

THE SPORTS LAW REVIEW

Second Edition

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EDITOR'S PREFACE

This second edition of *The Sports Law Review* is intended as a practical, business-focused legal guide for all relevant stakeholder groups in the area of sports, including sports business entities, sports federations, sports clubs and athletes. Its goal is to provide an analysis of recent developments and their effects on the sports law sector in 20 jurisdictions. It will serve as a guidebook for practitioners as to how a selected range of legal topics is dealt with under various national laws. The guidance given herein will, of course, not substitute for any particular local law advice that a party may have to seek in connection with sports-related operations and activities. It puts specific emphasis on the most significant developments and decisions of the past year in the relevant jurisdictions that may be of interest for an international audience.

The *Sports Law Review* recognises that sports law is not a single legal topic, but rather a field of law that is related to a wide variety of legal areas, such as contract, corporate, intellectual property, civil procedure, arbitration and criminal law. In addition, it covers the local legal frameworks that allows sports federations and sports governing bodies to set-up their own internal statutes and regulations as well as to enforce these regulations in relation to their members and other affiliated persons. While the statutory laws of a particular jurisdiction apply, as a rule, only within the borders of that jurisdiction, such statutes and regulations, if enacted by international sports governing bodies, such as FIFA, UEFA, FIS, IIHF, IAAF and WADA have a worldwide reach. Sports lawyers who intend to act internationally or globally must, therefore, be familiar with these international private norms if and to the extent that they intend to advise federations, clubs and athletes that are affiliated with such sports governing bodies. In addition, they should also be familiar with relevant practice of the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland, as far as it acts as the supreme legal body in sport-related disputes. Likewise, these practitioners should have at least a basic understanding of the Swiss rules on domestic and international arbitration as Swiss law is the *lex arbitri* in CAS arbitration.

While sports law has an important international dimension, local laws remain relevant in respect of all matters not covered by the statutes and regulations of the sports governing bodies, as well as in respect of local mandatory provisions that may prevail over or invalidate certain provisions of regulations enacted by sports governing bodies.

Each chapter of this second edition will start by discussing the legal framework of the relevant jurisdiction permitting sports organisations, such as sports clubs and sports governing bodies (e.g., national and international sports federations), to establish themselves and determine their organisational structure, as well as their disciplinary and other internal proceedings. The section detailing the competence and organisation of sports governing bodies will explain the degree of autonomy that sports governing bodies enjoy in the jurisdiction, particularly in terms of organisational freedoms and the right to establish an internal judiciary system to regulate a particular sport in the relevant country. The purpose of the dispute resolution system section is to outline the judiciary system for sports matters in general, including those that have been dealt with at first instance by sports governing bodies. An overview of the most relevant issues in the context of the organisation of a sports event is provided in the next section and, subsequent to that, a discussion on the commercialisation of such events and sports rights will cover the kinds of event- or sports-related rights that can be exploited, including rights relating to sponsorship, broadcasting and merchandising. This section will further analyse ownership of the relevant rights and how these rights can be transferred.

Our authors then provide sections detailing the relationships between professional sports and labour law, antitrust law and taxation in their own countries. The section devoted to specific sports issues will discuss certain acts that may qualify not only as breaches of the rules and regulations of the sports governing bodies, but also as criminal offences under local law, such as doping, betting and match-fixing.

In the final sections of each chapter the authors provide a review of the year, outlining recent decisions of courts or arbitral tribunals in their respective jurisdictions that are of interest and relevance to practitioners and sports organisations in an international context, before they summarise their conclusions and the outlook for the coming period.

This second edition of *The Sports Law Review* covers 20 jurisdictions. Each chapter has been provided by renowned sports law practitioners in the relevant jurisdiction and as editor of this publication I would like to express my greatest respect for the skilful contributions of my esteemed colleagues. I trust also that each reader will find the work of these authors informative and will avail themselves at every opportunity of the valuable insights contained in these chapters.

András Gurovits

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Chapter 10

NETHERLANDS

*Kees Jan Kuilwijk*¹

I ORGANISATION OF SPORTS CLUBS AND SPORTS GOVERNING BODIES

i Organisational form

In sports, an important role is played by sport associations. Statutory provisions regulating associations can be found in Article 2:1 to 2:52 of the Dutch Civil Code. These provisions are mandatory law and therefore cannot be waived, unless the law specifically provides for exceptions.

The two central bodies of an association are the board and the general assembly; the latter must be regarded as the highest body of the association.²

The law with respect to associations is governed not only by statutory provisions, but also the statutes and the regulations of the association itself. Also unwritten law, reasonableness and fairness, and customs play a role in the law concerning associations. On the basis of Article 2:8 Civil Code, the members must conduct themselves, towards each other, and the association towards the members, in a way that is reasonable and fair.

Athletes faced with an adverse ruling by their association often fight an uphill battle. A successful appeal to the general standard of reasonableness and fairness is tricky because courts are generally reluctant to interfere in the decisions of associations. A judge will ask not if they would have made the same decision, but whether the board or the general assembly could have come to the decision in all fairness.

ii Corporate governance

Organised sports in the Netherlands adopted their own code of conduct, entitled the Good Governance in Sport Code, in 2005. The Code covers 13 recommendations, dealing with a range of topics, including:

1 Kees Jan Kuilwijk is counsel at AKD.

2 See Article 2:40 paragraph 1 Civil Code.

- a* transparency;
- b* procedures for nomination and appointment of board members;
- c* separation of executive, policymaking, supervisory and implementation tasks; and
- d* a clear definition of tasks, powers and responsibilities of management.

iii Corporate liability

Normal faults of directors and officers are usually the responsibility of the association. In the event of serious misconduct by directors and officers, personal liability may arise.

A director or officer of an association can be held personally liable by a third party on the basis of a tort committed by them.³ A director or officer who enters into debt on behalf of the association, knowing that the association will not be able to meet the obligations, is personally liable. Liability of the entire board will only arise if the unlawful act of each individual director or officer can be proven.

A director or officer can be held liable by the association if they do not properly fulfil their task or if they exceed their powers.⁴ Liability in principle entails that the board is collectively responsible for good governance. However, this is not the case when directors or officers cannot be reproached in relation to a serious incident. A stereotypical example of this would be where the treasurer steals association funds for his or her own personal gain.

If directors or officers can be reproached with regard to a serious breach of ethics or code of conduct, for example, for maintaining a slush fund used for 'under-the-table' payments to players, they may be held jointly and severally liable with respect to the association. Also the tax authorities can, in such a case, hold these directors or officers individually liable.

II THE DISPUTE RESOLUTION SYSTEM

A distinction must be made between private law and public law enforcement. Private law regulates the relationship between citizens, while public law regulates the relationship between the government and the citizens. Administrative law, criminal law and constitutional law together form public law.

In Article 254 Code of Civil Procedure, provision is made for urgent cases; they can be brought through summary proceedings.

Associations can also punish members who do not follow their rules. The most severe penalty is the expulsion of the member. A member may also be reprimanded, suspended or be ordered to pay a fine. A national sports federation can also discipline a member of an association. This happens more and more often in Dutch amateur football, for instance, because of the increasing number of instances of serious violence against referees.

i Access to courts

If a player or a coach does not receive his or her salary from the association to which he or she belongs, he or she will need to take civil court action and request the court to order the association to pay the salary.

3 See Article 6:162 Civil Code.

4 See Article 2:9 Civil Code.

Public law, particularly criminal law, can play a role in sport, for example, in the case of extreme fouls in football whereby opponents are severely injured and the tackle is classed as 'career threatening'.

The opportunity to obtain a rapid decision through summary proceedings is important in cases that require prompt action, for example, where a sports federation has not selected an athlete to participate in an important upcoming event and instead has selected another competitor.

In the run-up to the London Olympic Games, Epke Zonderland had been nominated to participate by the Dutch Gymnastics Association. Jeffrey Wammes, another well-known gymnast in the Netherlands, instigated summary proceedings against the decision, arguing that Zonderland had yet to demonstrate preservation of his good form. The interim relief judge agreed that there could be no question of a final nomination but only a conditional one.⁵ In the end, Zonderland was still selected to represent the Netherlands at the London Olympics, where he would win a gold medal on the high bar.

ii Sports arbitration

Arbitration plays an important role in sports. Most sports federations in the Netherlands have their own arbitration commission. Arbitration is a means to resolve disputes between the federation and an affiliated association; between an association and a member; or between two associations. The membership of a sports club and a sports federation usually implies that an individual member is bound by the rules of arbitration.

The decision of an arbitration commission may be re-examined by the civil courts. However, the review may only be carried out on a limited number of grounds, as stated in Article 1065 Code of Civil Procedure. Judges are generally very reluctant to annul an arbitration award. The reason for that reluctance is that litigation should not serve as an appeal.

In most cases, rulings of the arbitration committee of a sports federation can be appealed to the Court of Arbitration for Sport (CAS) in Lausanne. Judicial recourse to the Swiss Federal Tribunal is possible against CAS awards on a limited number of grounds, such as lack of jurisdiction, violation of elementary procedural rules or incompatibility with public policy.

III ORGANISATION OF SPORTS EVENTS

i Relationship between organiser and spectator

The relationship between organiser and spectator may result from both an agreement (providing access to an event after purchasing an admission ticket) as well as from statutory law. An important legislative provision is Article 6:162 of the Civil Code, which deals with tort. A tortious act is regarded a violation of someone else's right (entitlement) or an act or omission in violation of a duty imposed by law or of proper social conduct, according to unwritten law. This entails an organiser of an event having a duty of care.

Sport often places spectators at risk, to varying degrees; for example, a spectator at a football match may get hit in the head by a ball or a spectator at a rallycross event runs the

5 See Rb. Zutphen, 6 March 2012.

risk of being hit by a car travelling at high speed. Spectators are expected to be alert and not take unnecessary risks, such as crossing the road at a rallycross event. On the other hand, the duty of care of the organiser means that all possible precautions must be taken to avoid accidents.

ii Relationship between organiser and athletes or clubs

An organiser of an event and an athlete often enter into a contract that stipulates the conditions of participation. When the conditions are violated, any claim must not be based on tort but on breach of contract.

It is not uncommon for organisers to demand of participants that they sign a disclaimer in which the participant declares that the organiser shall not be liable for damages suffered by the participant.

It is not always possible, however, for an organiser to invoke a disclaimer in court. A judge may consider that there is such a severe form of negligence on the part of the organisation that invocation of the disclaimer must be deemed to be in violation of reasonableness and fairness.

iii Liability of the organiser

As mentioned above, in assessing whether the organiser has acted unlawfully in relation to spectators, and is liable for damages, the main question that must be answered is whether the organiser has acted in violation of its duty of care. For example, an organiser of sporting events – and this certainly applies to motor sports – will need to take precautionary measures to protect the public.

Participants may suffer damage as a result of a cancelled event. Participants may be able to hold the organiser liable for such a cancellation as is the organiser's duty to ensure that an event goes ahead unhindered. In the event that organisers fail in that duty of care they act, in principle, unlawfully with respect to the participants.

iv Liability of the athletes

Athletes can be held liable for injuries caused to, for example, spectators or opponents. For example, on 17 December 2004, Rachid Bouaouzan, a player at the football club Sparta, ended the football career of Niels Kokmeijer of Go Ahead Eagles with a dirty foul. Kokmeijer suffered a double leg fracture to the right leg and was forced to retire from professional football.

Sparta suspended Bouaouzan for the rest of the season, which was more than the 10-match ban the Royal Dutch Football Association (KNVB) had awarded him. Kokmeijer filed a complaint with the public prosecutor against Bouaouzan for aggravated assault. Bouaouzan was sentenced to a suspended prison sentence of six months.⁶ He was later ordered to pay damages of €100,000. The amount was paid to Kokmeijer by his club Sparta.

v Liability of spectators

The doctrine of tort also governs the liability of spectators. On 27 September 1989, Ajax played against Austria Wien in the UEFA Cup. During the match a supporter threw an iron

⁶ See Rb. Rotterdam, 10 August 2005.

rod on the pitch which hit the goalkeeper of Austria Wien. UEFA decided to ban Ajax from all European football for an entire season; Ajax also lost the match 3-0. The club decided to take civil action against the spectator and he was sentenced to payment of 500,000 guilders (€125,000) for committing a tort against Ajax. In a separate criminal procedure, the offender was sentenced to five months in prison.

vi Riot prevention

The law on measures to combat football hooliganism and serious nuisance (MBVEO) entered into force on 1 September 2010.⁷ With this law, both the mayor and the public prosecutor obtained additional powers of intervention in cases of football vandalism and serious nuisance. Although specifically written to combat football hooliganism, the law does not exclusively apply to football.

IV COMMERCIALISATION OF SPORTS EVENTS

i Types of and ownership in rights

The economic importance of sport is enormous. This not only pertains to the paid members of a professional sport, but also to all kinds of economic activities that are related to sport. Sport is a product to which companies like to connect their name. Since companies are willing to pay large sums in sponsorships, they are keen to be associated with certain sports, while top athletes can make money from endorsements through the use of their name and image, along with personal appearances. The actual value is determined by the popularity of the sport, the performance of the athlete, and his or her appearance.

Of great interest are the television rights to sports events. In the Netherlands, the owner of the venue (or the one obtaining the usage right), usually the club, has the possibility to prohibit filming without permission at the venue. The broadcaster needs permission to place cameras and to make any recordings.

In Europe, a lot of money is paid for the rights to broadcast football matches. For matches in the Eredivisie (the Dutch professional football league), the American network Fox pays about €120 million per year. This may seem like a lot, but it is in sharp contrast to the amount that Sky Television and British Telecom are willing to pay for the rights to the games of the English Premier League, namely €2.3 billion per year (for the 2016/2017 season).

ii Rights protection

Copyright

The Copyright Act gives creators of a work the right to control the ways in which it may be used. Decisions of the Supreme Court make clear that there are two requirements that a 'work' must meet: first, it must have an original character and, secondly, a personal stamp of the creator.⁸

The creator of a television programme that involves a sports event has two important exclusive rights under the Copyright Act. First, the creator has the exclusive right to reproduce

7 The law is also known as the Football Law.

8 See Article 1 Copyright Act.

the work. Secondly, they have the exclusive right to publish the work. With regard to the 'right to make public', it is important to note that for each disclosure, separate permission must be obtained.

First, a television station must have permission to broadcast a sporting event. Showing the event in a public space is a new disclosure. The owner of a bar is therefore not permitted to show a game on television in his or her bar without permission from the copyright holder. Permission usually comes in the form of paying a monthly fee to show all sporting events covered by specific broadcasters.

Portrait rights

The popularity of athletes has a commercial value. They have the right to determine how their portrait is commercially exploited. Portrait rights are also regulated in the Copyright Act.⁹ If a portrait is used, the person portrayed can oppose the use thereof if he or she has a reasonable interest. This interest may be a personal interest or a commercial interest.

Trademark law

In the Netherlands, a brand can be protected on the basis of the Benelux Convention on Intellectual Property. Signs that may constitute a Benelux trademark are names, drawings, imprints, stamps, letters, numerals, shapes of goods or packaging and all other signs that can be represented graphically and that serve to distinguish the goods or services of an undertaking.¹⁰

Nike and adidas are among the most counterfeited brands in the world. The burden of proof of a genuine product can be a problem sometimes because some products are extremely well counterfeited. The trademark holder must be able to prove, in each individual case, that the goods are fake and that it is not an instance of (legitimate) parallel trade.

It is also possible to register a European trademark. The European Union Intellectual Property Office is responsible for managing EU trademarks.

iii Contractual provisions for exploitation of rights

The most relevant contractual provisions in an agreement to commercially exploit sports-related rights are those related to the scope of the acquired rights, payment of the agreed compensation, and the duration of the agreement. Provisions of mandatory law need not be included in the contract.

V PROFESSIONAL SPORTS AND LABOUR LAW

i Mandatory provisions

For a number of agreements, 'special agreements', provisions exist that sometimes differ from general contract law. The employment contract is an example of such a special agreement. Provisions are often aimed at protecting the weaker party, and in the case of the employment contract, the weaker party is the employee.

9 See Article 19ff Copyright Act.

10 See Article 2.1 Benelux Convention.

An oral employment contract is also a valid employment contract. In most cases, it is not difficult to prove the existence of an oral agreement of employment. Usually the employer makes weekly or monthly payments into the bank account of the employee.

Certain stipulations can only be made in writing; for example, a trial period pursuant to Article 7:652 Civil Code, or a non-competition clause.¹¹

Contracts with athletes often incorporate clauses that allow the athlete to terminate the contract of employment in cases of 'position improvement'. The concept of position improvement should not be interpreted too narrowly. If, for example, an assistant coach at one club can earn significantly more at a new club, but remains an assistant coach, this should still be considered a position improvement.¹²

ii Free movement of athletes

One of the freedoms enjoyed by EU citizens is the free movement of workers.¹³ This right includes the rights of free movement and residence for workers, the rights of entry and residence for family members, and the right to work in another Member State and be treated on an equal footing with nationals of that Member State.

The seminal *Bosman* case¹⁴ was an important decision made by the European Court of Justice on the free movement of labour and had a profound effect on the transfers of football players within the European Union. The decision banned restrictions on foreign EU players within national leagues and allowed players in the EU to move to another club at the end of a contract without a transfer fee being paid.

iii Application of employment rules of sports' governing bodies

A large number of rules typical of sports bodies can be incorporated in individual employment contracts of athletes without any problem. In most non-sporting employment contracts a penalty clause is exceptional. In an employment contract with a professional athlete, however, this is often a standard clause. If the athlete misbehaves, the club can impose a fine on the athlete. This includes cases where a player, without valid reason, arrives late for training, behaves in an unsporting way during a game or is guilty of misconduct in the public arena.

VI SPORTS AND ANTITRUST LAW

Sporting rules are subject to EU antitrust rules when the body setting the rules, or the companies and persons affected by the rules, are engaged in an economic activity. Article 101 of the Treaty on the Functioning of the European Union (TFEU) prohibits anticompetitive agreements and its implementation is defined in Council Regulation No. 1/2003, which can

11 See Article 7:653 Civil Code.

12 See *Ten Hag v. FC Twente*.

13 Freedom of movement for workers is one of the founding principles of the EU. It is laid down in Article 45 of the Treaty on the Functioning of the European Union and is a fundamental right of workers.

14 Case C-415/93, *Union Royale Belge des Sociétés de Football Association ASBL v Jean-Marc Bosman* (1995).

be applied by the European Commission and by the national competition authorities of EU Member States. Article 102 TFEU is aimed at preventing undertakings from those who hold a dominant position in a market from abusing that position.

The International Automobile Federation (FIA) is the sole regulatory body of international motor racing in the European Union. Anyone wishing to participate in an international motor sports event authorised by the FIA must obtain an FIA licence, not just drivers but also track owners, vehicle manufacturers and organisers of motor sport events.

Once a licence is obtained, licensees are only allowed to enter or organise races authorised by the FIA. Any licence holder disregarding this prohibition can be stripped of their licence. Losing the licence would prevent the licensee from playing any role in almost all international motor sport events taking place in Europe.

The case was investigated by the European Commission, which held, in its statement of objections, that the FIA was using its regulatory powers to block the organisation of events that competed with the events promoted or organised by the FIA.

The Commission eventually settled with the FIA. The Federation agreed to stop preventing teams and circuit owners from participating in or organising other non-FIA races provided that essential requisite safety standards are met.¹⁵

In October 2015, the European Commission opened an antitrust investigation into International Skating Union (ISU) eligibility rules that permanently ban skaters from competitions such as the Winter Olympics and the ISU World and European Championships if they participate in events not approved by the ISU. The investigation followed a complaint by two Dutch speed skaters, Mark Tuitert and Niels Kerstholt.¹⁶

On 27 September 2016, the Commission sent a statement of objections to the ISU stating its preliminary view that ISU rules are unreasonably preventing athletes from engaging in their profession by putting disproportionate and unjustified obstacles in the way of organisers not linked to the ISU but who want to hold alternative ice-skating events.¹⁷

VII SPORTS AND TAXATION

i VAT

A sports club or organiser of sporting events is usually liable to pay sales tax though different rules that apply to sports clubs and organisers. Sports clubs usually benefit from exemptions. As a result, organisers often pay VAT, but sports clubs in most cases do not. However, when a short-term single sporting event is organised, the organiser would not usually pay any sales taxes. The organiser will not be regarded as a trader.

Payroll tax

A sports club, or organiser of sporting events, that pays people must, as an employer, declare and pay payroll taxes. Payroll taxes are imposed on employers or employees, and are usually calculated as a percentage of the wages that employers pay their staff. They cover

15 See IP/01/1523, 30 October 2001, Commission closes its investigation into Formula One and other four-wheel motor sports.

16 See also Kees Jan Kuilwijk, Skating must innovate, or die, *Volkskrant*, 21 January 2016.

17 See IP/16/3201, 27 September 2016, Commission sends statement of objections to International Skating Union on its eligibility rules.

advance payment of income tax, social security contributions and various insurances (e.g., unemployment and disability). A club or organiser that only makes use of volunteers does not pay payroll tax.

Corporate tax

Corporate tax is a tax on the profits of a company. Most sports clubs are not considered companies and thus do not have to pay corporate tax. Also, organisers of sporting events usually do not pay corporate tax. Some clubs and organisers are incorporated as a limited company or a public limited liability company, and in that case the rules regarding corporate tax do apply to them.

VIII SPECIFIC SPORTS ISSUES

i Doping

The Doping Authority is the independent anti-doping organisation in the Netherlands. Its mission is realising doping-free sport in Netherlands. It does that on behalf of the government (Ministry of Health) and the Dutch Olympic Committee (NOC*NSF) and it cooperates with many national and international organisations.

Unlike various EU Member States, the Netherlands has no specific doping legislation. Doping culprits can therefore not be legally prosecuted. Of course, they can still be banned from competing in their chosen sport if caught taking banned drugs.

ii Betting

The Netherlands is among the few countries in Europe where online sports betting is still illegal. The Second Chamber of Parliament voted in July 2016 in favour of a plan to modernise the gaming policy. If the Senate agrees, it will be possible by the second half of 2017 to obtain a licence for offering online games of chance, casino games such as poker and sports betting.

The bill creates the basis for a licence system so that players can participate in online gaming in a safe and responsible way. The new legislation will make it possible to impose strict requirements pertaining to online gambling operators and thus better protect players against developing a gambling addiction. Licence holders will be required to pay a 29 per cent gambling tax, 0.25 per cent to the Gaming Addiction Fund and a 1.5 per cent contribution to the Gaming Authority over the gross game result (i.e., the profit).

iii Manipulation

Match-fixing is the manipulation of the results of sports games for the benefit of people who gamble on these games. There is no separate law in the Netherlands which criminalises match-fixing as, for example, in Italy and Portugal. In the Dutch Penal Code, there are also no separate articles related to match fixing as in Bulgaria and Spain.

Match-fixing falls under fraud.¹⁸ To prove fraud, 'intent' is required. A player suspected of fraud may argue that, for instance, he placed the ball without intent behind his own keeper

18 See Article 326 Criminal Code.

in scoring an own goal, or that his red card was undeserved. A player or referee who accepts money from a match-fixer may also be punishable on the basis of 'bribery by someone other than an official'.¹⁹

The KNVB officially established that in the Eredivisie, match-fixing occurred in 2009. The research showed that Ibrahim Kargbo, then a player for Willem II, entered into a deal with match-fixer Wilson Raj Perumal to manipulate the Willem II v FC Utrecht match on 9 August 2009. Email conversations between Kargbo and Perumal show that the two agreed that Willem II would lose the game.²⁰

iv Grey market sales

In the Netherlands, the secondary ticket market has been put under much scrutiny in the past few years as ticket touts dominated the resale ticket market. In April 2010, a proposal was adopted by the Second Chamber of Parliament to restrict the sale of tickets for more than 120 per cent of the original price. However, actual legislation still has not been adopted.

Providers of official sports tickets and other events, like music festivals, increasingly affiliate themselves with secondary ticket sites so that they can keep prices under (their) control. For instance, the infamous website Seatwave was bought by Ticketmaster. Both foreign, these companies are nonetheless active and popular in the Netherlands.

IX THE YEAR IN REVIEW

i State aid

In July 2016, the European Commission concluded that support measures granted by several Dutch municipalities to five professional football clubs were compatible with EU state aid rules. The Commission found that four clubs (FC Den Bosch, MVV Maastricht, NEC Nijmegen and Willem II Tilburg) received aid, but that the support was in line with EU State aid rules. A land transaction concerning PSV Eindhoven involved no aid as it took place on open-market terms.²¹

ii Access to courts/football

In July 2016, Eredivisie football club De Graafschap initiated summary proceedings against the KNVB. The club wished to maintain its place in Eredivisie. Although it had been relegated, in May, the licence committee of the KNVB had withdrawn the licence of FC Twente, another club in the Eredivisie, for triple infringement of FIFA's ban on third-party

19 See Article 328 *ter* Criminal Code.

20 In the emails Kargbo indicated that 'the captain', then Michael Aerts, and a third player would cooperate. In return for deliberately losing this match, each of these three players would receive €25,000 from Perumal.

21 See IP/16/2402, 4 July 2016, Commission clears support measures for certain football clubs in the Netherlands.

ownership²² and several years of general financial mismanagement, and had issued them a new licence for participation in the Jupiler League, at the second-highest level. Therefore, a spot had opened up in the Eredivisie.

Even though FC Twente lost the case in civil court, it had instigated action against the KNVB's decision to withdraw its licence. On appeal the appellate body of the licence committee, in a highly controversial ruling, reversed the decision of the licence committee so that FC Twente could keep its place in the top division.²³

De Graafschap lost its case in court only because the court felt it did not have the authority to relegate FC Twente and it was impossible, in practice, to adapt the programme for the new season to accommodate 19 instead of 18 clubs.²⁴

iii Access to courts/Olympic Games

The NOC*NSF decided in August 2016, at the instigation of the Gymnastics Association, to exclude gymnast Yuri van Gelder from the Dutch Olympic team with immediate effect. Van Gelder was sent back to the Netherlands after he left the team village to embark on a night out on Saturday, before returning in the early hours of Sunday morning. He also missed a training session that day. According to the Olympic Committee, Van Gelder had, in doing so, grossly violated the norms and values of both the NOC*NSF and the Gymnastics Association. As a result of the decision, Van Gelder could not participate in the finals on rings, taking place a week later.

In the Netherlands, the gymnast started summary proceedings to force the NOC*NSF to allow him to participate in the finals, but he lost. The court agreed with the Olympic Committee, stating that participants in the Olympic Games must strive to maximise their sports performance and act as good team members, both in and outside the sport.²⁵

X OUTLOOK AND CONCLUSIONS

The European Commission's decision to send a statement of objections to the ISU, stating its preliminary view that ISU rules are preventing athletes from engaging in their profession by putting unjustified obstacles in the way of organisers not linked to the ISU, is likely to have an enormous impact on the organisation of sports events in Europe.

Although the sending of a statement of objections does not prejudice the final outcome of the investigation, the Commission takes the preliminary view that the ISU rules are disproportionate and in violation of EU antitrust law. It therefore seems likely that international sports federations will lose their monopoly on the organisation of sports events. Several national competition authorities have already found that rules prohibiting the participation of its members in non-sanctioned events violated Articles 101 and 102 TFEU and had to be abolished.

22 See generally, Kees Jan Kuilwijk, FIFA TPO ban cannot be justified under EU law, LinkedIn column, 27 October 2015.

23 See Kees Jan Kuilwijk, Graxit or Twexit? LinkedIn column, 3 July 2016.

24 Rb. Utrecht, 15 July 2016.

25 Rb. Gelderland, 12 August 2016.

Appendix 1

ABOUT THE AUTHORS

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Kees Jan Kuilwijk is counsel at AKD. He focuses his practice on EU competition matters across a wide variety of industries and business sectors, including air and maritime transport, broadcasting, consumer goods, internet and e-commerce, film, TV, music and media, oil and gas, telecoms and technology, and professional sports.

Kees Jan has over 20 years' experience in competition law, including advising on European Commission investigations in cartel and abuse of dominance cases, merger filings, and all aspects of competition litigation. A significant element of his practice relates to complex cases that involve the interface of intellectual property and antitrust.

In addition, Kees Jan has extensive experience counselling clients under antitrust law on a broad variety of commercial agreements including R&D and production joint ventures, sales joint ventures, information exchange systems, various forms of horizontal cooperation, trademark, patent, know-how and copyright licensing, exclusive and selective distribution agreements, online platforms, franchising and other vertical agreements.

Kees Jan holds a first degree in business law from Leyden University and a PhD in European Law (with distinction) from the European University Institute in Florence. He also studied in Germany (Tübingen and the Max-Planck Institute in Heidelberg) and the United States (Harvard). During his career, he worked for several UK law firms and an American firm.

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