard to the rights of the defense before independent judges, with the possibility of appeal before different judges to those who gave judgement in the first instance. If payments are made, the way in which they are to be effected and the reciprocal obligations of the two parties should be determined. This requirement exists when it concerns aid given by the National Olympic Committee or the national sports federation during periods of intense training or participation in high level competitions. It also exists for the payment of the loss of earnings provided for in the International Olympic Committee's rules or for the payment of sums due by the employer or non-sports firm, even for professionals.

5. Social Insurance

One way of giving athletes a certain amount of aid from the social point of view is to take out insurance cover for them, particularly for accidents, etc. This idea was also expressed by Dr Paparescos, President of the Hellenic Society of Sports Medecine, in his exposé concerning the elements of the environment which influence sports activity and career. (International Olympic Academy: 1972 Session).

First of all any athlete may be injured on the sports ground, either during a competition or training. This injury may entail partial or complete incapacity to carry

out a professional activity in the future. This risk, like that of death during a competition or training, should be covered as much for the amateur on every level, including the highest, as for the professional. Fortunately the case is rare but it would be heart-rending if, through practising sport, widows or orphans or even handicapped athletes have to deplore the want of foresight of the sportsman and his managers who did not take out an insurance against this risk. The Italian National Olympic Committee has foreseen this and organised a complete system of insurance.

Footballers in Belgium and England are also covered.

These examples should be followed by other federations in a general way. Insurance seems to be the only real way of covering risks, and only the problem of finance arises.

It should however be less complicated to solve if the insurance is imposed in a general way, since by spreading out the risks, the cover will be much less expensive than if everyone is left free to contract or not, as he wishes, an individual policy for this cover.

A much more delicate problem arises over the question of the athlete's pension, whether he is professional or high competition, at the end of his career. Since his career rarely ends after the age of 35, a method must be found to ensure his reconversion rather than the payment of a pension proper.

Apart from a few footballers, basketball or baseball players, racing cyclists, racing car drivers or motor cyclists who make their fortune, the majority of other athletes who believed they would make a profession of their sport have in fact only been able to benefit from a few years during which they exploited their physical gifts, to find

themselves afterwards without a trade or profession. To our mind the time high competition athletes devote to their sport should be compensated for, and if the legislator has to intervene it is not by organising professional sport but by assuring high competition sportsmen of an easier reconversion when they finish practising sport, possibly by collecting within a fund part of the profits of the meetings in which they take part, television or radio rights, sums paid by firms using the athlete as an advertising aid, everything within the limits authorised by Olympic and national officials.

6. Social Statute

If some countries believed they were giving top sportsmen a social statute, we think that it would be necessary, to this end, not to limit oneself to the obligation of being covered by worker's social security.

Sport is a specific field with particular standards, and those who practise it have needs distinct from other people.

The top sportsman needs assistance, with constant medical supervision, physical care, massage, hygiene, and periods of training and competition. He should receive compensation for the considerable amount of time which he devotes to training and competition. This is already a basis of a social statute. Moreover, he should be covered by insurance for sickness and accident risks. Possible invalidity or death should also be fully covered. All this goes beyond social security in its current and usual sense.

The problem is different for the athlete than for a manual or intellectual worker in normal life.

Where does unemployment begin for the athlete, when is there incapacity of working? What are the athlete's obligations

towards his club or his employer, in comparison with other worker's obligations?

We think it is useless, or at any rate of little importance, to cover the risk of the impossibility of an athlete to continue his sports career, since what is important is not so much to be able to continue practising sport as to be able to continue working.

The first eventuality is fortunatel only rarely connected with the second.

What is also important in drawing up a social statute is to ensure that the rights of the individual are respected, on the one hand within the framework of the contract he has concluded and the engagements he has undertaken in his club or regarding his non-sports support, and on the other hand by ensuring the freedom of the individual within the framework of affiliation without fetters contrary to his dignity; if it is natural for the athlete to respect the club which has formed him, which has paid the trainers and sporting installations at his disposition, it is also natural that in certain cases a transfer may be obtained for another club in another region or for personal reasons. This freedom and the respect of rights should be ensured by imposing the organisation of independent commissions to which disputes are submitted, before upright judges, and with the possibility of appeal before a tribunal, even federal, but composed differently from the first one.

Conclusion

So-called professional sport has become a reality, particularly in the West. Even if we consider that this aspect of human activity should not be encouraged, a system of protection should be established, preferably within the framework of a more general organisation. We do not

think the legislator should intervene to apply social security to professional sportsmen, but are strongly of the opinion that the sports federations concerned should study the problem together and organise the social statute of the top sportsman.

Assistance at every level, sickness, accident and invalidity insurances, reconversion fund, and the organisation of federal tribunals. International statute within each federation with distribution among the greatest possible number of subscriptions permitting the financing of these insurances. Supplementary assistance at the end of high competition athletes' sporting career.

If we believe that sport, a specific subject, conforms to certain standards, sports law is a different subject from social law and the two cannot be confused.

Lawyers should study sport, but it is particularly to help sportsmen and their managers, and additionally to settle disputes which may arise. Assistance on a legal level may be included in the social statute of the athlete on the same grounds as all the other aspects we have stressed in this exposé.

Luc Silance,

Lecturer at the Free University of Brussels,
Lawyer at the Brussels Court of Appeal.