

Berichte aus der Rechtswissenschaft

**Robert C. R. Siekmann  
Richard Parrish  
Vanja Smokvina  
Nada Bodiroga-Vukobrat  
Gerald G. Sander (eds.)**

## **Social Dialogue in Professional Sports**

On some Topics about European Sports Law

*Emphasis on “old and new” EU Member States*



With the support of the Lifelong Learning Programme of the European Union.

Shaker Verlag  
Aachen 2013

**Bibliographic information published by the Deutsche Nationalbibliothek**

The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliografie; detailed bibliographic data are available in the Internet at <http://dnb.d-nb.de>.

Language disclaimer:  
Language-check was left to the authors alone.

Copyright Shaker Verlag 2013

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior permission of the publishers.

Printed in Germany.

ISBN 978-3-8440-2099-1  
ISSN 0945-098X

Shaker Verlag GmbH • P.O. BOX 101818 • D-52018 Aachen  
Phone: 0049/2407/9596-0 • Telefax: 0049/2407/9596-9  
Internet: [www.shaker.de](http://www.shaker.de) • e-mail: [info@shaker.de](mailto:info@shaker.de)

## Notes on Contributors and Editors

**Robert C. R. Siekmann** is Professor of International and European Sports Law at Erasmus University Rotterdam, and former Director of the ASSER International Sports Law Centre in The Hague, The Netherlands. His 2011 inaugural lecture concerned “What is Sports Law? A Reassessment of Content and Terminology”. He is the author of “Introduction to International and European Sports Law: Capita Selecta” (T.M.C. Asser Presss, 2012).

**Richard Parrish** is the Director of the Centre for Sports Law Research at Edge Hill University. His research explores the interface between sport and European Union law. He is author of two monographs and two edited collections and he has co-authored sports law reports for the European Commission and the European Parliament. Professor Parrish is a member of the European Commission’s Group of Independent Sports Experts (2010) and acts as an expert adviser for the European Commission’s TAIEX programme. He is an editorial board member on the International Sports Law Journal, the International Journal of Sports Policy and Politics, Sport and the Law Journal and the European Sports Law and Policy Bulletin.

**Gianluca Monte** is Policy Officer within the European Commission’s Sport Unit. He deals with issues related to governance in sport, sport & EU antitrust law, free movement of sportspeople, sports agents, social dialogue in sport, match-fixing, licensing systems for clubs, media and IPR. Before joining the European Commission in April 2008, Gianluca worked for six years as a consultant for KEA, a Brussels-based company specialised in creative industries, media and copyright law.

**Samuli Miettinen** is co-author of *The Sporting Exception in European Union Law* (Asser, 2008). He has contributed to Commission studies on nationality discrimination in individual sports and social dialogue in sport as well as the EP report on Sport after the Lisbon Treaty (2010). His most recent book is *Criminal Law and Policy in the European Union* (Routledge, 2012). He is currently completing his doctoral thesis in EU criminal law at the Faculty of Law, University of Helsinki.

**Roberto Branco Martins**, born 1977, is a lawyer and PhD student at Edge Hill University. He Lectures labour law and sport and International sports law at the University of Amsterdam. Roberto has worked on several EC commissioned legal research Projects in international football. He is the co Founder and general manager of the EUROPEAN football agents associations and and is a practicing lawyer at the Amsterdam bar focusing solely on sportslaw issue.

**Siniša Petrović**, born 1966 in Zagreb. Professor of law at the University of Zagreb Faculty of Law. Graduated and Ph.D. degree at the University of Zagreb. Author of numerous papers in the field of commercial law, company law, competition law and sports law. Vice-dean of the Faculty of Law 1999-2001. Member and vice-president of the Croatian Competition Council 1998-2003. Member of the delegation of the Republic of Croatia during the Proximity Peace Talks on Bosnia and Herzegovina, Dayton, Ohio, 1995. Arbitrator in several international commercial disputes. Member of the negotiating team for negotiations on accession of the Republic of Croatia to the EU. Currently special advisor to the Croatian Prime Minister.

**Marina Brollo** is Professor of Labour Law at the University of Udine, Italy and Director of the Law Department. Past Dean of the Faculty of Economics and past member of the Executive Committee of the Italian Society of Labour Law and Social Security, she is President of the Equal Opportunities and Anti Discrimination Committee at the University of Udine and Member of the Internal Supervisory Body of the Hospital of Udine. Since 2005 Prof. Brollo directs the Course of studies on “Women, Politics and Institution” (in cooperazione with Ministry for Equal Opportunities and Autonomous Region Friuli Venezia Giulia). She is author of two books on “Part time Work” and “Workers’ duties” and numerous papers on labour and social law, editor of the publication “Women and Society” (Forum, Udine). At present her fields of interests are women rights on labour market and equal opportunities law.

**Anna Zilli**, born 1978, is a Senior Researcher / Research Assistant of Labour Law at and Adjunct Professor of Labour law and Labour Market at the Faculty of Economics of the University of Udine, Italy. Graduated in Law in Trieste in 2002 (Magna cum Laude), Master (with scholarship) at Ipsoa School in 2003, Ph.D. (with scholarship) in Labour law at Padua University in 2007. She was post doc fellow at Karl Franzen University in Graz (2009) and at the University

of Udine (2009-2012) until she was appointed at her present position. Author of numerous papers and book chapters on labour law and welfare, at present she is publishing her first book on trade union law in public sector.

**Nada Bodiroga-Vukobrat** is Jean Monnet Professor of European Public Law at the University of Rijeka, Faculty of Law in Rijeka, Croatia and Head of Jean Monnet Inter-University centre of Excellence in Opatija, Croatia. She specialized in European Law and European Social Law at the University of Mainz, Max-Planck-Institute for foreign and international Social Law in Munich. In 1998/99, she was a research fellow at the European University Institute, Florence. She is member of UACES, European Academy of Science and Arts, Salzburg, Austria and Südeuropa-Gesellschaft, Munich.

**Hana Horak** is an associate professor at the Department of Law, Faculty of Economics, University of Zagreb. She finished graduate studies and postgraduate studies in Commercial Law in 1996 at the Faculty of Law, University of Zagreb. In 2001 she finished her PhD with dissertation: "Distribution contracts", at the Faculty of Law in Split. For the last seven years she has been actively researching in the area of corporate governance. Actively acting as a member of Croatian association of the members of supervisory and management boards (HUCNO) where she is president of the Court of honour and member of European confederation of directors (EcoDa) and academic member of ECGI.

**Tone Jagodič** is one of few lawyers in Slovenia in the field of sports law. He began his career at a Court in Ljubljana and was in the period from 1985-1992 a judge at Commercial court of claims. He finished Masters Degree "Development of legal responsibility for financial obligations of legal entities" at Faculty of Law, Ljubljana in 1990. In 1992 he was appointed as Secretary General of Olympic Committee of Slovenia and was then reappointed 5 times; his current mandate expires in 2015. At the beginning of his work in Olympic family he worked very intensively on marketing programme to attract first sponsors and other business partners. In 2003 he started with his doctoral dissertation "Legal characteristics of sponsorship contracts in Olympic movement" at Faculty of Law in Ljubljana, which he finished in 2007. He is also president of Slovenian Sports Lawyers Association and was more than 10 years President of Disciplinary Court of Slovenian Chambers of Commerce.

**Biserka Vrbek** is Assistant to the Secretary General for Legal and Joint Services of the Croatian Olympic Committee. She graduated Law at the University of Zagreb in 1983, and had a remarkable sport career in Shooting with gold medals and distinctions in World and European Shooting Championships and distinctions in Olympic Games. Among numerous memberships she is also a Member of the Executive Committee of the European Fair Play Movement, Member of the Presidium of the European Shooting Confederation, Member of the Council for the Development of Civil Society / Office for the Cooperation with the NOG's of the Government of the Republic of Croatia and of course Member of the Croatian Fair Play Committee.

**Vanja Smokvina**, born 1983, is a Senior Researcher at the Department of Labour and Social Law, Faculty of Law, University of Rijeka, Croatia. The theme of his PhD at the European Faculty of Law Nova Gorica in Slovenia was "*The free movement of sportspeople and the specificity of their labour law relationship in the EU*". Fields of his scientific interests are: Labour law, European law and Sports law (E-mail: vanja.smokvina@gmail.com).

**Gerald G. Sander** is Professor of German Constitutional and Administrative Law, European Law and Public International Law at the University of Public Administration and Finance Ludwigsburg (University of Applied Sciences) and Managing Director of the Institute for Applied Research Ludwigsburg. He is also Visiting Professor at the University of Westbohemia in Pilsen (Czech Republic) and gives lectures at Eberhard Karls University Tübingen and German University of Administrative Sciences Speyer.

## Abbreviations

Art.	Article
BOA	British Olympic Association
CAS	Court of Arbitration for Sport
CONI	Italian National Olympic Committee (It. <i>Comitato Olimpico Nazionale Italiano</i> )
CSAC	Croatian Sports Arbitration Council
DRC	FIFA's Dispute Resolution Chamber
ECA	European Club Association
ECJ	European Court of Justice
EP	European Parliament
EPFL	Association of European Professional Football Leagues
EU	European Union
FA	Football Association
FIFA	Fédération Internationale de Football Association
FIFPro	Fédération Internationale des Associations de Footballeurs Professionnels
IF	International Federations
IFAB	International Football Association Board
ILO	International Labour Organisation
IOC	International Olympic Committee
MS	Member States
NGO	Non-governmental organisation
NOC	National Olympic Committee
OG	Olympic Games
para.	paragraph
SME	Small and medium enterprises
TFEU	Treaty on the Functioning of the European Union
UEFA	Union of European Football Associations
UK	United Kingdom
UN	United Nations
WADA	World Anti-Doping Agency





## Foreword and introduction

It has become a tradition of the Faculty of Law of the University of Rijeka and Jean Monnet Inter-university Centre of Excellence Opatija, University of Rijeka, with the support of *Hanns Seidel Stiftung*, to co-organize scientific conferences tackling important questions in regard to the social and legal development of the Republic of Croatia as well as other transition countries in the context of their (prospective) accession to the EU. In this light specific legal systems and challenges faced by the “old” Member States are also examined. The latest conference convened on May 25<sup>th</sup>, 2012, focused on the social dialogue in sports. The Conference was held under the auspices of the Jean Monnet Chair financed by the European Commission LLL programme. This volume includes contributions that have been presented and discussed at the Conference.

The lively debate on sports law as a new branch of law is gaining attention not only in the EU, but also worldwide. Croatia as a hopefully new EU Member State should also take into consideration the existence of sports law. The Conference titled *Towards a Social Dialogue in Croatian Sports* intended to provide the academic world, the sports sector, sports stakeholders and laymen with an introduction into sports law and the problems of professional sports sector of today, mainly the legal status of professional sportspeople. Following a successfully organised conference we hope that this book provides insights into the current state of affairs and the changes that need to be undertaken in this field.

Co-editors Prof. Dr. Nada Bodiřoga-Vukobrat and Dr. Vanja Smokvina express their gratitude to Prof. Dr. Robert C. R. Siekmann for his valuable assistance and efforts put into “making this Conference possible” and for his outstanding academic contribution. Without his commitment the Conference would have never been organised. In addition, great thanks go to Prof. Dr. Richard Parrish for his immense contribution in bringing the Conference to the highest level of academic presentation.

Special acknowledgement goes to all participants, whose participation in the Conference contributed to its success. Thanks to: Prof. Dr. Siniša Petrović, Prof. Dr. Hana Horak, Prof. Dr. Marina Brollo, Mr. Gianluca Monte, Dr. Roberto Branco Martins, Dr. Samuli Miettinen, Dr. Anna Zilli, Dr. Rainer Koch, Dr. Tone Jagodić, Ms. Biserka Vrbek, Mr. Luka Markić, Mr. Robert Komen, Mr. Dejan Stefanović, Mr. Mario Jurić and Mr. Dario Šimić.

The first part of the book comprises papers on Sports Law and EU Sports Law (soccer rules, the Lisbon Treaty and Sport, EU internal market and sport, Social Dialogue, Home-grown players rules). The second part addresses comparative labour and sports law issues in terms of Croatia, Italy and Slovenia. Fi-

nally, the last part deals with pressing issues of professional sports persons (footballers) and professional sport clubs.

The intention of the conference organizers was to put this complex and important area of European Sport Law into a scientific perspective, while considering the regulations and practice of the European Union, Member States and the Republic of Croatia. Rather than emphasizing the lack of regulation, it is the state of awareness that needs to be altered in line with unprecedented social complexities that continue to emerge in modern Europe.

We owe a debt of gratitude to *Hanns Seidel Stiftung* that supported the Conference and the present volume.

We are sincerely grateful that the importance of this legal phenomenon has been recognized by offering continuous support to our research and to publishing these Conference proceedings.

Furthermore, we would like to thank all Conference partners for their financial and other support: the City of Rijeka and its Mayor M.Sc. Vojko Obersnel; the Ministry of Education, Science and Sports of the Republic of Croatia and its Minister Asst. Prof. Željko Jovanović; Hanns Seidel Foundation in Croatia and its Head Ms. Aleksandra Markić Boban; European Commission – DG Education and Sport, Sports Unit; HAGUE – International Sports Law Academy and ASSER – International Sports Law Centre; Croatian Olympic Committee and its President Dr. Zlatko Mateša; Primorsko-Goranska County and the Primorsko-Goranska County Sports Community; the Foundation of the University of Rijeka; ECS d.o.o. Zagreb; HARTA d.o.o. Rijeka; Infosistem d.o.o. Zagreb; SPAN d.o.o. Zagreb; I4NEXT d.o.o. Zagreb; NETCom d.o.o. Rijeka; Grand Hotel Adriatic Opatija and Protect d.o.o. Rijeka.

We hope that in view of the future development of Croatian sports and science this book marks only the beginning of a new series.

July 2013

The Editors

# Contents

Notes on Contributors	5
Abbreviations	9
Foreword and introduction	11
<b>SPORT, LAW AND SOCCER RULES</b> <i>Robert C. R. Siekmann</i>	19
1 Introduction	19
2 Does Such a Thing as “Sports Law” Exist?	20
3 What belongs to Sports Law?	22
3.1 What is sport?	22
3.2 What is law?	23
4 Laws of the Game of association football	25
4.1 Background	25
4.2 Law 12: Fouls and Misconduct	27
4.3 The Esteban case	28
5 Conclusion	31
<b>ARTICLE 165 TFEU</b> <i>Richard Parrish</i>	33
1 Background	33
2 The new Article 165 competence	33
2.1 Application of EU free movement and competition laws	34
2.2 The status and coherence of EU sports policy	35
3 Conclusions	37
<b>TOWARDS AN EU SOCIAL DIALOGUE IN SPORT</b>	
<i>Gianluca Monte</i>	41
1 Social dialogue at EU level	41
1.1 The sectoral social dialogue committees	42
1.2 Social dialogue as a source of EU legislation	43
2 European social dialogue and sport	45
2.1 The European sectoral social dialogue committee for professional football	47
2.2 A European sectoral social dialogue committee for the whole sport sector?	49
<b>IS THERE EUROPEAN SPORTS LAW?</b> <i>Samuli Miettinen</i>	55
1 What is ‘European sports law’?	55
2 ‘Sports law’ v. ‘sport and the law’	56
3 Which Europe?	57

4	What is sports law?	60
5	Is there EU sports law?	61
5.1	Sport and the EU Treaties: The ‘sporting exception’ case law	62
5.2	Article 165 of the Treaty on the Functioning of the European Union	64
5.3	Article 165 TFEU and the Court of Justice: Bernard and Murphy, and beyond	66
6	Sport in EU law: Four case studies	67
7	EU sports law applied by Member States?	70
8	Conclusion: Sketching the boundaries of EU sports law	71

## FUNDAMENTAL ECONOMIC FREEDOMS OF THE EUROPEAN UNION AND SPORTS *Nada Bodiroga-Vukobrat, Hana Horak, Vanja Smokvina*

1	Introduction	73
2	EU internal market	76
3	Economic freedoms within the EU internal market	81
4	Sports and the EU internal market	83
4.1	Sports and sports law in general	83
4.2	Sources of “EU soft law” as sources of European sports law	86
5	A brief overview of the ECJ case law and the EC decisions	100
6	Conclusion	123

## PROFESSIONAL FOOTBALL ON THE LEVEL OF THE EUROPEAN UNION: THIRD PARTY RIGHTS INVESTING IN TALENT OR OWNERSHIP OF PLAYERS?

<i>Roberto Branco Martins</i>	125
1 Origins of third party ownership	125
2 Ownership, federative rights, economic rights	126
3 The “influence” issue	127
4 Third party ownership in The Netherlands	129
5 Agent fees and sell-on clauses	129
6 Investment funds at football clubs	131
7 UEFA: ban on third party ownership?	132
8 Social Dialogue in the EU Treaty	135
9 Conclusion	138

PROFESSIONAL SPORTS CLUBS AND THEIR LEGAL FORM, AUTONOMY AND STATE INTERVENTION <i>Siniša Petrović</i>	141
1 Introduction	141
2 The notion of sports activity	142
3 Sports activity of participation in sport competitions and the legal form of activities performance	143
3.1 Sports association for competition	145
3.2 Sports joint-stock company	147
4 Professional and amateur sports clubs	150
5 Autonomy and regulation in sport – instead of conclusion	156
 SPORTS WORK IN ITALY <i>Marina Brollo, Anna Zilli</i>	 159
1 The sports work into Italian law between specialties and globalism	159
2 The dilemma: the sports ‘worker’ or self-employed?	161
3 1981: the ‘special’ subordination of the professional athlete under the Law	162
4 The two attempt to ‘escape’ from the subordination: the proposed reform and the use of quasi –subordination	166
5 Thirty years later, the sports apprentice?	169
6 A new European challenge: the promotion of equal opportunities in sport	171
 LABOUR LEGAL STATUS OF ATHLETES AND TRAINERS IN SLOVENIA <i>Tone Jagodič</i>	 175
1 Introduction	175
2 Full-Time Employment	176
2.1 Employment for an indefinite time	176
2.2 Employment for a definite time	176
3 Employment Opportunities provided by the Sports Law	178
3.1 Employment of a Professional Athlete	178
3.2 The Rights of a Top Athlete	179
3.3 Employment of Technical Experts	180
4 Employment of athletes and trainers by the State	182
4.1 Employment of trainers by the Affiliated National Sports Federations	182
4.2 Student Work	182
4.3 Part Time Employment or Contract for Work – Contract for Services	183
5 Conclusion	183

THE ROLE OF THE CROATIAN OLYMPIC COMMITTEE IN CREATING SPORTS LAW <i>Biserka Vrbek</i>	185
1 Introduction	185
2 The national Olympic committee – the Croatian Olympic Committee	186
2.1 The activities of the Croatian Olympic Committee	186
2.2 The Olympic Charter – a source of law for national Olympic committees, a source of sports law	188
3 How is the protection of Olympic property implemented in Croatia?	191
4 The NOC of Croatia and the Court of Arbitration for Sport	196
4.1 Sport disputes deliberation at international level	196
4.2 The Croatian Court of Arbitration for Sport (CAS Croatia) and the Croatian Sports Arbitration Council (CSAC)	197
5 Regulations on the categorisation of athletes	199
6 The NOC of Croatia as a creator of sports law in the area of sports competitions	202
7 The NOC of Croatia: right and competences related to doping in sports	204
8 The NOC of Croatia and the Nomenclature of Sports and Branches of Sports	205
9 The Sports Act and other regulations that regulate the area of sports– open issues in relation to the specificities of sports	206
10 The development of sports law and the position of the Olympic and Sports Movement concerning the specific nature and autonomy of sports	207
11 Conclusion	208
IS THERE A NEED FOR A CHANGE IN THE LEGAL (LABOUR) STATUS OF PROFESSIONAL SPORTSPEOPLE IN CROATIA? <i>Vanja Smokvina</i>	209
1 Introduction	209
2 Sports contracts and the introduction to legal (labour law) status in professional team sports	211
3 The EU Institutions’ point of view of the professional sportspeople status	216

4	Sports governance in Croatia	220
4.1	The legal (labour) status of professional sportspeople in Croatia	221
4.2	Problems from a labour and social law point of view	223
5	The (labour) legal status in professional football - FIFPro Black Book – Eastern Europe	228
6	Conclusion	229