

Sport law and the Court of Arbitration for Sport

Martin Schimke, partner, Germany

Jonathan Taylor, partner, UK

MARTIN SCHIMKE: The starting point is [sports] turned into a business (that is to say like banking, financing, IP, etcetera). Players of professional team sports are deemed as regular employees. Regular clubs had turned to stock companies, and needless to say that, you know, there is a need for contracts. And big business, big money is involved and so that's more or less the reason why we are talking about a new area in the framework of which we need legal advice.

JONATHAN TAYLOR: Isn't it a very highly regulated sector, not by the government so much, but by governing body of sports?

MARTIN SCHIMKE: Well, exactly. This derives from the fact that we are talking about the so-called self-regulatory power of association, which derives mainly from constitutional law, in other words, every association is entitled to set up their own rules, and that's why this is a big challenge. We are talking about the tension between this self-regulatory power of association to set up their own rules, and on the other hand regulatory law, fundamental rights.

JONATHAN TAYLOR: Some of our regulators would like to say no, no, we're immune from the law, the law doesn't apply to us, we're special. Is that right or not?

MARTIN SCHIMKE: To a certain extent. For instance, take these vicarious liability issues of hooligans. There is a rule which says, you know, the

clubs are responsible for the improper contact of supporters, regardless if they are at fault or not. This is a very debatable thing. Now athletes as well as other parties are trying to challenge this kind of rule and saying it's contrary to fundamental rights, that you have to prove fault, in any case, in order to impose a sanction on somebody.

JONATHAN TAYLOR: Already you've talked about constitutional law, criminal law, corporate law, commercial law, public law and administrative law, is there a sports' law or is it just every branch of law there is?

MARTIN SCHIMKE: There is a business with specific criteria, characteristics, but it's not a field as such. It's definitely as you indicated it - a cross sectional matter.

JONATHAN TAYLOR: And obviously Bird & Bird organises itself on sectors, and it does that to be client facing and to be organised the way the world organises itself, but sport really is almost a self-defining sector. One of the unique things about you and your background is that you're a member of the Court of Arbitration for Sport, and that's effectively the Supreme Court for international sport. Can you give us an idea even of just the subject matter, the range of things you have to deal with as a CAS arbitrator?

MARTIN SCHIMKE: Well, it goes from under-water

hockey - I was involved in one of these match fixing cases. Doping, for instance, transfer issues, problems of sponsoring agreement, regular contractual issues...

JONATHAN TAYLOR: So the spread of work is..

MARTIN SCHIMKE: ...As well as eligibility issues.

JONATHAN TAYLOR: Right. There's such a spread of work you said in sports' law, and it seems like all of those cases come up to the CAS.

MARTIN SCHIMKE: It goes back to Samaranch, he came upon the idea to say hey, wait, there is a need of harmonised rules in order to award, you know, different rules which fosters, you know, the fair competition. But we need also a Central Court of Arbitration for Sport which uses consistent case law.

JONATHAN TAYLOR: It's been confirmed by the Swiss courts that that's exactly what it is, and it has that power and that respect in the eyes of the law.

MARTIN SCHIMKE: It was really exciting to see how efficient dispute resolution within sport works in favour to all stakeholders. It's competitive, you know, both parties, three parties are fighting against each other. For instance, eligibility issues - somebody has been thrown out before his crucial race due to a doping rumour or something like that, he's able to take a lawyer with him the night, and then we are able, with all the facilities which were on the spot, to set up a hearing with three hours and to issue a judgement. I think the chemistry, more or less, of the sport family to resolve disputes quick and efficient is the key for such efficiency.

JONATHAN TAYLOR: One of the things that CAS does well is to develop the - what they called the Lex Sportiva, so principles from which apply in a common law or in a civil law system globally, because the rules of sport have to apply globally, so the legal principles do. Certainly it seems to be, let's say, a gradual process of people finding out these issues and

resolving them as they go along.

MARTIN SCHIMKE: I think judgements of the UK, as I recall, and also in the US you see sometimes the key sentence "sport is different", sport is different in many terms and in many regards and so that's probably the reason why we are - we can talk more and more about a kind of Lex Sportiva. It's sometimes, how do you call it, hard core legal issues, you know, the tension between, for instance, self-regulatory power deriving from constitutional law on the one hand and, for sure, vocational freedom, fundamental personal rights, free movement of capitals and all these things. This is really, I think, no Lex Sportiva. Sometimes I said I think you need the smell of a locker room in order to resolve a case in front of CAS, but on the other hand it comes down to anti-trust law as well, because we are talking about monopolistic structure due to the pyramid. So, you know, the only way to get access to acknowledged competition is to sign these rules, to be subject to these rules, and that's why we are talking about anti-trust law. That's one of the key issues in front of the Sport Arbitration panels.

JONATHAN TAYLOR: And that, I suppose to take us back full circle, you need these lawyers who will understand these issues of anti-trust, commercial law, corporate law and so on, but be able to understand - sometimes they call it the specificities of sport.

MARTIN SCHIMKE: Sometimes, I must admit, I'm not able to resolve cases in front of CAS without a specialist from a special area - anti-trust or IP also or labour law, well, I'm a certified specialist in labour law. But that's exactly - that's exactly I think the mission to be seen and to be accomplished or to be pursued.

JONATHAN TAYLOR: Is there something that the CAS brings for the people who have their disputes and need to bring them to the CAS? Is there something particular that CAS offers?

MARTIN SCHIMKE: It's quick and not that expensive. That is to say it's to get a quick and final judgement. We, according to the rules under certain circumstances have to, as CAS arbitrators, have to issue an award with three months or four months, depending on the case, et cetera. So there are a lot of tools which gives the parties who are looking for a judgement decision, there is a platform to get a quick and competent judgement. That's more or less the key and the reason why it is well accepted.

JONATHAN TAYLOR: Quick and authoritative resolution.

MARTIN SCHIMKE: Exactly.

END

This document is a transcript of an edited video recorded in October 2013

twobirds.com

Abu Dhabi & Beijing & Bratislava & Brussels & Budapest & Copenhagen & Dubai & Düsseldorf & Frankfurt & The Hague & Hamburg & Helsinki & Hong Kong & London & Lyon & Madrid & Milan & Munich & Paris & Prague & Rome & Shanghai & Singapore & Skanderborg & Stockholm & Warsaw

Bird & Bird is an international legal practice comprising Bird & Bird LLP and its affiliated and associated businesses. Bird & Bird LLP is a limited liability partnership, registered in England and Wales with registered number OC340318 and is authorised and regulated by the Solicitors Regulation Authority. Its registered office and principal place of business is at 15 Fetter Lane, London EC4A 1JP. A list of members of Bird & Bird LLP and of any non-members who are designated as partners, and of their respective professional qualifications, is open to inspection at that address.