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Editors

# Lex Sportiva: What is Sports Law?

T · M · C · A S S E R P R E S S

 Springer

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## Series Information

Books in the *ASSER International Sports Law Series* chart and comment upon the legal and policy developments in European and international sports law. The books contain materials on interstate organisations and the international sports governing bodies, and will serve as comprehensive and relevant reference tools for all those involved in the area on a professional basis.

The Series is developed, edited and published by the ASSER International Sports Law Centre in The Hague. The Centre's mission is to provide a centre of excellence in particular by providing high-quality research, services and products to the sporting world at large (sports ministries, international—intergovernmental—organisations, sports associations and federations, the professional sports industry, etc.) on both a national and an international basis. The Centre is the co-founder and coordinator of the Hague International Sports Law Academy (HISLA), the purpose of which is the organisation of academic conferences and workshops of international excellence which are held in various parts of the world. Apart from the Series, the Centre edits and publishes *The International Sports Law Journal*.

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# Foreword and Introduction

I am pleased and, indeed, very proud to write the Foreword to this timely book on “*Lex Sportiva: What is Sports Law?*”, on which vexed question opinion is traditionally divided amongst academics and practitioners.

In this context an international Conference was held in Djakarta, in September 2010, on “The Concept of *Lex Sportiva* Revisited”. This Conference was organized by Pelita Harap University (UPH) in cooperation with the Indonesia Lex Sportiva Instituta and the ASSER International Sports Law Centre. It was supported by the Office of the Minister of Youth and Sport of the Republic of Indonesia, the National Olympic Committee, and the Indonesian Professional Football League. At the conclusion of this Conference, the “Jakarta Declaration on Lex Sportiva” was adopted and signed on behalf of the newly-established *Hague International Sports Law Academy* (HISLAC). The Djakarta Conference was, in fact, the first initiative taken by the Academy whose primary ambition is to organize and/or contribute to workshops, seminars and conferences on international law, of excellence. The “Djakarta Declaration on Lex Sportiva”, as well as the Opening Address by Mr. Janez Kocijančič, on behalf the Academy, at the Djakarta Conference are included in this book.

In this context, it is worth setting out here the HISLAC’s explanatory note to the Conference, which *inter alia* reads as follows:

In international academic literature and at international meetings and conferences concerning themes in the area of “sport and the law”, the question is historically discussed whether a separate discipline of “(international) sports law” actually exists, and if so which criteria should be used to identify it and what belongs to it, what it involves. So far, the debate has not run along any structured lines, meaning that different points of view and angles have never been systematically compared amongst experts so as to attempt to possibly reach pertinent conclusions on that basis. This is not only important for the identification and positioning of “sports and the law” or “international sports law” from a purely academic perspective: such a delimitation of the field could also be a practical aid in determining learning materials of such a legal subject or focal area to be taught at universities and elsewhere. The Conference serves to bring together several prominent authors on the subject in order to exchange views with each other and with the Conference participants.

In addition to the papers of the Djakarta Conference, a selection of most relevant English-language articles on the subject of “*Lex Sportiva: What is Sports Law?*” are included in the book, the final contribution being the inaugural lecture delivered by Professor Robert Siekmann at his accession of the newly-established Chair of International and European Sports Law in the Erasmus University Rotterdam (EUR), in June 2011.

This book is not only an important contribution to the debate on whether there is such a thing as “Sports Law”, but will also stimulate further discussion amongst sports lawyers, academics and researchers on this fascinating and engaging subject. For all of them, this book, I would submit, is essential reading. I, therefore, warmly commend this book to all those with an interest in sport and the continually evolving interface and interaction that exists between sport and the law, as well as the different ways in which they influence one another. And I would also heartily congratulate the editors on publishing it!

Djakarta, Autumn 2011

Hinca I. P. Pandjaitan SH MH ACCS  
Executive Director  
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Honorary Member of HISLAC

# International Conference on Lex Sportiva Djakarta, 22 September 2010

## 1. Opening Address on Behalf of the Hague International Sports Law Academy (HISLAC)<sup>1</sup>

Janez Kocijančič<sup>2</sup>

Dear colleague Dr. Rita Subowo, Chairperson of the Indonesian Olympic Committee, esteemed Rector Professor Jonaan Parapak, esteemed Professor Bintan R. Saragih, ladies and gentlemen, distinguished guests,

I have been given a difficult task to deliver the opening address on behalf of The Hague International Sports Law Academy (HISLA<sup>®</sup>). Although it is hard to speak to such experts as some of you are, allow me, nevertheless, to go through some basic issues of sports and law:

Sport is a very important phenomenon of the modern society

1. It strengthens some basic human values, it establishes sports ethics and it enhances social cohesion and solidarity. It is beneficial for the public health and I would even say it constitutes an element of democracy.
2. It brings people, especially young people, together, regardless of the social, religious, political, gender and other differences. Moreover, it helps them to overcome these differences.
3. It increasingly represents an important economic activity.
4. In the EU (White book on sport of EU Commission) 2006—sport represents 3.7 % of EU GDP (in my country Slovenia 2.7% in comparison with 2.2% GDP coming from agriculture)
5. It is an important employer: for example, in the EU it employs 5.4% of the entire European workforce; that is 15 million workers.
6. It gradually narrows the division between developed and developing countries, or better said, emerging countries. This boundary is disappearing in sports and

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<sup>1</sup> Previously published in: 3-4 The International Sports Law Journal (ISLJ) (2010), p. 10.

<sup>2</sup> President of the National Olympic Committee of Slovenia.

belongs more and more to the past. Just look at the extraordinary sports achievements of China, Caribbean and some African countries, just take into the account the choice of the next organizer of the summer Olympic Games in Rio de Janeiro of Brazil.

There is no doubt that sport is subject to the rule of law. But at the same time sport is an area which belongs to the civil society and should, therefore, enjoy large autonomy, including essential self-regulation, which consequently results in the creation of numerous autonomous rules (e.g. rules of the game, organizational rules, etc.)

This international conference is going to explore the difficult question of the so-called “lex sportiva”. The basic theoretical problem of the legal science in sport is to define the specificity of sport. That means that we have to define what the particular characteristics of sports are, i.e. the typical features which compared to other social substructures (like culture or science) allow a set of specific sports rules, or in other words, which allow even the sport exception or immunity, complete or partially, with many theoretical and practical legal problems involved. In short, we have to examine what is so important in sporting problems and relations that it could command different legal treatment.

In addition to the principle of specificity, our special attention should also be given to the autonomy of sport, although this principle is less disputed. It is more than logical and largely accepted that the state and political authorities should not intervene in the organizational structure of sports.

When we discussed these problems in the Executive committee of European Olympic Committees we came to the conclusion that the application of “specificity” and “autonomy” of sport so far, is still not regarded as the guiding principles for the relationship between the public sector and civil society. That is why legal certainly is still missing.

Besides that, financial resources for a sport funding program in Europe remain doubtful.

These are not only the questions for the lawmakers, politicians and sports leaders. Before they act it would be advisable that they know the results of the analysis, the positions and the advice of the sports legal science. Before they or we act we should use our critical and analytical minds.

This is why a small group of sport lawyers, enthusiasts and scientists, who met on different occasions and at some congresses of the International association of the sports law, came to the conclusion that we have to join our forces and do everything needed to bring the sports legal science to a higher level. We are aware that high standards of sports legal science exist in some countries, at some universities and in some institutes, we know of some brilliant scholars, but the international exchange of views, the international circulation of knowledge and the high level of scientific dialogue is still missing.

Therefore, a small group of us, Professor Robert Siekmann, Professor Klaus Vieweg, Professor James Nafziger and myself decided to found The Hague International Sports Law Academy. You are aware that The Hague is supposed to



be the legal capital of the world and that is the reason why we think that our Academy belongs there, especially also because the famous Asser Institute is located in The Hague. We are planning to organize the activities and legal events all over the world. With great pleasure I am announcing that this meeting in Jakarta is our first activity and we are going to continue this way.

Let me, at the end, tell you that our wish to found the academy has never been a reflection of an ambition to form and run yet another parallel institution and that we do not consider ourselves to be competing with other present organizations in the field of legal science. Our aim is not competition and not quantity; on the contrary, we would like to direct our efforts to the quality. With this in mind, I wish the Dean Professor Bintan R. Saragih and all the participants fruitful deliberations and challenging exchange of views.

## 2. The Declaration on Lex Sportiva



# Konferensi Internasional Lex Sportiva (Hukum Olahraga)

### DECLARATION ON LEX SPORTIVA

Jakarta, Indonesia  
September 22, 2010

*Meeting* in Jakarta, the capital of Indonesia, to confer on the fertile concept of *Lex Sportiva* in its many manifestations;

*Recognizing* the public and private dimensions of *Lex Sportiva* as well as the significance of both national and international perspectives in defining this concept;

*Expressing* gratitude for the initiative by the Universitas Pelita Harapan and the Indonesia Lex Sportiva Instituta in Jakarta, as supported by the Indonesia Ministry of Youth and Sport, the National Olympic Committee of Indonesia, and the Indonesian League of football association;

*Noting* the official establishment today in Jakarta of the Hague International Sports Law Academy;

*Emphasizing* the crucial role of the rule of law and justice to govern the organization of sports and sports activity on the playing field as a cornerstone of civil society;

*Commending* the participants in this Conference for the variety and depth of their insights and outlooks concerning the concept of *Lex Sportiva*;

*Concluding* with the expectation of further international collaboration in the study and progressive development of international sports law in its broadest sense:

We, the undersigned, declare that the success of this initiative today provides a solid foundation for our shared commitment as lawyers and legal scholars from around the world to work together in the interest of the global sports community and public.

Didukung oleh:



KONI



KEMENEGPORA



INTERNATIONAL SPORTS LAW CENTRE  
T.M.C. ASSER INSTITUUT



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# Abbreviations

AAA	American Arbitration Association
AALS	The Association of American Law Schools
ADA	Americans with Disabilities Act
AIBA	International Boxing Association
AIGCP	Association Internationale des Groupes Cyclistes Professionnels
AIWF	Winter Olympic International Federations
ALR	American Law Reports
Am. Bus. L.J.	American Business Law Journal
ANOC	National Olympic Committees
ANZSLA	Australian and New Zealand Sports Law Association
AOC	Australian Olympic Committee
ASOIF	Summer Olympic International Federations
ATP	Association of Tennis Professionals
BALCO	Bay Area Laboratory Co-operative
BCCA	British Cyclo-Cross Association
BGE	Swiss Federal Court
BITs	Bilateral Investment Treaties
C.M.L.R.	Common Market Law Report
Cal. Rptr.	California Reporter (West)
CAS	Court of Arbitration for Sport
CBA	Collective bargaining agreement
CIO	International Olympic Committee
CJEU	Court of Justice of the European Union
CLR	Commonwealth Law Reports (Australian's High Court law reporter)
CONI	Italian Olympic Committee
CPA	Cyclistes Professionnels Associés
DRC	FIFA Dispute Resolution Chamber
E.D. Pa.	District Court Eastern District of Pennsylvania
ECJ	European Court of Justice

ECR	European Court Reports
EFFC	European Federation of Professional Football Clubs
EPCT	International Professional Cycling Teams
EPFL	European Professional Football Leagues
EU	European Union
FAT	FIBA Arbitral Tribunal
FEI	International Federation for Equestrian sport
FFTri	Fédération Française de Triathlon
FIBA	International Basketball Federation
FIBT	International Bobsleigh and Tobogganing Federation
FIFA	International Federation of Association Football
FIFPro	Fédération Internationale des Associations de Footballeurs Professionnels
FIG	International Gymnastics Federation
FILA	Fédération Internationale de Lutttes Associées
FIM	Fédération Internationale de Motocy clisme
FINA	International Swimming Federation
GSLTR	Global Sports Law and Taxation Reports
I.S.L.R.	International Sports Law Review
IAAF	International Association of Athletics Federations
IADA	International Anti-Doping Arrangement
IBA	International Baseball Association
ICANN	Internet Corporation for Assigned Names and Numbers
ICAS	International Council of Arbitration for Sport
ICSID	International Centre for the Settlement of the Investment Disputes
IF	International Federation
IILJ	Institute for International Law and Justice
IJF	International Judo Federation
IOC	International Olympic Committee
ISLJ	The International Sports Law Journal
ITU	International Triathlon Union
IWF	International Wrestling Federation
Law & Soc. Rev.	Law & Society Review: Journal Information
LGDJ	La Guilde Des Joueurs (The Guild of Players)
Marq. Sports L.J.	Marquette Sports Law Review
MHSAA	Michigan High School Athletic Association
MLB	Major League Baseball
NCAA	National Collegiate Athletic Association
NFL	National Football League
NOC	National Olympic Committee
NWBA	National Wheelchair Basketball Association
OG	Olympic Games
PGA	Professional Golfers' Association
PIL	Swiss Federal Code on Private International Law

PIL Act	Swiss Private International Law Act
S. Tex. L. Rev.	South Texas Law Review
S.D.N.Y.	District Court for the Southern District of New York
SLOC	Salt Lake Olympic Committee
SOCOG	Sydney Organising Committee for the Olympic Games
T.L.R.	Texas Law Review
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UCI	Union Cycliste Internationale (International Cycling Union)
UDRP	Uniform Domain Name Dispute Resolution Policy
UEFA	Union des Associations Européennes de Football
UIT	Union Internationale de Tir
UNESCO	United Nations Educational, Scientific, and Cultural Organization
UPH	Pelita Harapan Universitas
USATF	USA Track and Field
USOC	United States Olympic Committee
Va. J. Sports & L.	Virginia Journal of Sports and the Law
Val. U. L. Rev.	Valparaiso University Law Review
W. D. Mich.	District Court for the Western District of Michigan
W.L.R.	Weekly Law Reports (UK)
WADA	World Anti-Doping Agency
WADC	World Anti-Doping Code
WTO	World Trade Organization