

By which courts should athletes be judged?

Laws, ordinances and other rules govern even the most banal of human actions. Each of us is a citizen, taxpayer, owner or tenant, car driver, member of an association, etc. and, as such, involved in situations which are all governed by various kinds of legal provisions.

The law covers extremely different areas of our lives and, since judges cannot have universal knowledge, good administration and justice necessitate specialization and distribution of powers. If, for example, you enter into a dispute with your employer, you will go to a labour court. If you are having difficulties with your landlord, you will submit your case to the rent tribunal. If your insurance company refuses

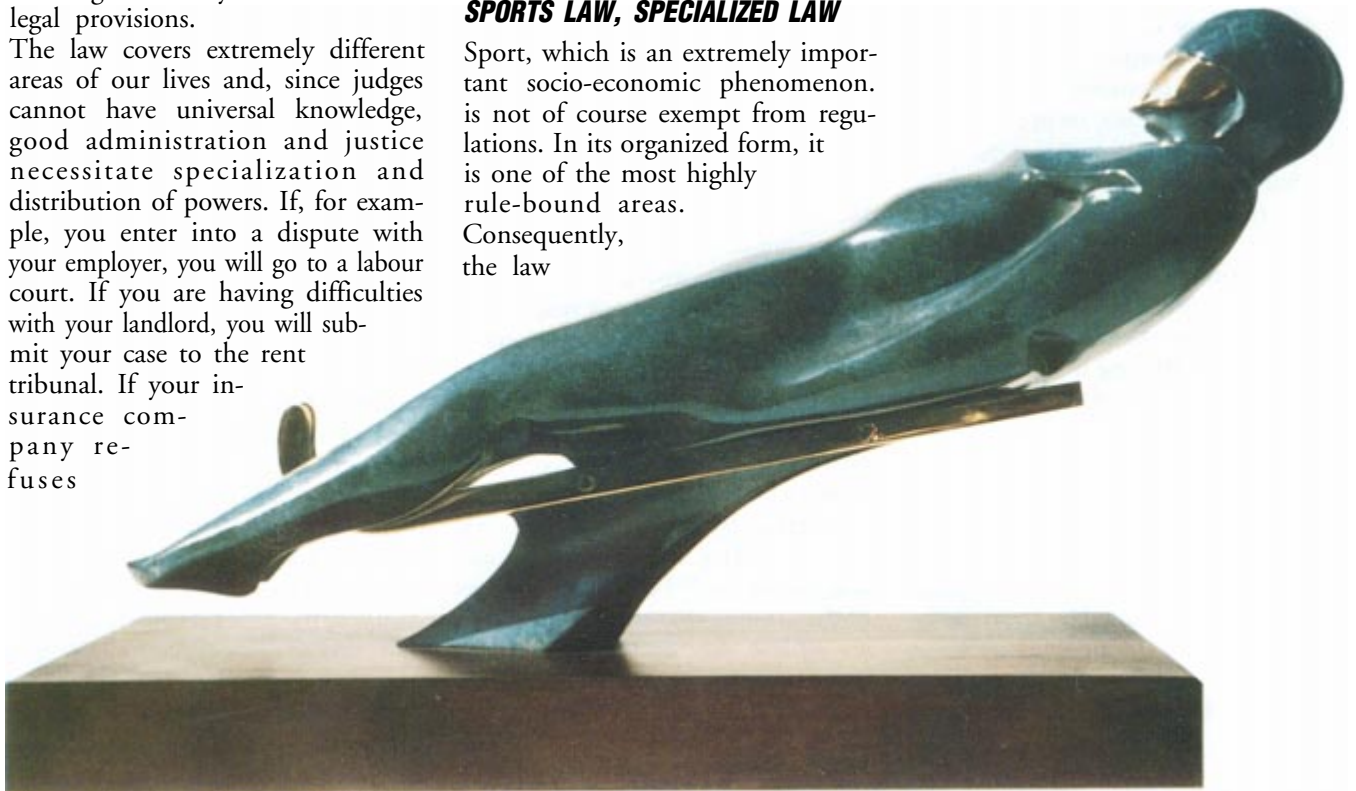
to cover an accident, you will go before the insurance court. According to the matter involved, an administrative, civil or criminal court, perhaps even a military court will have jurisdiction over it.

SPORTS LAW, SPECIALIZED LAW

Sport, which is an extremely important socio-economic phenomenon, is not of course exempt from regulations. In its organized form, it is one of the most highly rule-bound areas.

Consequently, the law

The creation of the International Council of Arbitration for Sport (ICAS) should give a new impulse both to the settling by arbitration of disputes arising in sport, and to the Court of Arbitration for Sport (CAS). Denis Oswald, president of the FISU, member of the IOC and of the CAS, justifies the existence of sports courts and presents the advantages they offer over state bodies.





Mr Denis Oswald in session as a member of the IOC Juridical Commission.

of sport is also a branch of the law, and must be dealt with by specialists. In general, judges of ordinary courts do not have this qualification. On the other hand, members of the "judicial" bodies of sports organizations are specialists, to the extent that they are familiar both with sport and with the law. They are therefore better qualified than ordinary judges to settle disputes arising within sport.

Sport is, however, not the only domain which has specialized internal courts. They can also be found in professional organizations, in the context of agreements between employers and unions, or in insurance. This shows that there is a genuine need for subject specialization to ensure a more effective system of justice.

Apart from the issue of competence, there are other factors that show that ordinary courts would not be capable of fulfilling in a satisfactory manner the task entrusted to sports courts.

DECISIONS MUST BE QUICK

In the first place, it is certainly true that ordinary courts would not be able to handle the enormous quantity of cases managed by sports association bodies, particularly as far as disciplinary matters are concerned. The overloading of ordinary courts would be exacerbated, and the administration of justice would be further paralysed. Moreover, sport needs

quick decisions, since the context in which the decision is taken is changing constantly; the life of an association, competitions and championships continue, and they could be distorted if the disputes that arise are not resolved immediately, or if the appropriate penalties are not applied without delay. Ordinary courts do not have the capacity for rapid action that sports bodies have hitherto shown.

THE PROBLEM OF FRONTIERS

It is well known that ordinary justice is relatively expensive. Conversely, sports justice is offered practically free of charge, since those who practise it offer their services freely. This is an important element, since the majority of athletes are still amateurs who practise sport for recreation. It is therefore appropriate that they should be able to claim their rights without engaging in disproportionate expense, and that easy access to justice be guaranteed.

There is also a discrepancy between the territorial jurisdictions of ordinary courts and those of international sports federations, another reason why state bodies cannot respond to the needs of sports organizations.

The territorial jurisdiction of ordinary courts is limited to their own country, whereas international federations govern their sports on a world level. There is thus a double distortion. First, decisions taken by applying international provisions have only a national scope, and cannot apply beyond the borders of the country that took them. Thus, an athlete suspended for doping would only be suspended in his own country, and could continue to participate freely in competitions abroad. This limitation would render the decisions taken completely ineffectual. If

it were left to ordinary courts to clamp down on doping, all the efforts undertaken to date to eradicate this blight would thus be negated.

And second, international regulations would be applied by national judges, each one according to his own assessment of the case, without there being any body above them to ensure uniformity of interpretation and precedents. Thus, the penalties imposed for comparable doping cases could vary enormously from country to country. We might find ourselves with contradictory decisions, depending on which part of the world an athlete came from. This would lead to serious inequality of treatment. Far from ensuring better justice for athletes, the transfer of powers for settling sports disputes to ordinary courts would only create inequality; it would prejudice the situation of athletes and give rise to additional difficulties. The Butch Reynolds case illustrates this very well. This athlete was granted 27.3 million dollars compensation by a United States civil court for having been suspended for doping. If Sergei Bubka had been in a similar situation, he would certainly not have been compensated so handsomely by the judge in Kiev!

INDEPENDENT JUSTICE

Sports justice is often presented as a private justice, or even as a justice of exception. This evaluation seems to me to be wrong, since associative courts belong within the general context of the justice system in which different kinds of courts each cover their own particular area. This is particularly so as sports bodies do not act in a totally independent or autonomous manner. They are obliged to apply the general principles of the law, and to respect the fundamental rights of the individual. Moreover, their decisions are mandatorily subject to the control of a judicial body outside of the organization, at least when these decisions affect the pri-

vate autonomy of the individual and his personal interests, particularly financial interests. This body could be an ordinary court or another body with the same guarantees of impartiality and independence, such as the Court of Arbitration for Sport. This possibility for control is essential in the rule of law.

APPEAL AND RESPECT

Thus, the athlete subject to court action may always appeal against the decisions taken by the sports tribunals, and have his case dealt with by a state court. This constitutes a fundamental guarantee for him. We should point out that any provisions in the regulations or statutes of certain associations which forbid appeal to ordinary courts are quite simply invalid, and cannot stop an ordinary court from declaring itself competent to review the decisions of that association.

One must not deduce from this state control that sports tribunals are inferior in quality to ordinary courts.

There would be no reason in this, since

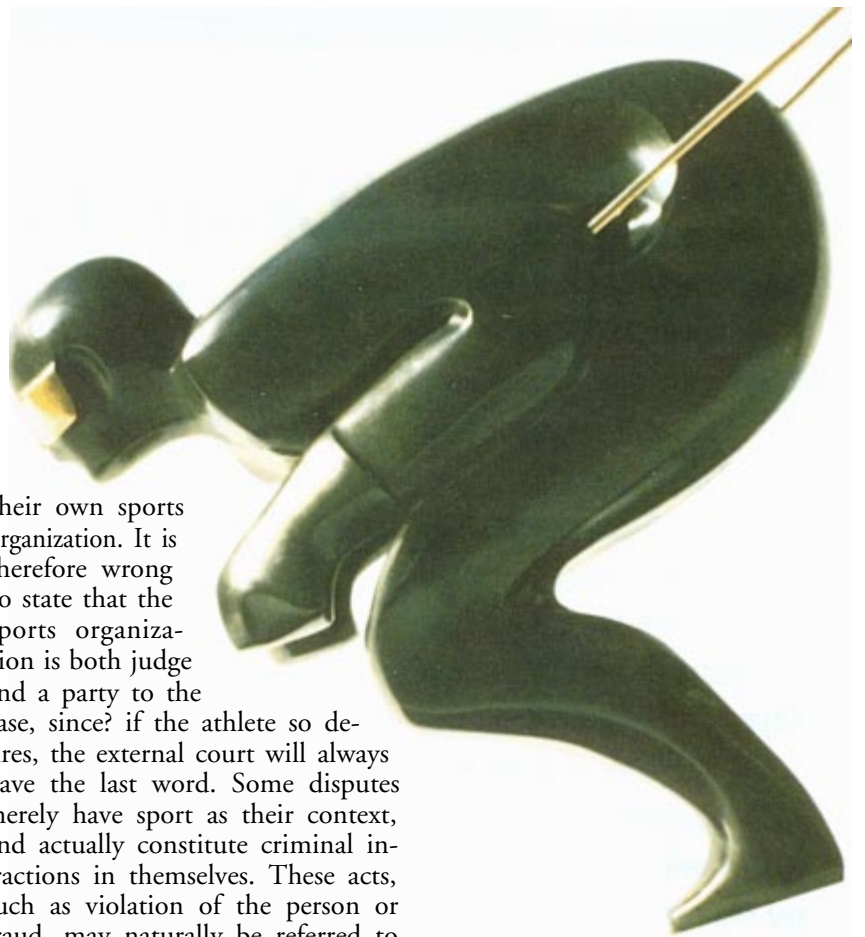
sports bodies include many state judges and excellent lawyers, and in general they are very objective and independent. The fact that certain decisions made by associations have been overturned by state courts does not contradict this statement. Indeed, appeal bodies overturn every day many decisions taken by lesser state courts, for reasons such as arbitrariness, violating certain fundamental legal principles, or for false application of the law! This state control merely offers the athlete, as it does any person under its jurisdiction, the guarantee that their case will be examined at several levels and, at the end of the day, controlled by a body that is completely independent of

their own sports organization. It is therefore wrong to state that the sports organization is both judge and a party to the case, since if the athlete so desires, the external court will always have the last word. Some disputes merely have sport as their context, and actually constitute criminal infractions in themselves. These acts, such as violation of the person or fraud, may naturally be referred to ordinary criminal courts. These would

give sentences in parallel with the sports penalties. We are convinced that

sports disputes should be judged by the bodies put into place by sports organizations, with an external control, under the conditions indicated above, in order to guarantee the rights of the athletes under their jurisdiction. Moreover, it is desirable that this external body be the Court of Arbitration for Sport rather than a state court, in order to avoid the above-mentioned problems linked with state courts, such as territorial limitations and the absence of specialization.

Indeed, the Court of Arbitration for Sport was recognized in a decision by the Swiss Federal Tribunal of 13th March 1993 as offering the same guarantees of impartiality and independence as an ordinary court.



Legitimacy and credibility, when they do not derive from state authority, must be earned by the quality of justice rendered, and certain sports organizations and associations still need to make progress in this area. It is important, in fact, that the rules and decisions of the sports bodies adhere extremely strictly to the general principles of the law, in particular the right to be heard, in order to avoid examination by external courts, and state courts in particular. Thus sports justice will win its independence, its legitimacy and its credibility. The higher the quality of sports justice, the less athletes will be tempted to go before ordinary courts.

DENIS OSWALD

Lawyer and IOC member in Switzerland