

**Aus dem Institut für Sportgeschichte
der Deutschen Sporthochschule Köln
Leiter: Univ.-Prof. Dr. Stephan Wassong**

Institutional position of athletes within Montenegro's Sport Movement

Von der Deutschen Sporthochschule Köln
zur Erlangung des akademischen Grades

Doktor der Sportwissenschaft

genehmigte Dissertation
vorgelegt von

Marko Begović

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Podgorica, Montenegro

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Marko Begović
Köln, 2019

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Glossary

Erga omnes	in relation to all
Homo homini lupus est	a man is a wolf to another man
Hostis humani generis	the enemy of mankind
Iure imperii	exercising state authority
Ius cogens	imperative norm
ius gentium	concept of international law based on the customs or traditions
Lex generalis	general legislation
Lex mercatoria	internationally accepted general trade practices
Lex specialis	law governing a specific subject matter
Numerus clausus	limited or defined number
Pacta sunt servanda	legal principle which presuppose that agreements must be kept
Raison d'état	national interest or state interest
Terra incognita	refereeing to unknown territory/field
Universitas personam	association of individuals (refereeing to natural entities)
Universitas rerum	association of organizations (refereeing to legal entities)

Abstract

There is an overall subjective consensus on the dimension, scope and importance of sport. As a vital ingredient, sport plays a crucial role in strengthening contemporary Montenegrin identity. However, research unveils a rather limited theoretical framework. The question whether sport in an organizational sense represents all its constituents or stakeholders, whether it fulfills the major prerequisite, that is, its democratic, representative capacities is not on the academic agenda.

The aim of this research was to determine the institutional position of athletes within Montenegro's Sport Movement. The results indicate that current normative settings, or legal frameworks and organizational structures are incapable to tackle all the challenges before the major constituent of the sport – athletes.

Due to the heterogeneity of sport systems and the fact that there is no single model of governance, the present methodology combined both sociological and judicial approaches to form a synthesized method. It confirms that athletes are not only misrepresented, but in the most cases athletes are institutionally unable to be directly represented or even exercise basic rights. The results of the literature review showed rather heterogeneous treatments, challenges and solutions. This approach, and the results, represent a supplement to the existing knowledge in terms of regional, historical, cultural and organizational specificities.

Zusammenfassung

Es existiert ein genereller subjektiver Konsens über die Dimension, den Rahmen und die Bedeutung von Sport. Als integraler Bestandteil spielt Sport eine entscheidende Rolle bei der Stärkung der zeitgenössischen montenegrinischen Identität. Die Forschung dazu enthüllt allerdings eine vergleichsweise limitierte theoretische Fundierung. Die Frage, ob Sport in einem organisationalen Sinn all seine Bestandteile und Stakeholder repräsentiert und ob er seine zentrale Grundvoraussetzung - also seine demokratische und repräsentative Kapazität - erfüllt, ist nicht Teil der akademischen Agenda.

Das Ziel dieser Forschungsarbeit war es, die institutionelle Position der Athleten innerhalb Montenegros Sport-Bewegung zu determinieren. Die Resultate deuten darauf hin, dass die gegenwärtigen normativen Rahmenbedingungen oder legalen Richtlinien und organisationalen Strukturen nicht in der Lage sind, all diejenigen Herausforderungen zu lösen, denen sich die zentralen Akteure des Sports - die Athleten - gegenübersehen.

Aufgrund der Heterogenität der Sportsystems und der Tatsache, dass ein singuläres Governance-Modell nicht existiert, kombiniert die hier angewandte Methodologie sowohl soziologische als auch juristische Ansätze, um eine synthetisierte Methode zu bilden. Diese bestätigt, dass Athleten nicht nur missrepräsentiert, sondern in den meisten Fällen garnicht erst in der Lage sind, direkt repräsentiert zu sein oder überhaupt elementare Grundrechte wahrzunehmen. Das Ergebnis der Literaturschau zeigte recht vielfältige Gegenmaßnahmen, Herausforderungen und Lösungen. Der hier gewählte Ansatz und seine Resultate bilden eine Ergänzung zum existierenden Kenntnisstand im Hinblick auf regionale, historische, kulturelle und organisationale Spezifika.

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List of Abbreviations

Note: For all abbreviations, the original title is given in the respective language of the country.
For all others, the English title is used.

AC	Athletic Commission
AIBA	International Boxing Association
ASCG	Athletic Federation of Montenegro
BSCG	Boxing Association of Montenegro
CAS	Court of Arbitration for Sport
CC	Consultative Committee
CoE	Council of Europe
COK	Montenegrin Olympic Committee
DIF	Sport Confederation of Denmark
DYS	Directorate for Youth and Sport
DŽSCG	Judo Federation of Montenegro
ECJ	European Court of Justice
ECU	European Chess Union
EPAS	Enlargement Partial Agreement on Sport
EU	European Union
ECtHR.	European Court of Human Rights
EUSA	European University Sports Association
FIBA	International Association of Athletics Federations
FIDE	International Chess Federation
FIFA	International Football Association
FINA	International Swimming Federation
FISU	International University Sports Federation
FSCG	Football Association of Montenegro
GSCG	Gymnastic Federation of Montenegro
IAAF	International Association of Athletics Federations

ICJ	International Court of Justice
INGO	International Nongovernmental Organization
IOC	International Olympic Committee
IPC	International Paralympic Committee
ISF	International Sport Federation
ITU	International Triathlon union
KP	Communist Party
KPJ	Communist Party of Yugoslavia
KSCG	Basketball Federation of Montenegro
LSSF	Local School Sport Federation
MSSF	Montenegrin School Sport Federation
NDAC	National Commission for Fight against Doping in Sports
NF	National Sport Federation
NGB	National Governing Bodies
NGO	Nongovernmental Organization
NOC	National Olympic Committee
OM	Olympic Movement
OOUR	Organizational Units of Associated Labor
PKCG	Paralympic Committee of Montenegro
RSCG	Wrestling Federation of Montenegro
RSCG	Handball Federation of Montenegro
SFKJ	Association for Physical Education Culture of Yugoslavia
SGO	Sport Governance Observer
SIZ	Self-management Communities of Interest
SM	Sport Movement
SOFK	Federation of Organizations for Physical Education Culture
SSC	School Sport Club
ŠSCG	Chess Federation of Montenegro
SSSCG	Student Sport Association of Montenegro
TSCG	Triathlon Federation of Montenegro
TSCG	Montenegrin Tennis Association

UEFA	Union of European Football Associations
UK	United Kingdom
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
USOC	United States Olympic Committee
VPSCG	Water polo and Swimming Association of Montenegro
WADA	World Anti-Doping Agency

Chapter One: Introduction

It is very difficult to examine a sport system without observing it from the perspective of a particular society. In today's world, this premise should be approached with a grain of salt, given the numerous cases of abuse of office or power, as a result of which the global Sport Movement appears to be detached from society. The functioning of the sport system today is based on the concept of autonomy, although who can act, in which ways and within what frame often remains unclear. Usually, autonomy is assumed to have a rather negative context "from who and to what extent" – which ends in a stalemate. In order to advance, the concept of autonomy should be seen within the positive lens "for." The sport system is also expected to function within a democratic environment and its functioning should take place according to adopted regulations that oversee a particular sport in both general and specific terms. The process of decision-making should ensure the participation of all relevant actors and subjects in a specific sport.

Once established, a sport entity or organization needs further engagement in order to develop or implement the mission for which it is established. From a normative point of view, considering the bureaucratic nature of sport organizations, it often requires intervention from without (not necessarily but most often the public sector) in order to incorporate specific measures that would provide a basis for a fair and participative decision-making process or an ability to keep focus purely within sporting principles. The decentralization process of the organizational structure that is based on defined, generally agreed, rules derives from the check and balance philosophy of governance. The basis of such a process could be seen through the utilitarianism of Jeremy Bentham who noted that the formation of structure/institution (in the present case, body) should be based on clear and noble rules, i.e. to serve the greatest number of participants. With that kind of individualism, where anyone is sufficiently able to independently assess the justification of certain decisions, the value system is not in danger. This constellation offers not only a high degree of autonomy, but also institutional development and systemic protection of the participants, bearing in mind a tradition and particularities of the society and the particular sport. Moreover, it requires

shifting the focus on merit (and an ethical) system devoid of abstraction or excessive ideologization.

Sport plays a very important role in Montenegrin identity overall, especially in times when economic crises have tremendously increased the gap between classes, with negative effects on the socialization of vulnerable populations. These negative effects on public institutions and the private sector tend to impact sports organizations. In his work, Chifflet defines three different types of organizational cultures of the sport governing bodies: the association culture of the elected volunteer executives, which is based on the federal values of amateurism and volunteering; the public service culture of public servants, who are placed at different levels within the federation formally (sports organizations in Montenegro tend to follow this organizational group); and the managerial culture of managers and experts, which is based on meritocracy, performance and profitability.¹ In Montenegro's case, a simple replication of another country would not be suitable, especially considering the current complex socio-political-economic situation that is complicated by the blurred road to full EU membership.

Cultural pattern

Disassociating social reality from the organizational or institutional development and actions of key actors, leads to a theoretical approach free of any practical application. The permanent contradiction between the individual and collective approaches, is largely grounded in the social reality of the culture (meaning, its history) of particular society. Furthermore, in order to understand the essence of relations within present organizations, it is important to look at societal perception of family relations as well. Researchers determining how a particular society in the Balkans remained a whole during historical turmoil look at the notion of inheritance.² A tribal constellation was transferred to all of society, reducing the possibility of private ownership, holding on to the process of making. Often based on patriarchal relations that have its historical roots ("us vs. them"), enormous power remains in the hands of individuals. Such an approach has served as a basis for

¹ Chifflet, P. (1993). Associations de sportifs ou entreprises du sport. In: A. Loret ed., *Sport and Management*. Paris: Dunod.

² Erlich, V. (1971). *Jugoslovenska porodica u transformaciji*. Libar, Zagreb. p. 345.

the creation of an authoritative leadership culture, being fertile soil for vassal relations and pervasiveness of power abuse. Furthermore, a vassal relationship implies the absence of uncritical perception, which creates a basis for various influences. Considering recent history, and linking it with the present social structure within newly established societies, a “heroic code” is introduced as the cult of decision-makers.³ Aspirations to remain solely in control at any cost, is the determinant culture of decision-making, eschewing the little or no humanity and ethical standards in the process. Given these circumstances and such a governance model, the general population is systematically excluded, with fear used to further distance them. A kind of depression has resulted from the lack of unity in a society whose motto is *homo homini lupus est*.⁴

Society that is institutionally based on religious organizations and the All-Montenegrin Tribal Congress cannot expect a different coexistence, nor an opportunity for the general population to pursue its needs. A special role in this process is played by the dominant religious organization, serving the interests of decision-makers by deflecting attention an often-imaginary existential threat for the country, awakening or reviving national myths. It transfers a metaphysical role to the general population while malevolently neglecting civic values and needs. The geographical position must also be mentioned, as indeed Montenegro is located in the crosswinds of different and colliding interests, about which little or nothing can be done. Lack of institutional formation further strengthens citizens’ orientation and loyalty to the existing (tribal) sources of power, invisibly narrowing their own developmental pathway.

Socially fractious individuals driven by collectivist determination imposed by the decision-makers and used as a bulwark to any activity that would result not even social progress but any possible change in constellation of the decision-making process. Paradoxically, as conditions have become harsher, general support for this constellation has grown more monolithic, inspired by various informal structures. An environment like this can only be justified by understanding the historical context of the continuing (to this day) struggle for survival, reflected in the general perception of contemporary event dynamics. This legacy can be seen in many tribal or kinship links to various institutional frameworks, which often produce claims such as “I = the institution.” It seems that

³ Džadžić, P. (1987). *Homo Balcanicus*, Homo Heroicus. BIGZ: Beograd.

⁴ Hobbes, T. (1996). *Leviathan*. Edited by: John Charles, ed., Addison Gaskin. Oxford University Press.

the constant turmoil has left its mark in the inability to establish a generally approved value-based system. That is why tribal times are still present: institutions are seen through their incumbents, thus neglecting the institutional process as such, and the non-contractual principle (institutional capture) is publicly promoted. Reinforcing individualism in a highly collectivist society with general perception driven mostly by historical or ideological considerations rather than societal or civic contexts has resulted in a greater discrepancy among classes, producing deep-seated fear.

The notion of freedom is also in line with the aforementioned: in the general population, freedom is seen in terms of only physical existence or subsistence. Any other form of freedom is transferred to “more” equal ones. In that respect, there is no room for the development of legal norms that would regulate the existing constellation, societal construction and its activities based on customs. It can be said that the process of the inevitable development of a particular society has been largely limited due to it being rooted in historically/ideologically arranged relations, shaped by decision transmitted through individuals rather than via appropriate organization. Decisions have usually not been part of any planned process but have been passed through an ad hoc approach or solution to a pressing issue. In that respect, any change can be either induced externally or occur by revolution, in either case implying a state of violence or abuse of power that would lead to some form of violence. Forming a culture of choice is a question of tradition in the societal reflected onto the institutional level. In this sense, the consistency of constellations is nothing more than a product of continuity of the existing power relations. The culture of a society (or of an organization) is essential to assess relationships and power relations among constituents and interested parties, i.e. the manner in which power is perceived as a bargaining chip is a precondition for power abuse.⁵

Scope of action

In order to facilitate the reasoning and positioning of this argumentation, it is important to understand the scope of action; should organizations (assuming that is national), be responsible for a specific sport or for that sport in relation to its members? If it is further assumed that it is indeed

⁵ Hofstede, G. (2001). *Culture's consequences* 2nd ed. Comparing values, behaviors, institutions and organizations across nations. Thousand Oaks, Ca: Sage.

responsible for a specific sport in general, then it follows that the legal framework stipulates that jurisdiction. This transfer of competences should then include obligations based on general needs in the specific field within a particular sport. It should further imply that the organization is a legal entity with a structure or composition of bodies in charge for certain segments. Being given the authority for a particular sport, the organization would gain sovereignty to exercise a high level of independence in that sport. This means an indivisibility of power, but it does not mean it has to be focused at one pole. The practice of sovereignty means having a structure in power, whereby the subject of governance is the organization. In the case where members are not in support of the principles of governance, their action would rarely be within the legal framework. There is a thin line between ethical or evidence-based action and political action, especially when representing the general interest. The line is often blurred in response to any type of absolutism or misuse of power.

Just as the organization is formed as a unit in relation to its members (groups or individuals), the functioning of the federation/association model is based on the transfer of authority from its members or constituents (organizations and individuals). This constellation is based on a contractual relationship and it has to function as an organization with an established structure. The level of sovereignty/autonomy of members within the federation rests on a contract, but an accession procedure could be imposed, which depends on a legal framework, i.e. transfer of jurisdictions within a specific field. The federation exists as an actual community or real union with a unified decision-making process and joint representatives. Although the status of a legal entity is indisputable, the framework for action of a particular member in this regard is greatly limited and guided predominantly by stake-holders' decisions made within the umbrella organization. In practical terms, constituents or members of the umbrella organization do not have to be explicitly in the form of a legal entity or organization. The wide scope of sport means that sport does not rest only on organizations; rather, sport life also takes place frequently outside or through it, such that the existence of the organization is not the reason for the existence of particular sport.

Special attention is directed at the position or participation of individuals at the level of local organizations and in the work and functioning of the umbrella organization. If sport exists primarily for those who actively participate in it (athletes, entourage, delegates and referees, etc.), it is an open question how and whether those involved should be involved in the decision-making process,

if not through the leadership of these legal entities. Thus, providing the second principle of democracy, there is accountability. Participation should be an inseparable factor from responsibility. The question of functioning is secondary in character in relation to the issue of participation and responsibility as a basic principle and prerequisite for democracy, which in this regard serve for greater unity and prosperity.

Chapter Two: Theoretical Framework

Democratic attitude

Democracy is a precondition for contemporary societal constellation and institutional functioning, i.e. values that promote participation, humanism and understanding. A democratic system could be defined as an institutional agreement in which individuals have the right to effect political decisions.⁶ It is a process inextricable from the individual's aspirations to live with dignity. Participation in activities of public interest, while respecting individual privacy and devoid of class division, is the pathway to the true meaning of democracy.⁷

There cannot be democracy without multiple liability, collective, on the level of society, and individual. It means that institutionalization of governing structures within organizations needs to rely on a clear electoral procedure, revocation and term limits along with broader and permanent control of it. It further implies that the process of democratization is not possible without participation, as it is the guardian from the creation of monopolies. This principle is one of Dahl's criteria (freedom of association) and seems to be of crucial importance since it is the lifeblood of democracy.⁸ Along with that, another crucial requirement is the principle of replicability, nurtured by credibility, transparency and accountability of decision-makers. High levels of participation require significant understanding of self-determination and self-management.⁹ In that respect, direct form of democracy implies freedom of any kind of fear and the right to dialogue and constructive criticism. This complex and rather civically demanding process presumes conscious individuals willing to subordinate their own interests in the spirit of solidarity and taking on their share of responsibility for overall societal development. On the other hand, those who bear most of the responsibility need to consider natural inequalities among participants in order for equitable redistribution of rights and obligations that follows from such rights. Therefore, as some authors

⁶ Schumpeter, J. (1942). *Capitalism, Socialism and Democracy*. London: Harper Perennial.

⁷ Blackwell, C. W. (2003). Athenian Democracy: an overview. In: Adriann Lanni, ed., *Athenian Law in its Democratic Context*. Center for Hellenic Studies On-line Discussion Series.

⁸ Dahl, R. A. (1971). *Polyarchy: Participation and Opposition*. New Haven, CT: Yale University Press.

⁹ Lichtheim, G. (1969). *The Origins of Socialism*. London: Weidenfeld and Nicholson Ltd.

noted, policy outcomes need to reflect principles of representation, participation, accountability and transparency.¹⁰

Activities of public interest precede the formation of the organizational structure. Therefore, they need to outweigh the potential private or commercial character of the organization for the simple reason that it exists for the greater good. There seems to be a natural attempt in which decision-makers, through bureaucracy and directed administration, seek centralism of decision-making by exploiting the non-compactness of other stakeholders.¹¹ Any form of instability further complicates the position of those who are not part of the decision-making process, reinforcing contradictions, separation and damaging their existence. It becomes a more political than rational (existential) issue, strengthening alienation and individualism (in the Hobbesian sense). In that way, politicized structures that are governed in a particular field, carry the contradiction between collective and individual, which could be understood as a conflict between their systematic and character nature. On the other hand, it is democracy that seeks “forces” to oppose the continuous efforts of decision-makers to strengthen their own position. Although it can be seen as a radical approach, the aforementioned self-determination and self-management is a way to return rights to the all interested parties, where often disguised and privileged networks of individuals or groups are being denounced and further disenfranchised in the process of appropriation of public goods. Therefore, the process of de-politicization of the structure has to be institutionalized using the fundamental principles of democracy. Creating an alternative with and through dialogue that includes interested parties assumes that nobody has a monopoly of power and any decision is the product of an agreement. It is inevitable for the process to lead to certain contradictions, as reflected in the aforementioned forces, which could replace the governing structure. It is therefore necessary to seek a consensus that would not affect the nature of an activity of general interest.¹² Determination of boundaries is more of a subjective nature and will often be a stumbling block for further positioning of interested parties or stakeholders.

¹⁰ Sen, A. (1999). Democracy as a Universal Value. *Journal of Democracy* 10(3):3-17.

¹¹ Pateman, C. (1970). *Participation and Democratic Theory*. Cambridge: Cambridge University Press.

¹² Fritz, V. & Rocha, M. A. (2007). Developmental States in the New Millenium: Concepts and Challenges for a New Aid Agenda. *Development Policy Review* 25(5):531-552.

Prerequisite for proper governance structure

Considering the concepts of democracy, or keeping different models of it in mind, there are three ways that one society accepting democratic standards could apply them: *competitive* – focusing on voting procedure as a basis for establishing power roles within a political system; *participative* – focusing on active participation for all within the decision-making process; *deliberative* – resolving conflict via rational discussion.¹³ For any democratic process, representation is a crucial and defining point. Manin sees representative democracy as a correlation of democratic principles (people government/ruled by the people) and aristocratic principles (government/ruled by elite), in which elected decision-makers should be socially different from those who elect them.¹⁴ Pitkin speaks about a *formalist concept*, which focuses on relations via forms (authoritative or accountable). And *substantive*, a concept focused on content (in what way is representation is taking part).¹⁵

The political constellation at the national level is very significant since a large portion of socialist influenced structure has remained in place in the governance mechanisms and decision-making representation in Montenegrin sport organizations, especially on the national level.¹⁶ Speaking of the social situation in Montenegro in the years after independence, Djurković warned that “conflicts over the constitution, the position of the church, state symbols and the relationship between the government and the opposition represent fertile breeding ground for new clashes.”¹⁷ In a much divided society regarding the question of Montenegrin independence,¹⁸ the post-referendum period characterized by strong nationalism and further division among various nationalities, ethnic and

¹³ Allern, E.H. and Pedersen, K. (2007). The impact of party organizational changes on democracy. *West European Politics* 30 (1): 69–92.

¹⁴ Manin, B. (1997). *The principles of representative government*. Cambridge: Cambridge University Press.

¹⁵ Pitkin, H.F. (1967). *The concept of representation*. Berkeley: University of California Press.

¹⁶ The Prime Minister of Montenegro is also the President of the Basketball Federation of Montenegro.

¹⁷ Djurkovic, M. (2011). *Montenegro: Headed for New Divisions?* Conflict Studies Research Centre, UK Defence Academy, Balkans Series, 07/11: 11.

¹⁸ Morrison, K. (2009). *Montenegro: a modern history*. London: IB Taurus & Co.

religious groups.¹⁹ The country was in a transition process from socialist (non-democratic), to being governed by a hybrid political regime in the post-Cold War period. What emerged was a “competitive authoritarian” system, combining elements of democratic and authoritarian governance (the choice based on the desire to remain in power) with election procedures riddled by violation of democratic procedures.²⁰ The leading political establishment reshaped the former Communist Party to retain political and overall monopoly.²¹ In practical terms, Florian Bieber has noted that leading political positions were used for adopting electoral rules that enabled strong election campaigns, outspending opposition parties by 10:1.²² This continuous transition period can be explained with Anna Grzymala-Busse’s concept of “rebuilding the post-communist Leviathan,” symbolizing the exploitative reconstruction of the state by political elites, which is further underpinned by the following:

“The degree to which governing parties can obtain private benefits from public state assets is constrained by robust competition: opposition parties that offer a clear, plausible, and critical governing alternative that threatens the governing coalition with replacement.”²³

Although voluntary organizations are seen as inseparable components of the democratic process and thus contribute to the social activism and individual development, Michels still sees voluntary organization as characterized by the “iron law of oligarchy.”²⁴ Lipset too discusses factors that lead to oligarchic governance of voluntary organizations in terms of monopolistic approach (decision-makers) on the one hand, and passivity (other stake holders) on the other.²⁵ Bering in mind the

¹⁹ Brubaker, R. (1996). Nationalizing states in the old “New Europe” - and the New. *Ethnic and Racial Studies* 19/2: 411-437

²⁰ Levitsky, S. and Way, L. (2010). *Competitive Authoritarianism: Hybrid Regimes after the Cold War*. Cambridge, UK: Cambridge University Press.

²¹ Goati, V. (1996). *Stabilizacija demokratije ili povratak monizmu? Treća Jugoslavija sredinom devedesetih godina*. Nikšić-Podgorica: Unireks.

²² Bieber, F. (2003). Montenegrin Politics since the Disintegration of Yugoslavia. In; Florian Bieber ed., *Montenegro in Transition: Problems of Identity and Statehood*, pp. 11-42. Baden-Baden: Nomos Publishers.

²³ Grzymala-Busse, A. (2007). *Rebuilding Leviathan: Party Competition and State Exploitation in Post-Communist Democracies*. Cambridge, UK: Cambridge University Press.

²⁴ Michels, R. (1949) *Political Parties*. New York: The Free Press.

²⁵ Lipset, S.M. Trow, M.A. and Coleman, J.S. (1962). *Union Democracy*. New York: Anchor Books.

significance for our present subject, in order to better explain the presented power relation structures, it is necessary to here take into consideration the structural challenges to the coexistence of the various/numerous (interested) sides within the sport moment or sport. The level of stakeholders' mobility/activity and the existence of a regulatory mechanism would begin to remove obstacles to higher involvement levels for all stakeholders or constituents in a specific sport's decision-making process. It is important to note, involving all stakeholders in decision-making could be followed by adoption of the organizational framework for each particular sport organization, but it could also lead to creation of new conflict.

Based on preliminary findings, our main concern should be to identify the stakeholders' obligations/responsibilities within the Sport Movement, as well as to understand (show) the following regarding governance: a) how various stakeholders (sport subjects) are being organized; b) whether they are sufficiently aware of their interest; c) what their position on overall interest is. Seen from a social system perspective, there are two diametrically opposing positions when it comes to governance and the nature of the stakeholders' relation: a) consensus theory – sport organization is formed from individuals of similar beliefs; b) social conflict theory – any position within a sport organization is fertile soil for conflict among interested parties.²⁶ Regulatory methods of power distribution are various. Parsons notes three most common methods: a) coerced compliance; b) compliance based on a higher position stakeholder threatening others with losing existing privileges; c) voluntary compliance.²⁷ Observing different kinds of conflicts, Dahrendorf's position of 'conflict as a structural effect' seems to be in line with power relations within sport organizations.²⁸ The nature of sport organizations could be characterized by a structure that enables interaction among interested parties (along with those excluded from the decision-making process) and could lead to potential conflict. Oglesby points out that in the work of Dahrendorf, conflict within a particular social group arises between 'those position holders exercising authority and

²⁶ Oglesby, C. (1974). Social Conflict Theory and Sport Organization Systems. *Quest Illinois- National Association for Physical Education in Higher Education* 06/1974; 22(1):63-73. DOI:10.1080/00336297.1974.10519807

²⁷ Parsons, T. (1966). The political aspect of the social structure and process, In David Easton ed., *Varieties of Political Theory*, Englewood Sliffs, NJ: Prentice-Hall.

²⁸ Thiel, A. (2003). *Soziale Konflikte*. Transcript Verlag, Bielefeld. ISBN 3-933127-21-1

those position holders excluded from authority',²⁹ where authority is defined as the legitimate right to acquire and use power'.³⁰ On the other hand, a fundamental way to control not only the nature, but also the flow of conflict, lies in the distribution of roles within decision-making process. In the pyramidal sport system, highly influenced by domestic political culture defined as participatory,³¹ the ones at the lowest hierarchical position will be "forced" to compromise with the ones in the higher position. Conversely, in societies with a longer democratic tradition, in addition to the globalization process, high levels of individualization contribute to increasing not only the appearance of social conflicts but also changes in society itself.³² Taking the mentioned constellation as a starting premise, it is not in favor of a systematic solution, rather, people decide individually to resolve conflicts using their own capabilities. It is seen as a case of individual capacity overriding group mobility.³³ Within those societies and specific social groups, it is more likely that conflicts will be resolved by voluntary compliance based on bargaining and persuasion. As an addition to this already difficult position, athletes (symbolizing the most vulnerable group in sport), are not even included in the formal structure of the European sport system ranging from IFs to the NSFs (and clubs at the grassroots level).³⁴ Taking into account these findings, the excluded sport subjects (athletes and entourage) and their needs are dealt with through systematic coercion. This seems a bit paradoxical, since democratic societies tend to support voluntary compliance process based on persuasion not on coercion compliance.³⁵ Such a constellation among sport subjects can only arouse distrust with high levels on instability.³⁶

²⁹ Ibid., 65.

³⁰ Ibid.

³¹ Almond, G.A. and Verba, S. (1963). *The Civic Culture: Political Attitudes and Democracy in Five Nations*. Princeton, NJ: Princeton UP.

³² Dahrendorf, R. (1959). *Class and Class Conflict in Industrial Society*. Stanford: Stanford University Press.

³³ Ibid.

³⁴ European Commission (1998). *The European Model of Sport, Consultation Document of DG X*.

³⁵ Brown, C. and Cassidy, R. (1963). *Theory in physical education*. Philadelphia: Lea and Febiger.

³⁶ Spady, W.G. (1973). Authority, conflict and teacher effectiveness. *Educational Researcher*, 2(1), 4-10.

Process constituents

The starting point for discussion can be placed in a theoretical formulation of the concept of constituent power, as elaborated in Thomas Young's letter to the citizens of Vermont:

“They are the supreme constituent power and, of course, their immediate representatives are the supreme delegate power; and as soon as the delegate power gets too far out of the hands of constituent power, a tyranny is in some degree established.”³⁷

In a narrower sense, constituents are those who directly participate in a particular activity of public interest. On the other hand, in a broader sense, there are also those who are not directly involved but on whom the aforementioned activity certainly depends greatly. Although based in a particular formation, this constellation often goes beyond it, representing new values in both directions. As part of an activity, regardless whether they are part of an organization or platform, the legal status of constituents varies depending on the nature of the action. This largely depends on the legal order within the given society and the level of autonomy and affiliation of the specific organization. In that respect, division of jurisdictions frames terms of reference and modes of exercising rights and responsibilities of constituents. In this case, only a legal entity can have a direct relationship with the competent authority, availing itself of allowed remedies. On the other hand, any other constituent is forced to exercise rights via intermediary arrangement, such as specifically indicated by Sieyes regarding societies with weak or no democracy.³⁸ This further means that certain groups or individuals of importance for an activity of public interest, are in a subordinate and vulnerable position. In this way, a certain order or hierarchy seems to develop as an integral part of the organizational structure, similar to Darwin's evolutionary theory.³⁹ Some authors argue that hierarchy via transferring of competences to the elected representative could facilitate an adequate

³⁷ Dr. Young's letter to the Inhabitants of Vermont, a Free and Independent State, Bounding on the River Connecticut and Lake Champlain. In: Colon-Rios, J. (2012). *Weak Constitutionalism: Democratic Legitimacy and the Question of Constituent Power*. Routledge Research in Constitutional Law. Routledge.

³⁸ Jaume, L. (2009). Constituent Power in France: The Revolution and its Consequences in The Paradox of Constitutionalism. In: Loughlin, M. and Walker, N. eds., *Oxford Constitutional Theory*. Oxford University Press.

³⁹ Darwin, C. R. (1963). *On the Origin of Species by Means of Natural Selection, or the Preservation of Favoured Races in the Struggle for Life*. New York: Heritage Press.

process of decision making.⁴⁰ However, it could also lead to concentration of power among the few,⁴¹ where participants' inquiries/needs are usually not part of the agenda. ⁴² On the other hand, democratic societies should introduce commitment to giving positions to those who are otherwise excluded from participation in decision-making process, allowing for a constant review of existing structure relations.⁴³ It further means that an initiative could come from any excluded party as well as formulated in the given frame and executed by the competent authority.⁴⁴

Direct versus indirect processes

There is no consensus among authors on the costs of direct versus indirect processes, particularly in terms of comprehending needs. In order to understand the relationships structure of the organization, understanding relationships itself, we need to go beyond thinking of the formal or political model as a restrictive/given/imposed constellation. This is particularly true if we bear in mind that some authors attribute importance to political influence,⁴⁵ where others indicate type of structure, i.e. if the environment is more heterogeneous, it will contain more diversified initiatives.⁴⁶

Although harboring an inner contradiction, by nature of its institutional functioning, democracy produces indirect representative systems and therefore is limited to the commonly particular needs or initiatives of individuals. It further means that an easier pathway exists for decision-making within an existing structure. Any process of emancipation, civic engagement or satisfaction of

⁴⁰ Van Vugt, M., Hogan, R. and Kaiser, R. B. (2008). Leadership, followership, and evolution: Some lessons from the past. *American Psychologist*, 63(3): 182-196.

⁴¹ Cartwright, D. and Zander, A. (1953). *Group dynamics: Research and theory*. Evanston, IL: Row Peterson.

⁴² Keltner, D., Gruenfeld, D. H. and Anderson, C. (2003). Power, approach and inhibition. *Psychological review*, 110, 265-284.

⁴³ Unger, R. (1987). *Politics: A Work in Constructivist Social Theory*. Cambridge: Cambridge University Press.

⁴⁴ Schmitt, C. (2008) *Constitutional Theory* [1928]. Trans. J. Seitzer. Durham and London: Duke University Press.

⁴⁵ Banducci, S. A. (1998). Direct legislation: When is it used and when does it pass? In: Bowler, S., Donovan, T. and Tolbert, C. J. eds., *Citizens as legislators*. Ohio State University Press.

⁴⁶ Matsusaka, J. G. and McCarty, N. M. (2001). Political resource allocation: Benefits and costs of voter initiatives. *Journal of Law, Economics, and Organization* 17: 413-448.

general societal needs is being disabled, particularly in neglected aspects of participation.⁴⁷ In the formal sense, it requires transfer, often involuntary, of individual sovereignty or rights to a particular representative/delegate. Depending on the structure of the organization, the indirect (electoral) representative system leads to a certain level of alienation from stakeholders as well as from the main mission. It further leads to accumulation of the levers of power and bureaucratization of structure, in which delegated powers are utilized for the purpose of stakeholder passivation, with the added possibility of acquiring additional material/immaterial assets.⁴⁸ Any attempt to rearrange or promote an even more decentralized model is perceived as a radical approach and encounters fierce resistance from the established decision-making structure.

In this sense, changes must be based on a gradual overcoming of obstacles bearing in mind the highest standards and principles of democracy.⁴⁹ One way to undertake this effort is reflected in the determination to achieve an agreed, clear framework of functioning, with principles of accountability, transparency and removability. This assumes enabling the representation of all interested groups/individuals with the opportunity to (again, through democratic process) stipulate a code of conduct that would, among other issues, review and impose rights and responsibilities of elected delegates.⁵⁰ These prerequisites seek the formation of competent authority for indirect representation of interested parties. Such an authority would be under permanent oversight as a product of an organizational construct by stakeholders using a model of revocation. It is a form of representation that implies non-profit status but that carries a level of civic responsibility. Any other form creates real possibility for abuse of office. A delegate system assumes an expression and sublimation of needs among interested parties not only of a legal nature, but rather social form. Therefore, it indicates a very complex constellation of competences: *decision-making process and election procedures* remain within interested groups; *initiatives* within delegates and interested groups; *transparency and representation* within delegate of the interested groups. Accountability is assumed for all but formulated or stipulated for delegates above others. There is an ongoing

⁴⁷ Chambers, S. (1996). *Reasonable Democracy*. Ithaca, NY: Cornell University Press.

⁴⁸ Operario, D. and Fiske, S. T. (2001). Effects of trait dominance on powerholders' judgments of subordinates. *Social Cognition*, 19, 161-180.

⁴⁹ Sodaro, M. J. (2004). *Comparative Politics. A Global Introduction*. New York: McGraw Hill.

⁵⁰ Dahl, R. A. (1971). *Polyarchy: Participation and Opposition*. New Haven, CT: Yale University Press.

debate regarding two differing approaches to accountability, specifically: *vertical* – in which citizens hold their representatives accountable via electoral mechanisms,⁵¹ and *horizontal* – imposed measures that regulate the constellation among various bodies.⁵² Considering that greater level of democracy linked with a socio-economic context and societal necessities, democratization is a never-ending process because of constant changes and new needs that require continuous review.⁵³

Relationships and membership within organizations: power structure issue

There are numerous definitions here and all of them could be summarized as follows. *Power* could be defined as a method/organization/structure for achieving a certain goal.⁵⁴ Power relations are understood, especially within Western-liberal societies, to quote Karlberg, as “conflictual or adversarial.”⁵⁵ Karlberg continues, saying that power goes along with competition (at best) or coercion mechanism (at worst).⁵⁶ It is understandable that in turbulent times, in particular, there is a lack of proactive action and adherence to the existing structures. Often, a specific economic situation should be a trigger for change. However, in this case, even complex societal challenges have been insufficient to launch motion in any direction. Reasons for this can be found in the historical development of Montenegrin society, consistently lacking any structure for any societal

⁵¹ O'Donnell, G. (1999). A Response to my Commentators. In: A. Schedler, L. Diamond and M. F. Plattner eds., *The self-restraining state: power and accountability in new democracies*. Boulder, Lynne Rienner Publishers: 68-71

⁵² O'Donnell, G. (1999). Horizontal Accountability in New Democracies. In: *The self-restraining state: power and accountability in new democracies*. A. Schedler, L. Diamond and M. F. Plattner. Boulder, Lynne Rienner Publishers: 68-71.

⁵³ Lipset, S. M. (1959). The Social Requisites of Democracy, Economic Development and Political Legitimacy. *American Political Science Review* 53(1): 69-105.

⁵⁴ Mann, M. (1986). *The Sources of Social Power. Vol. I: A History of Power from the Beginning to A.D. 1760*. Cambridge: Cambridge University Press.

⁵⁵ Karlberg, M. (2005). The Power of Discourse and the Discourse of Power: Pursuing peace through discourse intervention. *International Journal of Peace Studies*, 10(1): 1-25

⁵⁶ Ibid., 1

group (including the government). Dahl noted that the scope of power mainly depends on the ability of decision-makers to influence decisions regarding a particular subject of interest.⁵⁷

To understand the general context in relation to its power structure, it is important to note Karlberg's important distinction between 'mutualistic' power categories – seen as power with, and 'adversarial' that is, as power against.⁵⁸ Of course, the current (bureaucratic) structure has played its role in safeguarding the existing constellation as the only means of retaining acquired power. This implies that any change could occur only with an active role from those most affected by these relations. An aggravating factor is the lack of normative protection or legal instruments to exercise one's right to strive for proper positioning of needs. A basic need of any democratic institution is equal participation, especially in activities or decision-making processes that affect those particular persons. This process inevitably leads to permanent conflict among various stakeholders. It would be a mistake to consider it as an existential or political matter. The conflict would be fight over ideas that are based on a vital understanding of democracy. For this struggle, it is essential that within existing groups there should be consensus on the directions of action, knowing that current decision-makers will have a clear pathway. Although it does not have a revolutionary character, this approach could nevertheless cause a reaction among those who want to maintain the status quo. A similar approach could be found in the Fabian Society. Established in London in 1884, its aim was to promote the moral reconstruction of British society according to socialist principles.⁵⁹ "Fabians" advocated for non-revolutionary transition to socialism based on humanist (cosmopolitan?) foundations. Could this approach be adopted, bearing in mind differences between 19th century societies and the present day, especially concerning the intense politicization of sport organizations and considerable increase in potential conflict of interest (even with the best intentions)?

Another argument is that any change must begin with outside intervention. State interventionism is necessary, but in the current constellation, it is a test of its character, especially in regard to the uncertainty of role separation between public servant and decision-maker in sporting organizations

⁵⁷ Dahl, R. (1957). The Concept of Power. *Behavioral Science*, 2(3): 201-215.

⁵⁸ Ibid., 9.

⁵⁹ Bevir, M. (1996). Fabianism, Permeation and Independent Labour. *The Historical Journal*, 39(1):179-196.

that are both non-profit and non-governmental in character. The hindering fact is reflected in the nature of sport, a fluid social relation that is difficult to fit into existing norms, especially in times of excessive commercialization followed by institutionalization of corruption. The latter occurs particularly when the decision-making process becomes oligarchic, using popularity and misusing values that the sport represents for the sake of additional power.

Whether any change involves discontinuity of the existing structure seems to depend on the type of change conditioned by the dynamic of the overall societal shift. Even if done for noble reasons, the formation of the structure in the sport has eventually led to the subjection of the various interested parties to a group of individuals. The nature of this process enhances inequality among members whose relations are built on common law grounds. The organization is considered a necessary monopoly structure with a coercive approach. The argument that subsistence of the organization is in conjuncture with existence of particular sport is misleading but remains a powerful tool in shaping the general population's view. This perception relies on the same perception as a political order, where democratic principles were used to create a closed user structure, which are the hallmarks of the beginning of authoritarian systems. Similar considerations could be derived from the work of Thomas Hobbes, whose theory of state absolutism and all-mighty sovereign is basically the authority and power of individuals.⁶⁰ This assumes transfer of power from the group to an individual with monopolistic use and absence of checking mechanism. Any institutional openness or rearrangement in this respect would lead to the disempowerment of the decision-maker(s) and is likely to evolve into conflict. Order replaces the normative framework and any change is made as reactive nature.

From a progressive standpoint, change is permanent and involves continuous adaptations. That is the modern conception of continuity, a process that takes account of tradition, mission or a vision, as well as considering and adapting to changes. As opposed to Hobbes, Locke noted the importance of every individual's distinctiveness and right to freedom of expression.⁶¹ Abiding by the rules is conditional and based on providing an adequate environment that would protect and promote the rights of individuals. This is a kind of paradox where imposed rules cannot be overlooked, creating

⁶⁰ Hobbes, T. (2011). *Leviathan: Volume I*. CreateSpace Independent Publishing Platform. ISBN-10: 1463649932

⁶¹ Locke, J. (1980). *Second Treatise of Government*. Hackett Publishing Co, Inc; ISBN-10: 09151448

a certain contradiction in regulating implementation policy. Any noncompliance with the rules and procedure means a call for a collectivist approach or rebellion, which is another added paradox to the individualistic approach by Locke. As a continuation of the individualistic approach, Rousseau notes that even though men are born free, in structured society, they are not able to fully practice their liberty.⁶² It means that any individual is subjugated to the monopoly of the norms imposed by the decision-makers of particular society. By contrast, Rousseau's social contract proposed for people to create a general will (of the people) via "social bond" that would take into account every individual right. The people rule over the individual, and if there is no consensus, the majority decides. It is the people in a society that is sovereign. The concern that remains regards the organization's (state) coercion against individual liberty. Rousseau saw the state as a union of individuals, bound by common interest. In order to justify the existence of a supreme authority (organization vs. people) it requires bringing coercion mechanisms under the normative framework where the *raison d'état* has the highest level of support from the people. The question that arises and is in close relation with the concept of autonomy and participative formation is whether norms could exist within an organization structure, or whether they are derived from public authority influenced by international standards? Legally, norms are derived from a competent legislative authority. In that sense, the range of autonomy of a particular organization depends on the formulation of norms rooted in specific state needs. By indirect democratic principles, the people have the power to choose their representatives for public institutions. Those institutions are in charge, *inter alia*, of adoption of a normative framework in a given field. It means that responsibility in societies based on participation in decision-making lies in the citizens' decisions. Going a step further with this assertion, the people transfer their sovereignty to their public representatives with a strong possibility to be subjected to coercion mechanisms. This is the same paradox that was revealed in the functioning of contemporary sport organizations. The norms oblige everyone; liberty of individuals within organization is framed by norms (meaning orders) imposed by decision-makers, especially in situation where the state adopts semi-binding and non-binding rules for the organization's function. There is a nonsense in this constellation where organizations exercise a high degree of autonomy within which interested parties have significantly low level of opportunities to participate in the decision-making process. Regarding the autonomy of sport

⁶² Rousseau, J. J. (2008). *The Social Contract*. Translated by Cole, G. D. H. Cosimo, Inc. ISBN: 1605203971

organizations, it needs to be said that autonomy is given rather than acquired, and its range is framed by national law or specific decisions. It is the process of socio-political and economic compilation of decision-makers' agreement on a particular matter. Whether adopted by the state/organization, norms could exist only if implemented, although not necessarily grounded in a moral standpoint. The nature of sanctions should not be a matter of discussion, except in terms of implementation processes. The normative framework is inseparable of any state/organization's existence. State interventionism does not necessarily mean limitation of the society. Rather, it should mean limiting the influence of politicization that could treat a particular segment of society or civic engagement. Apparently, this question cannot be understood without economic factors, that is, state interventions is welcomed by socialists, in term of protection of labor rights. By contrast, liberalists urge for a clear delineation between state and the economy, where the state is obliged to adopt a normative framework to regulate societal relations. This would not only harm the economy, but also the field of sport as well (for example), which falls under the culture of specific society.

Being a union of individuals of often conflicting interests, society has no chance to survive, because it lacks any connective tissue. Any change to the natural state where public aid is taken to have a more negative connotation, since it is seen as an obstacle for those with do not need it. On the other hand, are individuals as social constituents that should, through interaction, denounce the necessity for change and unleash their will in order to engage with change. It would be correct to highlight that interaction could be some kind of competition that would result in positive change (for majority). This process should not be limited only to the interaction of individuals, but a whole range of different groups and their needs. Consequently, it is a struggle between groups and individuals expanding their influence of a particular field of interest within society. Focusing on the sphere of interest is not a limitation but a favourable determination for progress in society. In this process, the obligation of the state is to provide not only a framework for development, but also impose limiting mechanisms in case a group or certain individual's involvement overrides the national framework. Another important detail that should not be overlooked is the current constellation of groups and individuals within society; often there are different classes, economic and social positioning that requires the adoption of additional mechanisms to prevent dominance of some over others. The establishment of a class society, that is, systemic inequality have

inevitably led to the weakening of the “grass-roots” movement or groups that are often the engines of social progress. It is essential for a state to intervene in order to safeguard its own existence and survival. Solidarity is exactly what would give a society a wealth of resources to cope with the external, and those much more daunting, internal challenges. Decentralization of the state/organization does not mean that it becomes a passive observer, it means more opportunities for different groups or individuals to exercise their right to participate in the production of change and influence the decision-making process. State interventionism is especially needed for strengthening the structure (state) responsible for providing conditions/environment for the development of society and acting with more autonomy. The spreading of state and non-state (sport organization) actors and decisions of overall importance, requires subordination to the general will of the people.

Ownership: rights and implications

A moment that could test the stability and constellations among stakeholders is the question of property or ownership within a particular activity. A question that is perhaps prior to this, however, is whether activity of public interest may be privately owned? Sport is constitutionally recognized as an activity of public interest. Accordingly, sport and the organizational structure that serves as its platform need to keep/possess the character of social ownership. The latter represents an expression of constellation within a particular society, reflecting civic engagement and power relations. Ward argues that there are different perceptions in a socialist and capitalist environment of the aim/purpose and distribution. In a socialist society, existing assets as well as those accumulated during the operation of the particular organizational structure are directed as an outcome of coexistence among interested parties, while ensuring collective and individual satisfaction of needs.⁶³ This implies that no one group has a monopoly, i.e. the possibility of appropriating accumulated assets or unidirectionally/arbitrarily determining its distribution. An activity of public interest is at the foundation of association, providing the interested parties with equal representation, overseeing that there be no potential exploitation of vulnerable stakeholders, without imposing an appropriate governance model or mechanisms to ensure equal representation.

⁶³ Ward, B. (1967). *The Socialist Economy: A Study of Organizational Alternatives*. New York: Random House.

Here, it is important to distinguish between (ownership) right of disposal and right to administer (management-govern) that would suggest a governing model, especially in terms of movable versus immovable or financial versus economic or political versus social properties/assets/values. Certainly, what needs bearing in mind is the right of interested parties to private accumulation of assets exists only if it does not contravene or undermine activities of public interest.

An activity of public interest presupposes involvement of interested parties as a reflection of an egalitarian society. This involvement represents ownership within the activity, but the complexity of relations aggravates a better perception of stakeholders and the character of their participation. Social ownership or property owned by society is loaded with generalities that could be seen as following this contradiction: *power to all, responsibility to no one* – the absence of *de facto* subjectivity. On the other hand, social property can be understood as a complex relationship of norms, standards and accountability of stakeholders through political, legal, cultural and any other function. Based on solidarity and collectivity an activity of public interest is executed in real time and space, constantly challenged by bureaucratic-centralistic-monopolistic groups, who are often motivated by possibilities of using the sphere of public interest to spread influence/impact on society in general.

Depending on the complexity, an organization could be less homogeneous, but it does not necessarily mean decentralized, as it can be partialized. This contradiction is the first step towards building solidarity, which would lead to the decentralized constellation in organizational structures. The next task involves design of frameworks for the cooperation in a particular group of stakeholders (e.g. union of athletes). A particular group can be developed through direct dialogue of interested parties, with a general stance and appropriate guidelines. Even if it seems that work within a given group is solely up to the participants, bearing in mind the existing (inherited) relationships, as noted by Peltzman,⁶⁴ there is “space” for outside intervention/influence that often result in corrupt practices. Ultimately, it is up to the participants’ integrity and overall mission of the group to assess the validity of external intervention.

⁶⁴ Peltzman, S. (1976). Toward a more general theory of regulation. *Journal of Law and Economics* 19(2): 211-240.

As mentioned earlier, an activity of public interest implies the existence of a complex organizational structure, i.e. existence of different groups of stakeholders. Coexistence of their relations is brought to the more centralized, decision-making level. Here we can note a certain level of indirect relations of interested parties that requires a higher level of bureaucracy and politically based processes of decision-making in the further functioning of the organization. These relations do not have to be of a contractual nature per se; however, they need to be framed and to some extent guided by a founding act.⁶⁵ This act functions as an implementer, a closed group with a mechanical character and passive nature. Preoccupied with the hierarchy of rules and procedures, bureaucracy is detached from societal aims, indifferent to human relationships, which ultimately leads to “chaotic” bureaucracy.⁶⁶

On the other hand, a lack of immediacy emerges into the foreground of decision-makers, who do not necessarily follow the stance of involved groups in an organization and are directed more towards strengthening their levers of power. This could result in a concentration of total values as a result of the significance of the activity of public interest alienated from the direct control of stakeholders, creating fertile soil for a monopolistic position or the emergence of an autocrat with familiar characteristics (and very well described by Bass⁶⁷). Therefore, it is important that organization policy reflects participation of all stakeholders in the decision-making process and that governance structures rely on accountability, i.e. have interests and responsibility that are based on the overall interests reflecting values of the activity of public interest.⁶⁸

In that respect, a politics of organization needs to be multi-operationally oriented, with necessary means to guide a social process, act preemptively and resolve conflicts between conflicted stakeholders. This interface is a fertile ground for the operation of the various interested groups,

⁶⁵ Estrin, S. and Petrin, T. (1991). Patterns of Entry Exit and Merger in Yugoslavia. In: Geroski, Paul A. and Joachim Schwalbach, eds., *Entry and Market Contestability: An International Comparison*, Oxford UK and Cambridge US: Blackwell, pp. 204-220.

⁶⁶ Merton, R. K. (1968). *Social Theory and Social Structure*. Free Press. ISBN 0-02-921130-1

⁶⁷ Bass, B. M. (2008). *Bass' handbook on leadership: Theory, research and managerial application*. New York: Free Press.

⁶⁸ Halperin, J., Siegle T. and Weinstein, M. (2005). *The Democracy Advantage: How Democracies Promote Prosperity and Peace*. New York, NY: Routledge.

often acting beyond the given structure or imposed procedure. Sailing between external, internal and public interest, it is necessary for the strategic setting and the decision-making processes to rely on credibility and accountability. This implies responsibility to the organization, constituents of the organization and most importantly, to society in general. *De iure*, it is matter of given trust and transferred authority. Its absence potentially leads to abuse of power and criminal consequences. *De facto*, it is matter of civic and ethical credibility.

Negotiated vs. imposed norms

To understand the structure of an organization, it is important to understand its nature. Whether it is simply a compilation of individuals or a separate entity, i.e. *universitas personam* vs. *universitas rerum*. On that basis, it can be seen as a social group or a legal entity. As the latter, an organization has limited representation, contrary to the legal entity, which has full power to act (function) according to the competent legal framework. The legal framework serves to enhance progress or to prevent of any misuse. Structure is formed to follow the nature of the organization in a specific field. It depends mainly on the constituents and the nature of the society (social, political, economic, physical characteristics, etc.). As a legal entity, through its structure, an organization tends to subjugate its own members with the aim to outlive them. If the organization is seen as an organism, the combustion process is a process in which the members transfer part of their rights, enabling the same use of coercion mechanism if needed. Members could exercise their right indirectly through the formed structure and in accordance with the will of the organization set by internal norms. The authority of decision-making is based on legal norms, which shows the inseparability of law and organization. With a monopoly to elect representatives within the structure, the organization maintains control over its work and functioning, further limiting the scope of action for its members. Since norms cannot foresee all circumstances, proactive parties (external or internal) can act in order to influence the further standardization of specific issues within the field of interest. At the beginning, interventions could be evidence- or ethics-based, but in order to have a practical impact they need to meet legal form.

“Negotiations” should not be based on economic or political, but rather a democratic and even ethical standpoint, based on cosmopolitan (Olympic) values. Discussion about governance model

is needed as long as the foundation is safeguarded, that is the equal participation of all stakeholders. The second basis for functioning is the merit system as contrary to a protectionist approach that has guided the current formation of norms followed by structures established to serve that purpose. In particular, the question is whether this, the romantic approach, is at all possible considering how opposed the parties are in their positions. With the abovementioned lack of proactivity, the question and the commencement of conflict resolution is at stake. A pyramidal way of strengthening existing power with abuse of the network principle or co-management with interested (third) parties, have deadened any attempt for both internal and external activities of the individual capacity. However, this could be overcome, the next potential risk lies in further misuse of democratic principles by creating permanent organizational and functional crisis in order to lower civic potentials and to undermine principle of equal participation. A unionist approach, which implies a kind of melting pot of public interventionism (socialist style) with capitalism (neoliberal) philosophy that introduces individuals with strong political backgrounds, working in public institution and representing a particular sporting organization. They are creating spheres of influence in the form of related organizations, in addition to their representatives further strengthening their position in relation to those who should by nature portray the given sport. In the constellation in existence, the aforementioned groups are doomed to continued conflict, where the intensity and the outcome will depend on the synergies of the vulnerable one. In that struggle, the gap between *de iure* equality and *de facto* inequality should not be a starting point. *De iure* position of the interested parties within a particular sport needs to be reviewed first on the basis of equal participation which means not only right but also the greater share of responsibility. On the other hand, the burning issue is the question of ownership and how it affects interested parties, especially in a broad understanding that a particular sporting organization is seen as private property of certain individuals. A lack of clear regulations of election procedures allowing for multiple terms in decision-making positions, have produced “trapped” organizations with no accessibility for all. Essentially, this requires restructuring of the organization in a particular sport, keeping in mind the sport’s particularity and tradition on the one hand, and needs for equal representation on the other. A first step should include reasoning of different structural as well as individual capacities among various interested groups and individuals. Acknowledging different capabilities, an organizational approach should rely on a process of more than simple collectivism in order to enable sustainability of coexistence, cognizant of the hidden danger that processes could be misused. As Rawls notes, the future of

democracy depends on reinforcing the moral dimension, the general social value and merit system within the distribution of power. These are the preconditions for any external intervention in support of internal initiatives.⁶⁹ Sport is part of culture and cannot exist without society, but nor can society without sport. Therefore, activities should be guided by cosmopolitan (democratic and cultural) social needs, rather than by simple economic and political ideas. This does not mean that in case of a complex economic or political situation, the environment is not a significant factor, but fundamental change lies in going forward, beyond the framed constellation. Sport and society, as internal and external communities with competences that often coincide, leaving a certain level of autonomy for sport-specific rules. The way how this position is perceived stands as an obstacle to deal with the root of the problem. The danger lies, of course, in abstracting the problem, which leads to cleavages within vulnerable groups, creating sub-groups that could easily be derailed.

Permanent crisis in the service of nurturing; decision-makers' perspective

Nurturing a dualistic system, formal vs. informal or public vs. closed group or profit vs. nonprofit, has shown to greatly reflect complex economic and political situations in society. Often, informal ties supported by the profit sector and enabled by normative loopholes have replaced the existing formal system using any form of societal displacement of core values with a wide range of coercion mechanisms. As the product of the previous constellation, a permanent crisis is being created, permeated across all of society; therefore, for the purpose of understanding the current constellation, it is necessary to use a multidisciplinary approach, i.e. go beyond the main object of observation. A permanent crisis could be defined as unavailability of organizational structure, imposed through highly bureaucratic procedures where decisions that are not of interest to decision-makers are marked by slowness and unenforceability, resulting in atrophy of civic engagement and further boosting the power of the ruling class. An outcome is the inefficiency to maintain values of public interest, creating on the one hand pure bureaucratic elitism and on the other further erosion of the group on which the activity relies upon. In this sense, the position of decision-makers frequently involves the use of other (interested parties or individuals) through various forms of manipulation, thus strengthening their own position, all the while making those

⁶⁹ Rawls, J. (1971). *A Theory of Justice*. Cambridge: Harvard University Press.

others even more vulnerable.⁷⁰ An additional problem is reflected in the notion that those not part of the decision-making process have no incentive to support the values for which the activity of public interest stands. Studies have shown that such an attitude greatly backs up the creation of absolutism and lowers the likelihood of cooperation with other ideas/suggestions, in which case, a particular concept unilaterally becomes the only valid character of the organization.⁷¹

Thus, reflecting on the historical trace of such formation, not only organizational but also ethical deformation can be seen, which further implies the notion that there is no progressive policymaking without ethics. There is a devolution into interest-ideology (and artificially produced) groups that generate absolutist (most often individual) power. The core conflict between etatism and those excluded from the decision-making process is being constantly strengthened by the socio-economic context, by politics via imposing norms full of loopholes in which others are “strangled” by highly demanding procedures and selectively permeable bureaucracy.

Concluding remarks

Given the framing of the constellation discussed above, it seems that members can be categorized in three groups: *unlimited* – members are subdued to the legally framed organization and guided through individual action; *collective* – the organization represents an approach in the general interest of members; or *active power* – members are directly involved in decision-making process. To establish a specifically structured organization, i.e. one that will serve all interested parties, it is important to broaden the legal framework, imposed by state and influenced by international norms in this specific field. The legal framework restricts any individual’s will, in order to meet the needs of majority or general will. It is necessary to form the structure in a way where individual bodies are in the service of implementation of specific activities prescribed and framed by the competent norm of the organization, derived from the legal framework. In particular, the executive bodies have the higher responsibility of knowing that all decisions have direct consequences for those who for whatever reason are not included in the decision-making process. Given that

⁷⁰ Kipnis, D. (1972). Does power corrupt? *Journal of Personality and Social Psychology*, 24(1): 33-41.

⁷¹ Eaton, A. A., Visser, P. S., Krosnick, J. A. and Anand, S. (2009). Social power and attitude strength over life course. *Personality and Social Psychology Bulletin*, 35, 1646-1660.

positions within the structures represent the individual, they stand in for the entirety of governance and therefore the only legal entity is the organization as whole. Being part of an organization is a privilege which does not come alone. The responsibility for all decision-makers must be clearly defined on the level of civil and criminal liability, specifically in the area of misuse of power and abuse of office. On the other hand, work within expert bodies, although not producing directly any legal effect, have an enormous impact, especially considering that those decisions by nature would be incorporated by the decision process of executive bodies. As explained, although the scope of work is defined by the legislation, internal control must remain solely within the independent body. The composition of that body and its terms of reference depend on the struggle between classes within the organization. How functional it will be depending on ensuring the general population's support and on international pressure to implement its norms and standards. The core activity focuses on adoption and implementation of rules based on a legal framework, particularly frame of formed bodies within the structure, and necessity to prevent any misuse of power or abuse of office that could affect the basic mission of the organization.

Conditions for the emergence of change differ depending not only on the simple distribution of authority, but also on the existence of the emancipated interested groups (as part of the wider civic engagement) that are excluded from the decision-making power. Established as a monolithic body, bureaucracy is opposed to any form of direct involvement of interested stakeholders in the decision-making process. Any adjustment within the mentioned body depends primarily on decision-makers, i.e. power relations in the organizational structure. With this formation, decision-makers take over all the values that represent an activity of public interest. The lack of opportunities for direct representation leads to the negation of basic democratic rights and freedom.

In support of this, it is important to bear in mind the contradiction between *de iure* and *de facto*, or rather what is stipulated versus what is implemented. The discrepancy leads to the detachment from core values or mission of organizations. In order to transcend this contradiction, there needs to be a pathway from informal to formal, closed to public and nonprofit perception. Importance must be placed on participation, intervention and initiative as noted by Benhabib, bearing in mind that this means that the process of *democratization* (participation of all stakeholders in decision-making processes) must be undertaken: imposing clear mechanisms for human rights protection (ethics

commission), *delineation of structure* traversing the organizational structure (from centralized to decentralized and pluralistic) and introduction of *internal legal/financial audit control* (supervisory board).⁷² Therefore, measures need to go beyond governing principles in order to reflect integration processes tackling all types of inequality and misuse. In that respect, belonging to an organization also means the right to make your own decisions.

A federal, decentralized organization with emancipated and autonomous groups, a legally defined mechanism of checks and balances based on accountability, credibility and transparency, de-monopolization of ownership rights, particular decision-makers not representing the overall activity of public interest. In structural terms, it means disjunction of administrative/technical nature of bureaucracy from the ownership right, which implies adequate positioning of the administrative apparatus. Nevertheless, interested groups/individuals need to respect and value diversity among themselves, articulating methods and appropriate mechanisms in order to protect and promote their agenda in a manner in which actions will not constrain others.

Thus, it is important to recognize the existence of an ideological or political monopoly, which in addition to what has already been said, must be reviewed in the same manner. In this regard, it is important to promote pluralism of ideas, separability of measures, implementation versus abstraction, further promotion of freedom of opinion and open expression. This arrangement does not produce a “final” product, especially if we take into consideration individual imperfections and systemic shortcomings; it produces necessary conditions to ensure coexistence and prevents the process of alienation of social values within a particular activity of public interest. It further implies *a priori* given trust to the particular group or individual, only using coercive mechanisms when agreed norms have been violated.

Summing up the argument, an organization as a platform of various stakeholders (interested groups and individuals) needs to be guided by progressive ideas and represent an authority within a specific field in order to safeguard and enhance the given activity of public interest.

⁷² Benhabib, S. (1996). Toward a deliberative model of democratic legitimacy. In S. Benhabib eds., *Democracy and difference: Contesting the boundaries of the political*. Princeton, NJ: Princeton University Press. pp. 67-94.

Chapter Three: Understanding the Autonomy of Sport Movement/ from the International to the National Environment

Introduction

From ancient times, there was a differentiation of *special law* – written law, which regulated relations of a particular community, and *universal (general) law* – a sum of customs and unwritten norms defined as natural law and recognized everywhere.⁷³ Although each community exercised certain particularity, it presupposes that the principal standards are suitable to all communities acting as *ius gentium*. More precisely, *ius gentium* represents a ‘natural reason established among all peoples’,⁷⁴ which was subsequently replaced by international jurisprudence focusing on law between nations rather than law of nations.⁷⁵ Since authors’ today avoid in *numerus clausus* to enumerate entities of the international law descending to the level of the natural entity, it opens up a need not only to examine the position of sport movement within the international context but to disclose a placed structural frame and implications on the national level as well.⁷⁶ Furthermore, to comprehend *modus operandi* of sport, it is necessary to consider the position of the institutions which, it could be argued, act as monopolies within the international environment. In this respect, the authors are right to suggest that it should not be seen purely through the normative framework, but the focus should be on the decision-making process as part of organizational culture, and particularly authoritative decisions.⁷⁷

⁷³ Aristotle *Rhetoric*, I, 10, 1368b.

⁷⁴ “*Quod naturalis ratio inter omnes gentes constituit vocatur ius gentium*” in Tierney, B. (1997). *The Idea of Natural Rights. Studies on Natural Rights, Natural Law and Church Law. 1150-1625.*

⁷⁵ Bentham, J. (1970.) *An Introduction to the Principles of Morals and Legislation*, ed., Burns, J.H. & Hart, H.L.A. London.

⁷⁶ Milenković, S. (1968). *Zaštita prava čovjeka i subjektivitet pojedinca u svetlu međunarodne teorije i prakse. Zbornik Pravnog fakulteta.* Niš: Serbia. pp. 175-190.

⁷⁷ McDougal, S. M., Lasswell, D. H. and Reiman, M. W. (1966). *World Constitutive Process of Authoritative Decision. Faculty Scholarship Series.* Paper 675.

Sources of international law are based on general principles of law set in Article 38 of the International Court of Justice Statute,⁷⁸ humanity and *pacta sunt servanda*. Above all, this further implies the rule of liability – *nemo plus juris ad alium transferre potes quam ipse habet* and rule of impartiality – *nemo judex in sua causa*. In a hierarchical sense, if there are multiple sources, priority is given to treaties between states in relation to customary international law derived from practice,⁷⁹ judicial decisions and writings of the most recognized publicist.⁸⁰ Application of customary international law – ‘the law that results from the customary practices and beliefs of nations’, depends on five categories: territory, nationality, protective principle, passive personality and universality.⁸¹ Those categories are important for later consideration of legal range of decisions made by sport and sport judicial bodies, bearing in mind inter-relation between on the one hand treaties, customs, judicial decisions and *lex sportiva* on the other hand. In particular when it comes to civil liability, the range of universal jurisdiction is still unclear, considering various forms of corruption within sport movement. It is not unusual that international norms stipulate more commitments than are reflected in certain national legislation (and *lex sportiva*), and its implementation procedure often depends primarily on constitutional arrangements, i.e. methods how to implement precedence of ratified treaties and customary international law over domestic legislation. When it comes to universal jurisdiction, Bradley continues that for “those who commit such offenses” are *hostis humani generis*, with obligation for countries to act in order to prevent or impose sanctions where needed.⁸² In terms of commitment, it applies *par in parem non habet imperium* principle with *ius cogens* rules aimed to protect the international community where each state has authority to act upon competent norm of the international law in order to safeguard international order.⁸³

⁷⁸ “The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; b. international custom, as evidence of a general practice accepted as law; c. the general principles of law recognized by civilized nations...”

⁷⁹ With remark *opinio juris*.

⁸⁰ With remark *sententia jus facit inter partes*.

⁸¹ Bradley, A. C. (2001). Universal Jurisdiction and U.S. Law. *University of Chicago Legal Forum*: 2001(1): 323-350.

⁸² *Ibid.*, 324.

⁸³ Brownlie, I. (1998). *Principles of Public International Law*. Fifth Edition. Clarendon Press.

Examining the status of the ISFs in International law

International sport federations (ISFs), much like other international organizations, are established by appropriate legislation followed by a founding act where mission/vision, competences, governance and financial aspects should be stipulated. ISFs are not fully independent, taking into account fact that they have limited legal personality and functional/organizational capacity upon selected membership principles, i.e. *universitas personam* vs. *universitas rerum*. From the legal point of view, ISFs including the International Olympic Committee, are subject under the competent legislation for the civil society – NGOs.⁸⁴ They are expected to adopt a founding act (e.g. Statute) with the vision/mission/goals in place; they are required, in *organizational terms*, to foresee a structure of an organization with appropriate bodies in place (e.g. General Assembly/Board) and decision-making procedures. Although freedom of association presupposes limits especially in regard to economic affairs, there has been a debate and action in order to award a *sui generis* status in that respect. Such status along with action to receive special treatment relating to the tax exemption, has led to the IOC in particular, bearing in mind core activities in promotion of peace, mutual understanding and education, adoption of necessary provisions within the Host State Act, all of which later impacted other ISFs as well. As Mrkonjic noted, the latter allows the ISFs to have ‘public service providers’ status and to be recognized as international NGOs.⁸⁵ Through its global recognition and significance in sport, the IOC has received worldwide legitimacy reflected above all, in observer status within the UN and contributor to international peace.⁸⁶ The acquired position of the IOC and the growing influence on constellations beyond the sporting world has led to the *de facto sui generis* status. Therefore, to become part of the international sport movement, sports organizations are obliged to abide by the Olympic Charter, i.e. to comply with provisions specifically foreseen as fundamental principles of Olympism,

⁸⁴ The majority of ISOs including the IOC are registered by the Swiss Civil Code.

⁸⁵ Mrkonjic, M. (2013). *The Swiss regulatory framework and international sports organizations*. Action for Good Governance in International Sports Organizations. Play the Game.

⁸⁶ More at: www.olympic.org/news/ioc-and-un-secretariat-agree-historic-deal/230542 (Accessed 9 August 2018).

imperative rules directing a ToR of organization and compliance with competent legislation in the spirit of *pacta sunt servanda*.⁸⁷

Beyond this framework, states as the primary subjects of the international community, access, sign and ratify treaties based on the appropriate international norms. As with potential *ius cogens* rules and *erga omnes* jurisdiction, the latter constellation complicates relations within the sport movement *vis-à-vis* states/intergovernmental organizations, even though the intention is an implied covenant of good faith and fair dealing.⁸⁸ The growing interaction among various subjects and international nongovernmental organizations reflected in power-sharing and consultative frames of international law is more complex than the structured bearing of still state-centric constellations. As Martens notes, there has been an attempt to identify the level of impact of international NGOs,⁸⁹ and we must recognize the growing NGOs influence on states and intergovernmental organizations using a soft power approach, frequently representing public opinion/interest.⁹⁰ It is very much reflected in lawmaking, policy-making and new diplomatic approach.⁹¹ Here it is important to distinguish ‘two major tracks of NGO interpretation’.⁹² *Sociological approach* – focusing on structure and actors within NGOs with *soft law* (recommendations) norms imposed in that respect;⁹³ the *judicial approach* – focusing on the legal personality and position within the international community. In particular, the status of international nongovernmental organizations seems to still be unclear, vague and undetermined. Member states within the Council of Europe – an intergovernmental organization – signed and later ratified the Convention on the recognition of the legal personality of international NGOs, under the conditions of universality, non-profit, established by the internal legislation of states of origin, conducting activities in more than one country, with necessary organizational and management structures in place.⁹⁴ It further means, that

⁸⁷ IOC, 2015. IOC Charter.

⁸⁸ Vienna Convention on the Law of Treaties (1969).

⁸⁹ Martens, K. (2003). Examining the (Non-) Status of the NGOs in International Law. *Indiana Journal of Global Legal Studies*, Vol. 10(2): 1-24.

⁹⁰ Pearson, Z. (2006). Non-Governmental Organizations and the International Criminal Court: Changing Landscapes of International Law. *Cornell International Law Journal*, 39(2): 243-284.

⁹¹ Ibid., 251.

⁹² Ibid., 19.

⁹³ Recommendation CM/Rec (2005)8.

⁹⁴ Convention No 124.

particular international NGO recognized in its country of origin is automatically recognized in other states as part of the treaty emerging beyond *terra incognita*. International NGOs, as any other entity, are entitled to both recognition and protection under fundamental freedoms with imperative provisions for parties-states stipulated in the articles 9-11 of the European Human Rights Convention.

An aggravating factor for the field of sport is a deficiency of adequate academic focus. It would therefore be a good idea to consolidate existing data. With this in mind, cooperation on an international level provides an appropriate environment to enable international NGOs' voices to be heard, which goes often beyond state jurisdiction through various forms, especially in relation to intergovernmental organizations.⁹⁵ In this consultative rather than fully participatory relationship, international NGOs have an opportunity to influence and to offer a sport specific perspective for sensitive policy and political issues.⁹⁶ The adopted rules within the sport movement often reflect the *vidimus* that states or appropriate supranational or intergovernmental organizations follows, which could lead to intricacy of relations, questioning existing consultative based partnerships. From the work of the Consultative Committee within the Council of Europe's EPAS structure, having in mind *ordre public*, there have been several issues raised regarding participation modes of international NGOs in the field of sport. Status, representation, costs of participation and appropriate forum in the light of self-regulation (meaning autonomy) and self-organization; all of which are still being discussed given the significant increase, both quantitatively and qualitatively of transnationalism and the sizable impact on global governance.⁹⁷

Sport provides a vital contribution to public health and stresses overall justice through principles of equality and impartiality.⁹⁸ In order to enhance the implementation of those principles, certain structures and rules must be in play, depending on the cultural particularities that often reflect power relations within a given society.⁹⁹ The constellation here in question brings to mind certain

⁹⁵ Resolution CM/Res (2010)11 & CM/Res (2015)4.

⁹⁶ Resolution (2003)8.

⁹⁷ Rosenau, N. J. and Czempiel, E. O. (1992). *Governance Without Government: Order and Change in World Politics*. Cambridge Studies in International Relations. Cambridge, UK: Cambridge University Press.

⁹⁸ Agozino, B. (1996). Football and Civilising Process: Penal Discourse and the Ethic of Collective Responsibility in Sports Law. *Law and Popular Culture in International Journal of the Sociology of Law*, 24(2): 163-188.

⁹⁹ Nafziger, J.A.R (2004). *International sports law*. Translational Publishers: NY.

limitations for the development of sport as an activity of public interest, given the level of political significance reflected in the soft law approach. Although Malatos notes that sport is a three-level regulated activity within public authority, sport movement and their combination – this is debatable.¹⁰⁰ Public authority decides to transfer rather than regulate competences to the sport movement with some limited *de iure* frame for action. However, *de facto* through informal networks, it reaches the necessary involvement-pressure. When it comes to combined legislation, it could be argued that activities are more related to the frame of international law in the dynamic and multilateral environment – intergovernmental, supranational institutions and appropriate judiciary. On the other hand, a “battle” of the sport movement to gain full autonomy (meaning independence) with highly promoted specificity, often understood as having *sui generis* status, has led toward a heterogeneous approach. In some countries, the courts are not willing to take action against decisions made by the sport movement,¹⁰¹ while in others they exercise supervising autonomy.¹⁰² The ambiguity of the concept of autonomy represents an obstacle when it comes to drawing the line between sport-specific and general liability. Of particular interest in regard to the position of sport organization, in structural terms, are the relations among stakeholders are reflect *ordre public* and nature of the association in the spirit of *pact sunt servanda*. The latter comes into collision with natural rights of individuals (that is, athletes) to free accession and equal opportunity within sport. In a narrow sense, it has opened a debate regarding the basic principles of both active and passive democratic participation, and indeed of the decision-making process. Depending on the political power structure, legislators or decision-makers should impose measures to regulate level of liability of constituents and participants within sport. Even if a decision by a stakeholder does not produce criminal offence, it is still liable to all interested parties within sport-specific or civic liability via its monopolistic position. In this given constellation, this cannot be solved simply by concerned state legislation, it must be understood through a universal lens, with aim on creating more harmonized both intergovernmental and *lex sportiva* normative framework.

Leaving aside the appearance of heterogeneous approach in regulating the sport field in national context, and besides its sport-specific nature, there is an intersection with labor, contracts, criminal

¹⁰⁰ Malatos, A. (1992). *Introduction to sports law: Sports legal order*. Epitheorissi Athletikou Dikaïou.

¹⁰¹ Nafziger, J.A.R (2002). Comments on Applying International Sports Law in the United States. *ISLJ* 2002/3, p. 9.

¹⁰² For example, the Serbian sport system and its relation to the public authority.

and competition law. This represents an additional argument for a necessary multidisciplinary prospective in order to properly distinguish the line between guiding development and degrading treatment for an activity of public interest. It further implies, as Oschutz states, adoption of strict liability for sport specific offences, e.g. anti-doping.¹⁰³ Legal entities within sport movement ISFs or NSFs provide, adopt and implement rules as a part of a formalistic approach to direct the development of a specific sport. Methods of controlling the implementation of adopted norms are by nature private and of an internal character, disciplinary and unilateral rather than mediational. By statutes or contracts, athletes are forced to accept the rules stipulated by the competent sporting organization, in order to participate in the appropriate competitive framework. Bearing in mind that jurisprudence related to sport is imperfect, it creates an unfair environment for athletes in relation to the decision-makers. In this way, the road to the exercise of justice is paved by bureaucratic obstacles in competent bodies. Such an aggravating environment constitutes a frame for particular state intervention, using appropriate coercion in order to create fairness among the entities of sport movement. Besides setting up a preemptive legal frame, decisions imposed by the sport movement could be challenged through the appropriate judicial authority and arbitration, if there is any. From a procedural perspective, the existence of arbitration greatly influences the orientation of the process and a possible court intervention. Further, based on the contractual nature of sport movement constituents, different types of remedies are available to the parties. An example of English law opens a great debate on, as van Kleef notes, “whether sports federations are subject to the public law remedy of judicial review, under which the legality of decision-making process of a body exercising a public function is reviewed, instead of merits.”¹⁰⁴ His claim is based on the interpretation of English law regarding jurisdiction and remedies of administrative law. He later concludes that this debate was put to an end with the court decision in *Bradley vs. Jockey Club*:

“The function of the court is not to take primary decisions but to ensure that the primary decision-maker has operated within lawful limits...In each case the essential concern should be the lawfulness of the decision taken: whether the procedure was fair, whether there was any error of

¹⁰³ Oschutz, F. (2002). Harmonization of Anti-Doping Code Through Arbitration: The Case Law of the Court of Arbitration for Sport. *Marq. Sports Legal Review* 12(2): 675-702

¹⁰⁴ van Kleef, R. (2015). Reviewing Disciplinary Sanctions in Sports. *Cambridge Journal of International and Comparative Law*, 4(1): 3-28.

law, whether any exercise of judgment or discretion fell within the limits open to the decision-maker, and so forth.”¹⁰⁵

Where does sport autonomy come from?

As the narrower part of legislation that regulates sport, *lex sportiva* is primarily produced from the work of sport movement. In the frame of *ius commune* as part of international law, which does not occur in a stable regime, it has non-national contours representing a transnational legal order. Aside from a democratic context (the existence of which is questionable in this case), norms derived from these activities presuppose a consensus on competence, jurisdiction and rules, the clarity of decisions, impartiality and equity. In the sense outlined before, there is a resemblance with the concept of *lex mercatoria* – its origin and developments. It consists of norms produced by commercial customs and practice, with available arbitration, acting in a way to restrict implementation of national legislation.¹⁰⁶ The adoption and implementation of norms within sport movements varies from the nature of the organization and national/international legislation where abuse of power, absence of proportionality and liability should be prohibited and subject to the competent judiciary procedure. In a *sui generis* and self-regulating manner, in both exercise and supervision, the adopted norms go beyond *ordre public*. It could be argued that the very comfortable position of the ISFs is partially liable to the competent national legislation by imposing non-reviewable rules in transitional jurisdiction over members and affiliated parties. It further implies an obligation to subordinate the rules to the national legislation in a way that reduces ordinary regulatory jurisdiction.¹⁰⁷ The given constellation makes primarily *sport specific rules* – technical rules and laws of the game that constitute a basis for the particular sport or sporting discipline. Thus, the adopted rules distinguish between physical activity and sport where stipulations and implementation are under ISF supervision; it further establishes *ethical principles of sport* – going beyond sport specific rules, noting the nature of sport reflected on *bona fides* relying on fundamental values incorporated in the Olympic charter, i.e. fair-play, equal

¹⁰⁵ Ibid., 7-8. Bradley vs. Jockey Club

¹⁰⁶ Michaels, R. (2007). The True Lex Mercatoria. *Indiana Journal of Global Legal Studies*, 14(2): 447-468.

¹⁰⁷ Ordinary – national or intergovernmental level.

opportunities, sportsmanship. Even though they act as autonomous bodies and can be seen as acting through an independent legal order, their decisions can still be challenged through an appropriate judicial procedure, i.e. competent court or arbitration, if there has been a breach of the *ordre public*.

Dispute resolution mechanisms – from disciplinary to arbitration proceedings

Given the highly heterogeneous approach, and in the absence of agreement to arbitrate, the courts exercise jurisdiction over sport related disputes in a supervising, rather than *de novo* form.¹⁰⁸ The courts' intervention is expected where decisions are passed with no factual/legal basis and contrary to the *bona fides* principles. Although a judicial review is a very rare approach, in a liberal society (from an economic point of view), sport related disputes could be brought before the main criminal and civil law judicial instance – the High Court. However, this is more related to commercial than to sport specific disputes.¹⁰⁹ Nevertheless, both the NOC of Denmark and Sport Confederation of Denmark (DIF) has in place a mixture of competences when it comes to dispute-resolution mechanisms. There is a possibility for both NFSs and NOC to have disciplinary boards and arbitration in place with no stipulated provision that would preclude proceedings being brought before the competent court.¹¹⁰ Similarly, the German law foresees the possibility for sport entities to challenge decisions before both the appropriate court and arbitration. And the requirements lie in the necessity for internal legal remedies to be exhausted prior to the intervention.¹¹¹ Without entering into *pacta sunt servanda*, if there is a breach of *ordre public*, the case of a court in Singapore points out that they are eager to apply public legal norms in order to compel the sport movement to comply with national legislation¹¹² All of which is to say, in decisions made by sport organizations, the frame of action by the competent court focuses on the procedural rather than on an essence of the dispute. *Ratio legis* should imply the possibility (depending on the availability) of arbitration proceedings when all mechanisms within the competent sporting authority have been

¹⁰⁸ Ellis, J., Lynam, I., Shapiro, P. and Rees, B. (2015). England and Wales. *The Sports Law Review*. eds., Gurovits, A.A., Niederer, K. & Niederer, F. Law Busines Research Ltd. London.

¹⁰⁹ Ibid., 138.

¹¹⁰ For more se: DIF Regulation II.

¹¹¹ Hass, U. and Martens, R.D. (2011). *Sportrecht- Eine Einführung in die Praxis*, Schulthess.

¹¹² Ibid., 158.

exhausted. A mandatory precondition to complete this formalistic approach includes a procedure of the parties on a consensual basis, by submission of a particular dispute to an authority exercising *iure imperii*, as part of the transferred jurisdiction from domestic legislation following the NY Convention from 1958.¹¹³ The process presupposes a willingness to restrict its own autonomy and submit to the binding decision derived from the arbitral procedure. The latter are arrived at in objective manner, based upon competent *lex sportiva* or international/national legislation with an opportunity for parties to present each their own position. Although it appears as a closed procedural system, it indicates a need for the kind of the court supervision/assistance/monitoring that exists in territorial jurisdiction. Any decision made by ISFs is subject to revision by the CAS, acting as an independent institution resolving disputes through arbitration and infrequently through mediation.¹¹⁴ The competences of CAS are range from sport-specific disciplinary to commercial disputes.¹¹⁵ Their legal basis is derived from the contractual nature of constituents within the sport movement submitting to the independent authority to arbitrate in their disputes. However, contractual nature is most often voluntarily, but in public order, it is forced and indirect, as in the case of *natural* entities/athletes primarily and *legal* entities, such as clubs or local sport organizations acting as members of a particular federation. Further, an absence of a written agreement and bargaining of all constituents, does not necessarily mean a lack of liability, but it raises a significant question over the monopolistic relation of legal to natural entities. On the national level, the pathway to exercising rights or submitting to particular rules mainly depends on the structure of the sport movement and domestic legislation, much as it was the case with disciplinary proceedings.

In relation to the NSFs/ISFs and arbitration decisions, the procedure supported at the supranational-EU level, where clauses are incorporated into these authorities. In the national contexts, there is still a heterogeneous view.¹¹⁶ Even though there is no clear division of jurisdiction, in the case of

¹¹³ Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

¹¹⁴ Even though CAS undergone a serious reform, the question of impartiality is still debatable, and it will be a subject of this paper.

¹¹⁵ Code of Sports-related Arbitration in force from 2016.

¹¹⁶ *Ibid.*, 15.

sensitive issues, e.g. violation of human rights, the court should take action in order to provide an adequate judicial procedure and protection of the *ordre public*.

Concept of limited autonomy – the CAS

Considering the public importance of sport, since it is not restricted simply to private legal matters, the *lex sportiva* represents a unique heterogeneous framework. As a legacy of Juan Antonio Samaranch to create a more centralized Olympic movement, the Court of Arbitration for Sport (CAS) has come to represent the final instance of the judiciary in sport.¹¹⁷ The range and competences of the CAS are still contested, mostly by national legislators and by individual actors, primarily athletes. Structured as a body for settling sport-related questions via arbitration and mediation with possibility for appeal, it is open to all interested parties.¹¹⁸ With competences in place, the CAS has a plural judicial approach acting as a *civil court* – dealing among other with contract and tort law between interested parties; *administrative court* – dealing with norms, rules and decisions adopted and implemented by sport movement bodies; and *amicus curiae* – assisting the competent court in matters related to criminal liability.¹¹⁹ The IOC recognizes the jurisdiction and supremacy of CAS over decisions derived from the work of the sport movement.¹²⁰ In that respect, the IOC and the ISFs stipulate necessary provisions to appoint CAS as the last instance for sport-related disputes.¹²¹ CAS is supposed to rule using a tailor-made approach keeping in mind the specificity of each sport and in accordance with existing *lex sportiva*, e.g. Olympic Charter, with general principles and rule of law applicable to the particular dispute. Bearing in mind that sport organizations are by formation meant to act as regulatory, administrative and sanctioning (that is, monopolistic) institutions, the CAS is supposed to act using *iure imperii* and *ius cogens* norms on activities conducted contrary to *bona fides* principles. Building its own authority, as noted by Nafziger, CAS is eager to “apply three values that the principles of *stare decisis* serves for:

¹¹⁷ Reilly, L. (2012). Introduction to the Court of Arbitration for Sport (CAS) & the Role of National Courts in *International Sports Disputes*, A Symposium, 2012. *Journal of Dispute Resolution*, 2012(1): 63-81.

¹¹⁸ R27 of Procedural Rules- CAS Code.

¹¹⁹ *Amicus Curiae*: assistance in the issues such as doping or match-fixing cases wherein some legislation is recognized as criminal offense.

¹²⁰ Article 61 of the IOC Charter.

¹²¹ Article 40 of the FIBA Statute in force from 2014.

efficient legal process, stability of expectations and equal treatment.”¹²² Its mission is to reflect a comprise mode by offering a possibility to choose arbitrators so as to reduce the injustice of monopolistic decisions/verdicts within the ISFs. In addition, a list of *pro bono* counsellors is part of the available legal aid. With this plural judicial approach and going from the statutory point of view in relation to cases such as “Pechstein,” doubts have been raised as to the impartiality of the CAS from the structural and organizational point of view. With regards to the hearing procedure of natural entities, the Swiss Federal Tribunal stressed that “it would be desirable for a public hearing to be held on request by the athlete concerned with a view of trust in the independence and fairness of the decision making process.”¹²³ The Courts in Germany pointed out that a closed list of arbitrators within the CAS excludes the possibility of direct nomination to the latter of natural entities (primarily athletes). This structure represents a significant deficiency of the CAS independence prior to the monopolistic position of the ISFs.¹²⁴ Even though there has been an intent in this regard, the Code of Sports-related Arbitration in force since 2016 has shown little progress, siding with a particular group of stakeholders – legal entities/ISFs.¹²⁵

Implementation of good governance principles – no binding, no commitment

In order to understand the concept of autonomy and the position of the stakeholders, it is important to consider the nature of governance in the sporting world. Governance models seem to be receiving growing attention of late, ranging from the corporate world to non-profit organizations.¹²⁶ It addresses the composition and structure of bodies (board or commissions) within particular organizations, focusing on leadership, roles, structure, motivation and outcomes. A synergy of paid

¹²² Nafziger, J.R.A. (2004). *Lex Sportiva*. The International Sports Law Journal. In: Blackshaw I.S. Sickman, R.C.R. and Sock, J. eds., *The Court of Arbitration for Sport 1984-2004*. The Hague. p. 3

¹²³ SFT 4A_612/2009, para 4.1.

¹²⁴ For more, see: Decision by the Regional Court of Munich I Az. 37 O 28331/12 (2014); Decision by the Higher Regional Court of Munich Az. U 1110/14 (2015).

¹²⁵ For more, see section C, S 14 of Code.

¹²⁶ More on the topic from: Francis, I. (1997). *Future direction: The power of the competitive board*. South Melbourne, Victoria: Pitman.

Schmidt, S. and Brauer, M. (2006). Strategic governance: How to assess board effectiveness in guiding strategy execution. *Corporate Governance: An International Review*, 14(1), 13-22.

and voluntary management has been broadly investigated by various researches, focusing on the balance of power within an organization.¹²⁷ Examined through a literature review, looking at performance, supervision, policy and operation, for sport organizations, member (stakeholder) representation and stewardship are the key elements to meet the needs of governing within the organization.¹²⁸ ToR of decision-makers, in particular those legally liable, depends on a wide range of variables that could impact the functioning of an organization.¹²⁹ Furthermore, supervisory procedures strongly rely on credibility, compliance and accountability of involved parties within an organization.¹³⁰ This procedure, especially when it comes to accountability, is very much dependent on stipulated *norms* – the level of compliance within the legislation of origin, imposed *hierarchy* – the power relation structure, on the set up of *funding* – the control over funding mechanism. Along with accountability, democracy and transparency represent leading principles for good governance within the sporting family.¹³¹ However, it is still vague on methods regarding how to enable participation of all parties within a particular sport, since there are only declarative statements stressing its importance as a significant condition to democracy. Perceived as a tool to decrease abuse of power, transparency could be simply described as timely availability of information.¹³² However, there is consent that the set of the good governance principles is even wider, although authors perceive its individual importance variously. Katwala strongly emphasizes the accountability of the decision-makers, i.e. term limits.¹³³ Henry and Lee focus on the democratic principle of representation.¹³⁴ Taylor and O’Sullivan differentiate the commercial from

¹²⁷ Auld, C. J. and Godbey, G. (1998). Influence in Canadian national sport organizations: Perceptions of professionals and volunteers. *Journal of Sport Management*, 12(1): 20-38.

¹²⁸ More on the topic: Ferkins, L., Shilbury, D., and McDonald, G. (2005). The role of the board in building strategic capability: Towards an integrated model of sport governance research. *Sport Management Review*, 8(3): 195-225.

¹²⁹ Van der Walt, N., Ingle, C., Shergill G. and Townsend, A. (2006). Board configuration: Are diverse boards better boards? *Corporate Governance*, 6(2): 129-147.

¹³⁰ Garratt, B. (1996). *The fish rots from the head*. London: Harper Collins.

¹³¹ Geeraert, A. (2016). Indicators and benchmarking tools for sport governance. In: *Global Corruption Report: Sport*. Transparency International. Routledge. p. 57.

¹³² Mulgan, R. (2008). Transparency: The Key to Better Governance? In: Christopher Hood and David Heald eds., *Australian Journal of Public Administration*, 67: 237–239. doi:10.1111/j.1467-8500.2008.00584

¹³³ Katwala, S. (2000). *Democratising Global Sport*. London: The Foreign Policy Centre.

¹³⁴ Henri, I. and Lee, P. C. (2004). Governance and ethics in sport. In: Beech, J. and Chadwick, S. eds., *The Business of Sport Management*. Harlow, Essex: Pearson Education. pp. 25-41

the non-profit aspect in functional and organizational terms towards a corporate governance model.¹³⁵ Depending on the nature of the legal status/functioning and particular sport, the existing literature recognizes *democratic governance* – associated with less commercialized sport organizations, and *corporate governance* – reflecting highly professional sport organizations. At the national policy level, even though the legal positioning of sport system is heterogeneous, there is a consensus on the composition of the good governance principles. The baseline for “intervention” into the functional and organizational aspect of the sport movement starts with the appropriate vision/mission and strategy that should reflect societal orientation and the particularity of a sport.¹³⁶ Given the *a priori* status of the sport organizations as democratic, special emphasis should be placed on transparency in policy-making and visibility of decisions to the general public.¹³⁷ In relation to the position of natural entities, primarily athletes, USOC has continued the path set by the Ted Stevens Olympic and Amateur Sports Act. In 2005, the USOC introduced the Preliminary NGB Governance Guidelines, among others, stressing that NGB Boards should comprise at least 20% of athlete directors.¹³⁸ According to the Ted Stevens Olympic and Amateur Sports Act and appropriate policy of the NSF, athletes must hold 20% of the membership and voting power in any governing body or board. In provisions related to representation in respect to “its governance and conduct of its affairs for reasonable representation of:”

“Amateur sports organizations recognized as national governing bodies and paralympic sports organizations in accordance with section 220521 of this title, including through provisions which establish and maintain a National Governing Bodies’ Council composed of representatives of the national governing bodies and any paralympic sports organizations and selected by their boards of directors or such other governing boards to ensure effective communication between the corporation and such national governing bodies and paralympic sports organizations...amateur athletes who are actively engaged in amateur athletic competition or who have represented the United States in international amateur athletic competition within the preceding 10 years, including through provisions which—

¹³⁵ Taylor, M. and O’Sullivan, N. (2009). How Should National Governing Bodies of Sport Be Governed in the UK? An Exploratory Study of Board Structure. *Corporate Governance: An International Review*. 17(6): 681 - 693. 10.1111/j.1467-8683.2009.00767x.

¹³⁶ Dutch Olympic Committee Code for Good Governance in Sport 2008.

¹³⁷ The Voluntary Code of Good Governance in the UK 2011.

¹³⁸ USOC NGB governance guidelines 2005.

(A) establish and maintain an Athletes' Advisory Council composed of, and elected by, such amateur athletes to ensure communication between the corporation and such amateur athletes; and

(B) ensure that the membership and voting power held by such amateur athletes is not less than 20 percent of the membership and voting power held in the board of directors of the corporation and in the committees and entities of the corporation.”¹³⁹

However, acknowledging a significant level of autonomy, decision-makers were directed to the importance of athletes' participation, ownership and above all the necessity of their opinion being heard and valued. In this constellation, decisions are adopted with athletes' viewpoint and vote in all matters.

In terms of dispute resolution, mechanisms and complaints, special attention is given to the limiting of autonomous deciding regarding the rights of natural entities introducing external control and legal aid.¹⁴⁰ The most comprehensive set of binding principles represented, in terms corporate governance, is the Australian approach, divided into 3 sections: *structure of sport* – balance and delineation of the roles/responsibilities/powers, *board composition/operation* – introduction of a rotation system, term limits and independent directors, *sport transparency/reporting/integrity* – requiring timely and lawful reports, disclosure of expenses with appropriate three-year strategic plan.¹⁴¹

Good governance in sport has been on both the political and sport policy agenda for quite a while and has resulted in numerous sets of standards, principles and positions, mostly at an international and inter-governmental level. It is thought, considering its *sui generis* status and autonomy, that the sport movement would be able to manage challenges within the appropriate forums in a pre-emptive manner. However, manipulation of sport and its values can be seen from its modern beginnings; the politicization of sport during the Cold War, Salt Lake City and Tour de France scandals constitute a fair starting point to understand the relationship of the implementation of good

¹³⁹ Section 220504 of the Ted Stevens Olympic and Amateur Act.

¹⁴⁰ DOSB Good Governance in Sport 2015.

¹⁴¹ AIS Sports Governance principles 2012 and Mandatory Sports Governance Principles 2015.

governance principles and the continuous degradation of values represented by sport.¹⁴² Even though good governance principles are high on the agenda in the IOC, where principles are stipulated in the Code of Ethics, their implementation is far from satisfactory, to the point of a legitimacy crisis.¹⁴³ The 2015 Sport Governance Observer (SGO) (an assessment of the implementation of good governance principles among 35 Olympic ISFs based on 4 governance dimensions: transparency, democratic process, checks and balances and solidarity), has shown that 26 federations scored lower than 50% of the SGO index.¹⁴⁴ The noted assessment discloses a significant gap between the existence and implementation of the GG principles. Furthermore, the limitation in approach can be seen as both a lack of organizational and cultural perspective and as part of the political/societal environment.¹⁴⁵

The aforementioned acquired “autonomy,” the *sui generis* perception and vertical decision-making structure, has led sport organizations to function outside the non-profit environment, often with a company-based and market-oriented philosophy. With regard to the legitimacy of the sport movement, Geeraert correctly applies distinctions between *output* – the ability to efficiently implement “shared goals”, *procedural* – structure and decision-making process in line with “generally accepted” rules/procedures and *structural* – constituting the organizational structure, decision-making process and dispute resolution mechanism, based upon good governance. The legitimacy of these components is “under the threat.” In particular, he points out the politicization

¹⁴² Houlihan, B.M. (1998). *The World Anti-Doping Agency and the campaign against doping in sport*. Council of Europe Handbook. Council of Europe Publishing. p. 63.

¹⁴³ XIII Olympic Congress, (2009). Recommendations, Denmark. Self-assessment approach within Olympic family is promoted broadly, keeping autonomy in mind: “The relevant intergovernmental organizations and governments should acknowledge the necessary and essential autonomy of the Olympic Movement including, in particular, respect for and enforcement of the rules of good governance, equality and fairness in sport and sport administration, as established by the Olympic Movement and set out in the Olympic Charter, to ensure the best and fairest possible practice of sport... All constituents of the Olympic Movement should review their rules and activities to ensure that they fully comply with the Olympic Charter and the fundamental principles and values of Olympism.”

¹⁴⁴ Geeraert, A. (2015). *The legitimacy crisis in international sports governance*. Sports Governance Observer 2015 Report.

¹⁴⁵ Sports Governance Observer 2015 Report. FIFA scored 67.8 on the SGO index, second best among 35 federations, which supports the fact that the existing indicators and good governance principles need to go under revision, taking into account the existing specificities on both the international and national level.

of sport at the top of the pyramidal structure – the ISFs,¹⁴⁶ which in reality resulted in a crisis of legitimacy.¹⁴⁷

The IOC adopted and made Basic Universal Principles of Good Governance (BUP) its standard as a result of increased political pressure and reaction from the media. These principals ultimately provided the structure for organizations and emphasized the importance of including both legal and natural entities as part of an organization's framework.¹⁴⁸ It was also suggested that members of an organization be represented within NGBs with "right to express their opinion."¹⁴⁹ The most important segment of the BUP foresaw athletes' right to participate and their voices should be heard within NGBs.¹⁵⁰ Another aspect to this debate is the perception of athletes' representation in the leading sporting organization – the IOC. Yielding to broad public pressure, the IOC adopted a system of representation that would enable athletes' voices to be heard.¹⁵¹ With respect to the structure of the Olympic Movement, Thomas Bach reflected on his time as an athlete during an era of strong political influence and boycotts. As a representative for athletes, Bach felt it was vital to encourage fellow athletes to speak up and take a stand on how politics influenced their sport.¹⁵² Although he strongly believed in open discussions with the political world, he remained firm in his belief that sport and athletes remain apolitical, or unbiased with respect to political matters.¹⁵³ The Olympic Movement and its values according to Bach, should act in accordance with Kant's

¹⁴⁶ Ibid., 15.

¹⁴⁷ Ibid., 16.

¹⁴⁸ International Olympic Committee (2008). Basic Universal Principles of Good Governance of the Olympic and Sports Movement. https://stillmed.olympic.org/Documents/Conferences_Forum_and_Events/2008_seminar_autonomy/Basic_Universal_Principles_of_Good_Governance.pdf (Accessed 12 November 2019).

¹⁴⁹ Ibid., 3-4.

¹⁵⁰ Ibid., 10.

¹⁵¹ Miller, D. (2008). *The Official History of the Olympic Games and the IOC: From Athens to Beijing, 1894-2008*. Edinburgh: Mainstream Publishing.

¹⁵² Bach, T. (2009). Unity in Diversity – Respect, Responsibility, Reliability, Proceedings of the XIII Olympic Congress https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/IOC/Congresses/XIII-Olympic-Congress-Copenhagen-2009/Overview/EN-XIII-Olympic-Congress-Proceedings.pdf#_ga=2.80315927.146716025.1573554983-699986183.1572943939 (Accessed 12 November 2019).

¹⁵³ Ibid., 108.

“categorical imperative” concept.¹⁵⁴ In order to achieve this level of objectivity, specifically within decision-making processes, Bach recommended the need to adopt an appropriate code of ethics and good governance principles. With relation to the IOC seminar on autonomy and the adoption of BUP, Bach emphasized the importance of adopting “clear, democratic and efficient structures” that involved “active athletes in decision-making” in order to protect and uphold their rights at all levels.¹⁵⁵

According to Wassong, starting point to research athletes’ involvement in governing bodies of the Olympic Movement is the XI Olympic Congress in 1981.¹⁵⁶ He noted that “liberalization of the eligibility rule” was the aim of Congress to enhance cooperation by making athletes and coaches observers.¹⁵⁷ It was the IOC’s Tripartite Commission (TC) that advised the Executive Board of the IOC to invite athletes to Congress. Later that year, during the meeting of the Executive Board of the IOC, the Athletic Commission (AC) was formed.¹⁵⁸ Members of the AC served as consultants and were appointed by the IOC President. Since 1994, the majority of IOC AC members have been elected by athletes. In 2000, eight members of the IOC AC became IOC members with one of them serving as a member of the Executive Board of the IOC. In 2002, the IOC International Athletes’ Forum was established in order to address various but relevant topics of concern for athletes.

The perception of their importance through the philosophy of “*religio athletae*”,¹⁵⁹ creates the necessity to be engaged in the decision-making process based on recommendations from the XIII Olympic Congress. These recommendations regarding the role of athletes in Olympic Movement institutions point out that “athletes must be included in the decision-making bodies” and stress the

¹⁵⁴ Ibid., 108.

¹⁵⁵ Ibid., 110-111.

¹⁵⁶ Wassong, S. (2018) The International Olympic Committee’s Tripartite Commission and Its Influence on the Foundation of the Athletes’ Commission, *The International Journal of the History of Sport*, 35:9, 836-857, doi: 10.1080/09523367.2018.1471064

¹⁵⁷ Ibid., 836.

¹⁵⁸ Ibid., 837.

¹⁵⁹ Nissiotis, N. (1987): L’actualité de Pierre de Coubertin du point de vue philosophique. In: Müller, N. eds., *L’actualité de Pierre de Coubertin. Rapport du Symposium à Lausanne*. Niedernhausen: Schors.

importance of re-empowering Athletes' Commissions.¹⁶⁰ It would be formed in a consultative rather than an executive form. With the newly adopted strategy, Olympic Agenda 2020, athletes regain their position at the center of the sport. The Athletes' Commission serves as a focal point for athletes and the Olympic Movement, with the main responsibility to empower and ensure athlete representation in decision-making processes. As stated in strategy, the composition reflects future, current and recently retired athletes – elected to a term of 8 years.¹⁶¹ The Chair of the Commission is a member of the IOC Executive Board. One of the major goals is to empower athletes “through a worldwide network of effective Athletes' Commissions.” As part of the IOC AC Strategy, work on the Athletes' Declaration began after a series of meetings within the IOC AC and the NOC's AC.¹⁶² The contents of the Athletes' Declaration were revealed during the IOC International Athletes' Forum in 2017. In 2017 and 2018, there were two surveys that were influenced by the framework and overall theme of the Athletes' Declaration. The final Athletes' Declaration was prepared, presented and adopted by the 133rd IOC Session on behalf of the Olympic Movement. It broadly influenced the way in which athletes were represented within sporting organizations during the Olympic Movement.¹⁶³ During the 9th IOC International Athletes' Forum, Bach gave an encouraging speech that inspired athletes to speak up and ultimately become part of decision-making bodies.¹⁶⁴

However, voices have been raised regarding Olympic reform and key issues that athletes face. As former athlete Johann Koss noted, the IOC reform enabled athletes to become IOC members and

¹⁶⁰ XIII Olympic Congress, (2009). Recommendations, Denmark.

¹⁶¹ IOC Athletes' Commission Strategy.

¹⁶² International Olympic Committee (2019). A Growing Voice: the history of the IOC Athletes' Commission. <https://www.olympic.org/news/a-growing-voice-the-history-of-the-ioc-athletes-commission> (Accessed 13 November 2019).

¹⁶³ International Olympic Committee (2018). Athletes' Rights and Responsibilities Declaration. https://d2g8uwgn11fzhj.cloudfront.net/wp-content/uploads/2018/10/09134729/Athletes-Rights-and-Responsibilities-Declaration_2018.10.07.pdf?utm_source=hootsuite&utm_medium=social&utm_campaign=entourage (Accessed 13 November 2019).

¹⁶⁴ Pavitt, M. (2019). IOC President Bach urges athletes to make voice heard. Inside the Games, <https://www.insidethegames.biz/articles/1077912/ioc-president-bach-urges-athletes-to-make-voice-heard> (Accessed 13 November 2019).

allowed them to take an active part in decision-making processes.¹⁶⁵ He also noted that although many Athlete Commissions were established by the NOC, the challenges remain especially in transparency and the election process.¹⁶⁶ In addition to Koss remarks, Ann Peel stressed that contractual nature within national organizations silenced athletes “make any political commentary at any Games.”¹⁶⁷ It is of great importance to have “powerful athlete body within the IOC, NOCs and NSO”, because athletes’ voices have been ignored. Alexandra Orlando.¹⁶⁸ The position of natural entities – athletes – in the decision-making “food chain” throughout the history of modern sport remains in practice quite vulnerable. Their position is vulnerable because the decision-making practices are *corrupte*, ignoring the root of the problem, that is an environment suited to malpractice.¹⁶⁹ The majority of existing research is focused on early professionalization, athletic life skills, athletic retirement (career after sport), dual-career system (ongoing social and educational inclusion of athletes via specific designed formal/informal programs), athletic identity and athletic talent development environment.¹⁷⁰

Absence of Global Sport Order

The main motive or principle of action assumes seeking consensus of interested parties in pursuit of cooperative engagement, owing to the need for respecting the democratic system of governance while acknowledging the autonomy (meaning sovereignty) of constituents. There have been numerous declarative appeals from major national, supranational and intergovernmental institutions to most of the sporting authorities, demanding necessary changes in line with the globalization/commercialization of sport. This would, of course, require shifting from a vertical to

¹⁶⁵ Koss, J. (2011) Athletes' rights and Olympic reform: a discussion with Johann Koss, Ann Peel and Alexandra Orlando. *Sport in Society*, 14:3, 309-318, doi: [10.1080/17430437.2011.557267](https://doi.org/10.1080/17430437.2011.557267)

¹⁶⁶ Ibid., 310.

¹⁶⁷ Ibid., 315.

¹⁶⁸ Ibid., 316.

¹⁶⁹ Chappelet, J.L. (2016). Autonomy and governance: necessary bedfellows in the fight against corruption in sport. In: *Global Corruption Report: Sport*. Transparency International. Routledge. p. 24.

¹⁷⁰ Stambulova, N., Ryba, T. (2014). A critical review of career research and assistance through the cultural lens: Towards cultural praxis of athlete’s careers. *International Review of Sport and Exercise Psychology*, 7(1): 1-17

a horizontal decision-making process, i.e. participatory governance.¹⁷¹ Existing challenges have resulted in the numerous corruptive practices going beyond sporting authorities. These practices are the result of intense interdependence that irretrievably threatens to endanger core sporting values and form an even greater distrust among various actors. A significant level of interdependence, surprisingly, has not led to the creation of a respectful global authority. Rather, these practices have remained in position to thwart interference in internal affairs, while indirectly examining the ability and readiness to exercise authority.

The noted issues should be understood from the perspective of match-fixing, a reality only recently recognized, although it has been a long-standing problem. The Council of Europe, an intergovernmental organization comprised of EU and non-EU member states, has initiated work on international binding mechanisms to tackle this growing threat to the sporting world. Although the initiative was welcomed by broad acclaim and followed by the involvement of various stakeholders (including non-European ones) and signatures of most of the EU member states, it does not contest but merely restates its position *vis-à-vis* the applicability of the Convention. It is important to note that both the European Commission and the European Court of Justice (ECJ) recognize discretionary right of member states to regulate gambling within the domain of their own market.¹⁷² Another aggravating factor is its Western-centric approach, often neglecting cultural/governance diversity, even though globalization has tended to reduce divergences.

Thus, there is an incoherent attitude towards common challenges within sport world. Ongoing challenges to autonomy have been met with solutions that attempt to adopt the concept of pooled autonomy (e.g. Olympic family; SportAccord) or gain support from rising powers (e.g. BRICS or OPEC countries). Without a central authority, the continuous rearrangements additionally complicate current matters, ignoring the urgent need to safeguard core values of equal representation, the prerequisite for participatory governance. In searching for consensus, demanding horizontal governance in the sport movement, restructuring interdependence with an appropriate central authority – must not underestimate the need for participatory governance. This also implies a harmonized general governing approach supported by proper institutional

¹⁷¹ MSL 13 (2014) 10rev Council of Europe Resolution No.1 „Corruption in Sport“.

¹⁷² Art. 51 of the Charter of Fundamental Rights of the European Union. Art. 49 and 56 of the TFEU.

mechanisms, founded on mutual understanding, common rules and shared values. Although there is general consent, the activities supposed to minimize these threats are complicated by the intense bureaucratization of the involved constituents as well as by insufficient competences in the field of sport. This inevitably leads to the collision of legitimacy and acquired power, in which geography and organizational culture play an important role. This constellation of entities, each with a different level of understanding of the importance of implementing participatory governance structures is more likely to maintain polarized positions.

This indicates the presence of a rather anarchic governance structure, which demonstrates how internal developments are able to upset global arrangements. Given the structure's deviation from the goal of tackling challenges and safeguarding major constituents of sport, the result of these upset arrangements are disenfranchised actors with limited character and ability. An absence of action in that respect represents a great risk of potential further disintegration of sporting society and expansion of the gap between the existing *de iure* checks and balances mechanisms of participatory governance structures and their implementation. Due to, among else, the *sui generis* aspect of sport, the movement plays a unique role in society, partly fulfilling commitments generated from both international and national sources and practice. As previously noted, this has contributed largely to the crisis of sport itself, mainly due to the ambitions regarding the commercial nature of sport and weaknesses in autonomy standing as obstacles in the pathway of reaching *sport order*. Interference that has gone as far as the internal affairs of particular countries (e.g. India) shows the growing power of the IOC in relation to the majority of the UN member states. On the other hand, the IOC has shown little or no willingness to reconstitute itself for the sake of its stakeholders and interested parties. Even though there is a framework that can be taken as a set of semi-binding instruments, recommendation 21 of the Olympic Congress held in 2009 (and later in Agenda 2020), underscores the priority of the concept of good governance. Nevertheless, the process of assessment and evaluation is conducted through a method of self-assessment that is ineffective.¹⁷³ Such a foundation, along with the inadequate position of natural entities/major constituents of any sport, has not disrupted the sport movement's pathway to influence expansion, primarily through commercial frameworks.

¹⁷³ Recommendation No. 27 of the Agenda 2020 & ASOIF's key governance principles and basic indicators.

The global governing structure for sport is characterized by four levels. Neither pyramidal, nor a simple horizontal structure; rather the imposed structure could be defined as intersecting circles. At the *national level* – public authorities act in coherence with the sport movement;¹⁷⁴ the *ISF level* – driven by the International Anti-corruption summit held in the UK with the IOC announcement to act towards establishing the International Sport Integrity Partnership;¹⁷⁵ the *Intergovernmental/supranational level* – the CoE and the EU activities towards facilitating cooperation and encouraging partnership at the European level;¹⁷⁶ *INGOs/Academia* – conducting necessary research while advocating for rigid enforcement of competent legislation towards implementation of good governance principles within ISFs.¹⁷⁷ Such a structure is not part of any consistent regime. It emerged in an ad hoc manner and as part of nonstructural initiatives. Nevertheless, it was produced in an attempt to recognize the interests of all formal actors, even though some of them were not ready to readjust or to engage in cultivation of the structure by acknowledging and tackling threats in a concerted manner. More hybrid than unified forum, it is struggling to resolve tensions within and among these circles that arise primarily due to the conflicts between Olympism and self-interest.

The overall environment is characterized by balancing between power and legitimacy with attention paid to mitigating conflict and not dealing with or preventing its root cause. Various alliances have been produced in order to safeguard continuity. As noted by Harari, this rather complex societal structure requires more “imagined hierarchy and unjust discrimination.”¹⁷⁸ With this arrangement in place, natural entities, primarily athletes, have remained on the margin of the decision-making processes and economic safety. The conservative, oligarchic and plutocratic structure tends to build bulwarks against any attempt to question it. In addition, it adopts tactics of

¹⁷⁴ e.g. Australian Sport Council.

¹⁷⁵ Anti-Corruption Summit, <http://www.hostcity.com/news/event-management/anti-corruption-summit-welcomes-international-sports-integrity-partnership> (Accessed 15 October 2017).

¹⁷⁶ The Council of Europe Ministerial Conference/ EPAS GB and Counsultative Committee; EC Expert Group on Good Governance in Sport.

¹⁷⁷ Play the Game Conference; The Sport Governance Observer.

¹⁷⁸ Harari, N.Y. (2014). *Sapiens. A brief History of Humankind*. Vintage. p. 153.

demanding, unreachable bureaucratic procedures and reciprocity guided by individual interest rather than by policy. It thereby preserves its monolithic decision-making perspective, leaving natural entities in a peripheral position. Bearing in mind different levels of capacities or understanding, there cannot be excluded parties if we attempt to return to the path of Olympism, i.e. to properly structure Global Sport Order. The struggle to reach common understanding is vital, especially given that the alternative is continuing individual ad hoc operations, only resulting in increases in sport malpractice. Therefore, this multipolar intersected circular structure has different and ambiguous levels of interest and understanding of good governance principles and their application.

The traditional approach relies on contesting legal entities and their orientation to constrain any rearrangements *vis-à-vis* natural entities. Participation, as a precondition to democracy, is burdened with bureaucratic nomenclature, prescribing norms and introducing rather complicated procedures, in order to reduce attempts to grow social capital through sport. Participatory governance has for a long time been imagined with little thought given its true implementation, which could be regarded as the cause of current arrangements where interrelations among stakeholders are concentrated in the hands of those with monopolistic capacities. In this way, a crossroad has been reached in sport, unavoidably posing the question of its sustainability. Sustainability presupposes the existence of shared principles about how to reach structured order. Different approaches to governance and sport functioning, from national-international to societal, political, culturally diverse, represent a significant challenge with repercussions for the activity of sport as public interest.

Continuing with the present arrangements, with a shift in public opinion and perception of legitimacy following recent scandals, will inevitably lead to the redefinition of power relations. Further, these scandals will call into question positions of acquired legitimacy, accountability and balance in decision-making, as the main determinants of governance and order in sport. Yet another ambiguity serves for reflection: globalization is needed in order to reach all possible stakeholders but is currently creating far more challenges that seek to be addressed in different forums. The described discomfort deserves additional examination of its origin. It can be traced back to the

constituent constellation, increased in time by rampant instrumentalism, which has led to endangering the core values of sport.¹⁷⁹

Focused on the bureaucratic form of existence in some contemporary societies, Weber seems to have understood these difficulties, defining modern society as an “iron cage”.¹⁸⁰ Such bureaucracies undermine the basic principles of democracy – participation (participatory governance) – while at the same time expanding the gap among stakeholders. It further refers to a crisis in sport identity, and it is not sufficient to consider this challenge strictly from a technical standpoint – an isolated decision-making structure, pyramidal with monopolistic influence, while keeping athletes in an inferior position via instrumentalized/bureaucratic approach. In particular, athletes are expected to add to the commercial value of sport, further denaturalizing them. Such an orientation serves its purpose in a consumer society, that is, consumerism, where sport represents only a *portion* of the market-oriented philosophy. It cannot be argued with certainty whether the Olympic maxim *citius, altius, fortius* have contributed to the misuse in the previous constellation, but an orientation towards high performance and spectacle-based sport has laid the foundation for the *homo homini lupus est* principle. Further, it could be argued that the modern perception of sport has been separated from the spirit of Socrates, who mentions, in Antidosis, the importance of also training the mind (not only the body) of athletes:

“Are twin arts; parallel and complementary- by which their master prepares the mind to become more intelligent and the body become more serviceable, not separating sharply two kinds of education, but using similar methods of instruction, exercise, and other form of discipline. Watching over them and training them in this manner, both the teachers of gymnastics and the teachers of discourse are able to advance their pupils to a point where they are better men and where they are stronger in their thinking or in use of their bodies.”¹⁸¹

The abandonment of the native values of sport occurred in parallel with intense globalization where the motto “winning no matter what” became part of instrumentalized, i.e. controlled society.¹⁸²

¹⁷⁹ Long debate on athlete’s eligibility *vis-à-vis* their status.

¹⁸⁰ Weber, M. (1958). *The Protestant ethic and the spirit of capitalism*. New York: Scribner

¹⁸¹ George Nolin, (1929). *Isocrates*. London and New York, Vol. II, pp. 289. 291

¹⁸² Horkheimer, M. and Adorno. W.T. (2002). *Dialectic of Enlightenment* ed., Noerr, G.S. Stanford: Stanford University Press.

Which Horkheimer and Adorno have followed up with the observation that “technical rationality today is the rationality of domination.”¹⁸³

¹⁸³ Ibid., 95.

Chapter Four: A Historical Overview of the Development of Legislation in Sport and the Position of/Implications for Athletes

Sport policy foundation

The question of the institutional position of athletes is not new, either as a normative or an organizational perspective of sport as a public good. During socialist Yugoslavia, sport was seen as a factor contributing strongly to societal cohesion. Looking at the constitutional system and regulations of physical education and sport dynamics, there were three interrelated legal levels: (1) regulation stipulated by the competent ISF for specific sport; (2) self-management regulation stipulated by the NSF arising from the constitutional order, the political and legal system of the country, but autonomous in the sense that the formation of relations represented an autonomous decision-making process; (3) regulation derived from national legislation related to the field of physical education and sport. This constellation relies on autonomous legal institutes and heterogeneous norms. Therefore, sources of legislation were: (1) internal regulation of sport organizations; (2) constitution, national legislation – specific law on sport (with appropriate by-laws); (3) intergovernmental agreements in the field of sport; (4) self-management treaties in the field of sport and norms/rules stipulated by the various sociopolitical organizations (e.g. the Communist Party).¹⁸⁴ Natural entities (e.g. athletes, coaches, referees), local sport organizations, NSFs, self-managing communities of interest (SIZ) represented the main subjects of legislation in the field of sport. The SIZ were founded by the various workers' associations, individual workers and citizens within the self-management frame. The Executive Council of the Parliament would ratify the self-management treaty, making it the founding act for the SIZ. Regulation of the field of physical education and sport, as public goods, primarily addressed sport in schools, the position of its main constituents, i.e. athletes, completion systems and models of financing sporting activities.

¹⁸⁴ State Self-Managing Communities of Interest (1978). *Current issues of self-management transformation in physical education culture –recommendations from the Socialist Republic of Croatia*; prepared for annual General Assembly meeting of the RSIZ. State Fund for Physical Education Culture (item no. 394). Cetinje: State Archive of Montenegro.

Constitutional reforms and its implications on sport

According to the 1974 constitution, sport was established as part of the physical education culture and all needs/activities were implemented through the Federation of Organizations for Physical Education Culture (SOFK). This normative solution reflected certain challenges that require further explanation. The main obstacle in the functioning of legal norms in the field of sport, was the transfer of jurisdiction and competences from the federal government to the state and then the local community level, which resulted in an inability to objectively monitor the functionality of the sport movement. Even though sport was seen as an activity of public interest, organizations for physical education culture did not have the same status as organizational units of associated labor (OOUR), primarily due to the constitutional nature of workers' associations and councils. In addition, the Communist Party's declared slogan, "factories to the workers" transferred competences/functions from the public authorities to the workers' councils.¹⁸⁵ This constellation resulted in deepening decentralization, transferring ever broader competences to the local communities in terms of establishing local SIZ within the Statute of the Local Community –defining rights to engage in physical education culture, its infrastructure and ToR of local SIZ.

Like the other states in Yugoslavia, Montenegro adopted the Law on Physical Education Culture and SIZs focusing mainly on ToR of the SIZs.¹⁸⁶ Special interest was paid to the development of school sport and the possibility for establishing organizations for sport activities (sports clubs) in order to meet the needs of working people. On the basis of the self-management medium-term plan, funds for sports were secured from the personal income of working people. While amateur status of athletes was clearly defined, with specific rights in terms of social security (and pension), medical care and insurance policy, top athletes were classified into three categories: (1) merit, (2) international class athlete and (3) athlete of the state class.¹⁸⁷ In addition, the Association for Physical Education Culture of Yugoslavia (SFKJ) drafted a Social Agreement on position, rewards

¹⁸⁵ For more, see: Basic Law on the Management of State Enterprises, Off. Gazette FNRJ 43/1950; Kidrič, B. (1950). Teze o ekonomici prelaznog perioda u našoj zemlji. Komunist, no. 6/1950. pp. 1-20

¹⁸⁶ Socialist Republic of Montenegro (1976). *Law on physical education culture and SIZ*. Podgorica: Off. Gazette 6/76.

¹⁸⁷ Yugoslav Association for Physical Education Culture (1975). *Social Agreement on position, rewards and remuneration of top athletes in the SFRJ*. Belgrade: Off. Gazette No. 3-4.

and remuneration for top athletes in Socialist Federal Republic of Yugoslavia (SFRJ) with a stipulated range of criteria (with three categories of athletes, plus one more for promising talents), responsibility for competent NSFs and the public authority to implement proposed provisions.¹⁸⁸ Athletes had the possibility to be employed as entrepreneur, reflecting global debates on the issue.¹⁸⁹ Like earlier legislative regulations pertinent to physical education culture, the law did not provide for an ownership structure regarding management of assets. In addition to this, there were no provisions for control or supervision in the way of safeguarding public goods. Organizations for physical culture for workers (recreational sport), could be established by the Law on Associations.¹⁹⁰ Such a normative framework foresaw that legal entities (sections, clubs, federations, school sport organizations, workers organizations and SIZ) are additionally framed by the *external* – self-management treaties and agreements (as autonomous sources of law), and *internal* – statutes and other appropriate regulations.¹⁹¹ In the pyramidal format of the international sporting environment, umbrella sport organizations transfer and enact international sport rules and regulations in the national legal system. In the case of an interventionist sport system, the functionality of internal regulations and sport rules requires underpinning by the constitutional system and the norms that derive and frame sport. However, in the case of SFRJ, the delimitation of jurisdictions and competences was not clearly defined among its constituents. Further, legislators did not anticipate the significance of a centralist approach when it comes to high-performance sport or the unique positions of umbrella sport organizations. This would prove to be a significant problem in the functionality of the sport system.

¹⁸⁸ State Self-Managing Communities of Interest (1983). *Information on Social Agreement on position, rewards and remuneration of top athletes in the SFRJ*; prepared for the Executive Board meeting of the RSIZ. State Self-Managing Communities of Interest fund (Item no. 05-552). Cetinje: State Archive of Montenegro.

¹⁸⁹ It is important to note that significance of this period reflected an ongoing debate whether professional athletes could or should take part in the Olympic Games.

¹⁹⁰ Socialist Republic of Montenegro, 1971. *Law on Associations*. Podgorica: Off. Gazette 30/71.

¹⁹¹ Self-management norms co-existed with general legislation in the doctrine of dualism. Local and state SIZ were established by the appropriate self-management treaty. Self-management agreements were of the special interest in regulating status of athletes, agreed between the legislative body and SIZ.

Challenges in implementing sport policies

Inconsistencies in defining an adequate legal framework resulted in numerous difficulties. In the document “Current issues of self-management’s transformation of physical education culture,” discussed during the SFKJ meeting, notes the obstacles that should be resolved within SIZ and organizations for physical education culture: *organizational* – institutional robustness and *governance* – limitation of decision-making processes for athletes and other natural entities stressing “the necessary democratization is limited because there is still a division between those who are actively engaged in sport (natural entities) and those who make decisions in organizations (decision-makers).¹⁹²

One of the main recommendations showed the importance of strengthening self-management relations. The delegate system was to be consistently built from the local to the state level – indicating a process of not simply decentralizing the existing forum, but rather involving all stakeholders on the basis of a horizontal decision-making system. Fully aware of the vulnerable position of athletes, the State SIZ (RSIZ) noted that although there is a significant number of active athletes (40,000), their status of high-performance athletes needs to be improved.¹⁹³ The same year, the RSIZ prepared an annual program for 1980. What is interesting, besides noting the need for a more analytic approach, is the accompanying document “Program of Activities for the Implementation and Improvement of Collective Work and Responsibility of One-year Presidential Mandate”.¹⁹⁴ Namely, there was an increasing phenomenon of politically exposed individuals who held more than one office – a single person appears as a delegate in the club, in the SOFK and SIZ. These practices needed to be decisively suppressed, because they opposed the essence of self-management principles, the delegate system and democratic processes in society. This set of

¹⁹² State Self-Managing Communities of Interest (1978). *Current issues of self-management transformation in physical education culture – set of recommendations from Socialist Republic of Croatia*; prepared for annual General Assembly meeting of the RSIZ. State fund for Physical Culture (item no. 394). Cetinje: State Archive of Montenegro.

¹⁹³ State Self-Managing Communities of Interest (1979). *Some issues related to the discussion on high performance sport*. State Self-Managing Communities of Interest fond (Item no. 02-27). Cetinje: State Archive of Montenegro.

¹⁹⁴ Republic Self-Managing Communities of Interest (1979). *Program of Activities for the Implementation and Improvement of Collective Work and Responsibility of One-year Presidential Mandate*; prepared as a supplement document to the RSIZ annual program for 1980. State Self-Managing Communities of Interest fond (Item no. 02-840). Cetinje: State Archive of Montenegro.

provisions, enacted as obligatory for organizations to receive public funding, represented a set of good governance principles with the aim to fully implement the delegate system as the basis of self-management with greater influence of natural entities within the decision-making process. It also indicates the importance of: (1) limiting term in office; (2) de-accumulation of functions/positions; (3) reducing bureaucracy and strengthening democratic processes (primarily meant for representation); (4) accountability and (5) transparency. In practical terms, the document proposed limiting the mandate of the president to four years with no possibility of re-election, with no formal superiority over other members of the governing bodies; regular meetings of the governing board, public and open meetings with board members held accountable for their responsibilities. In other words, the Conclusions presented by the Presidency of Communist Youth (SSOJ) supported good governance principles, stressing that this area has evaded the control of working people, i.e. self-management control. The lack of oversight had favored the emergence of undemocratic processes, monopolistic and autocratic decision-making, which led to the suppression of activity. Further, the report indicated the necessity of applying a merit system, rotation and replicability, with the decision-making structure corresponding to the membership structure. In addition, the Presidency tasked its members with the implementation of these recommendations – which shows the incomprehension of the actual application of democratic principles relying on mechanism of checks and balances.¹⁹⁵ In a similar manner, delegates within the RSIZ noted that policies and decisions must reflect all stakeholder groups. They urged for a more inclusive approach among constituents and reiterated the importance of good governance principles. They also placed special emphasis on enabling natural entities to be involved in decision-making and strengthening functionality of delegate system.¹⁹⁶

A lack of experience was very much present in drafting strategic and operational documents, where special attention was dedicated to the competition format. In that respect, initiative from the state

¹⁹⁵ Association of Socialist Youth of Yugoslavia. (1979). *Conclusion of the Presidency of SSOJ*. State Self-Managing Communities of Interest fond (Item no. 01-396). Cetinje: State archive of Montenegro.

¹⁹⁶ State Self-Managing Communities of Interest (1980). *Implementation of the program of activities on the implementation and improvement of collective work and responsibility and the implementation of one-year presidential mandate*; prepared for annual General Assembly meeting of the RSIZ. State Self-Managing Communities of Interest fond (Item no. 02-613). Cetinje: State Archive of Montenegro.

was very welcome. Namely, SFKJ adopted principles for organization of competitions which could be understood as a set of added norms for good governance, especially since its members stressed negative aspects of monopolization and autocracy that manifest in competitions: *representation/openness* (to ensure equal opportunities for all participants), *massiveness* (number of sport organizations and participants); *amateurism* (the principles of amateurism and implementation of the provisions of the social agreement on the status and stimulation of top athletes in SFRJ); *compliance* (with the good governance principles and appropriate legislation), process of selection/selectivity (a system of mass-based competitions, which is stimulating in terms of quality); *multi-stage competitions* (quality based format competition the from municipal to state); *consistency* (providing dual-career system); *applicability* (implementation of international sporting rules) and financial *sustainability*.¹⁹⁷ In addition, SOFK, as an umbrella sport organization in Montenegro, adopted an action plan to implement the principle of collective work and responsibility, i.e. good governance principles and SFKJ principles.¹⁹⁸ Recognizing the inability of constituents to implement given competences along with conclusions from the joint meeting of the SSRNJ and SSOJ, the RSIZ proposed amendments to the Law on Physical Education Culture and RSIZ. The intention was to enable direct representation of all stakeholders, focusing on natural entities, i.e. workers, athletes, coaches and others.¹⁹⁹ It was pointed out that in addition to the achieving (sporting) results, much needed to be done or followed by the appropriate development of democratic and self-management relations within sports organizations. Specifically, there was an absence of implementation of good governance principles and a delegate system, which was followed by intense monopolization, autocratic behavior and misuse of social (workers) funds. On the other hand, the SOFK report underlined that enabling representation of natural entities within governing bodies would limit the scope of action and efficiency of the sport organizations, leading

¹⁹⁷ Yugoslav Association for Physical Education Culture, 1980. *Principles for organization of competitions*; prepared for annual General Assembly meeting of the RSIZ. State Self-Managing Communities of Interest fund (Item no. 02-604). Cetinje: State Archive of Montenegro.

¹⁹⁸ Federation of Organizations for Physical Education Culture. (1981). *SOFK Draft Program for 1982*. State Self-Managing Communities of Interest fond (Item no. 03-295). Cetinje: State archive of Montenegro

¹⁹⁹ State Self-Managing Communities of Interest, 1981. *Proposal of amendments to the current law on physical education culture and RSIZ*; prepared for Parliamentary Assembly of the Socialist Republic of Montenegro. State Self-Managing Communities of Interest fond (Item no. 02-425). Cetinje: State Archive of Montenegro.

to its bureaucratization.²⁰⁰ There was no analysis to back up this position and the minutes of the meeting obviously show an understanding of importance of compliance with good governance principles, the delegate system and self-management orientation.

When the global crisis caught up with the small socialist economy at the beginning of 1980's, it resulted in cut spending and reduction in monitoring the challenges that started to erode self-management principles inherited by the sport movement. However, the RSIZ further pushed towards strengthening the delegate system, implementing good governance principles with specific reference to the institutional position of athletes – it underlined that athletes should be moved from the position of objects to subjects of decision-making process, i.e. active decision-makers.²⁰¹ Further, the RSIZ prepared information on the implementation of measures and activities in order to eliminate negative phenomena in sport and physical education culture, stressing that resistance to the implementation of good governance principles (including delegate system) is present and politically powerful – seeking to maintain the existing status, especially within the field of (competitive) sport. In the report, they are characterized as autocratic, clientelist, constantly abusing their office and social funds dedicated to sport. Another serious challenge was the nonconformity of regulations adopted within the sport movement with the norms and standards of self-management and socialist society – irregular supervision and professional control, lack of transparency and little influence of workers and other natural entities in decision-making processes, especially emphasizing neglect of athletes.²⁰² Along with information from the RSIZ, the state parliament adopted a report on monitoring and eliminating negative phenomena in sport calling for urgent and decisive action, *vis-à-vis* individual and interest groups abusing political power and misusing social funds dedicated to the physical education culture and sport. The conclusions of the parliament noted a gap between *de iure* acceptance and *de facto* lack of implementation of good

²⁰⁰ Federation of Organizations for Physical Education Culture. (1985). *SOFK Annual Report for 1984*. State Self-Managing Communities of Interest fund (Item no. 02-258). Cetinje: State archive of Montenegro

²⁰¹ State Self-Managing Communities of Interest (1982). *Conclusions of the 17th General Assembly of the RSIZ*. State Self-Managing Communities of Interest fund (Item no. 02-86). Cetinje: State Archive of Montenegro.

²⁰² State Self-Managing Communities of Interest (1983). *Information on the implementation of measures and activities for the elimination of malpractices in area of sport and physical culture*; discussed during General Assembly of the RSIZ. State Self-Managing Communities of Interest fond (Item no. 02-470). Cetinje: State Archive of Montenegro.

governance principles within the RSIZ and the sport movement.²⁰³ Yielding to political pressure, the RSIZ conducted an analysis of a mid-term (4 year) strategic plan noting the following weaknesses: (1) *implementation of delegate system* (delegates are detached from the base, which makes it difficult to articulate authentic interests of the workers and natural entities leading to poor access to policy and decision-making processes); (2) *inability of association for natural entities* (fewer opportunities for athletes, coaches and referees to constitute an association in order to be directly represented within decision-making process); (3) *inadequate organizational culture* (in terms of policy planning, policy making and implementation, financial operation, transparency and accountability); (4) *the absence of selection procedure* (in terms of competitive sport) and (5) *dual-career system* and inconsistent system of financing sport (absence of structure and precise strategic goals).²⁰⁴ In addition, the RSIZ proposed a set of goals for the period of 1986-1990, repeating more or less same measures throughout 1980's. This orientation was an integral part of annual working and action plans of the RSIZ until 1989-90. The only difference after that concerned the institutional position of the umbrella sport organization, SOFK. The complexity of relationships can be seen in the fact that there is no limit in terms of membership: it is possible for the same person to be member of the club, the federation and in the same sport, member of SOFK, which leads to potential conflict of interest, as the checks and balances are lost, i.e. the function of control.²⁰⁵ With this constellation in mind, the position of SOFK would be very difficult to remain impartial within its ToR, i.e. as a service provider for its member organizations.

²⁰³ Parliament of the Socialist Republic of Montenegro (1985). *The Conclusions of the parliamentary debate on sport and physical culture*. State Self-Managing Communities of Interest fund (Item no. 02-328). Cetinje: State Archive of Montenegro.

²⁰⁴ Republic Self-Managing Communities of Interest (1985). *Analysis of the realization of the Development Plan of the physical culture 1981-1985*. Republic Self-Managing Communities of Interest fond (Item no. 02-264). Cetinje: State Archive of Montenegro

²⁰⁵ Republic Self-Managing Communities of Interest (1988). *Assessment of the current condition of the physical culture in Montenegro*; prepared for the parliamentary debate. Republic Self-Managing Communities of Interest fond (Item no. 03-2027). Cetinje: State Archive of Montenegro.

Concluding remarks

The main difficulties and obstacles for the period of the 1980's was the formally accepted delegate system that was still a long way away from allowing equal representation of natural entities, that is, functionally systematically neglecting athletes' needs. The bureaucratized decision-making structure formed through political interest, cronyism and nepotism, reluctant to apply the delegate system (as a part of good governance) and principles for organization of competitions. The absence of appropriate strategy/action plans in the sport movement. Unclear competition formats, in which both amateur and professional athletes could take part.

As the country started to disintegrate, political decision-makers were quick to abandon self-management principles. Of course, this also had serious repercussions in the field of sport. The newly formed Ministry of Culture and Sport of Montenegro pushed for a market-oriented sport system, neglecting the constitutional principles of sport as a public good.²⁰⁶ The delegate system was abandoned, along with good governance principles, considered irrational and insufficiently functional (although no analysis was offered in this respect). There were no remarks on the position of natural entities, primarily athletes and their position in the new architecture of sport. With absence of control of sport organizations in terms of functionality and compliance with legislation, focus was placed on liberating as much as possible with the aim to privatize sport organizations (commercialize them for individual needs). In 1991, the Ministry prepared a report stressing that athletes should manage their own self-improvement in sports, and society should value it.²⁰⁷ In other words, there was an expectation that athletes should become entrepreneurs.

²⁰⁶ Ministry of Culture and Sport, 1991. *Draft of Law on Sport*. State Self-Managing Communities of Interest fund (Item no. 05-1094). Cetinje: State Archive of Montenegro

²⁰⁷ Ministry of Culture and Sport, 1991. *Information on the current condition of the sport system*. State Self-Managing Communities of Interest fund (Item no. 04-643/2). Cetinje: State Archive of Montenegro

Chapter Five: Methodological approach

Introduction

Globalization has dramatically influenced and rearranged social power relations everywhere, including sport structure, in particular stressing the importance of representation and accountability.²⁰⁸ There has been special attention paid to organizational and governance in sport structures, from a legal point of view, specifically focusing on dispute-resolution mechanisms.²⁰⁹ The position of natural entities, mainly athletes and their representation within governing sporting structures, today represents an important issue.²¹⁰ The ability of athletes to influence the decision-making process in their home organizations greatly impacts the extent to which the governing system of a particular sport is conducive for long-term development and wellbeing of those athletes. Based on existing knowledge, further action is needed to gain proper insight into opportunities and obstacles combining societal, legislative and organizational aspects. Although authors note an increase of athlete representation within ISFs, the level of their impact is still unknown.²¹¹ It is predominantly athletic associations that lobby and advocate for athletes, giving them influence and acting as conduits in their taking part in decision-making design. There are many factors (institutional, organizational, behavioural, and cultural) that both limit and enable the effective role of direct athletic representation in defending and advocating for their own interests. As mentioned, inquiry into this field has thus far focused on exploring the impact of various factors in silos (i.e. the institutional, organizational or normative lens). This study plans to combine a variety of lenses and apply them to a single semi-structured case study in order to determine which factors or which combination thereof is most likely to lead to an effective form of advocating for athletes' rights. Therefore, the frames of further research should be participation in decision-

²⁰⁸ Jarvie, G. (2006). *Sport, Culture and Society: An introduction*. London: Routledge.

²⁰⁹ Gardiner, S., James, M., O'Leary, J., Welch, R., Blackshaw, I., Boyes, S. and Caiger, A. (2006). *Sports Law*. 3rd edition. London: Cavendish Publishing.

²¹⁰ Katwala, S (2000). *Democratising Global Sport*. London: The Foreign Policy Centre.

²¹¹ Thibault, L., Kihl, L. and Babiak, K. (2010). Democratization and governance in international sport: Addressing issues with athlete involvement in organizational policy. *International Journal of Sport Policy*, 2 (3). 275-302.

making processes, ways of athlete representation and its ability to influence decision-making and balance in governance.

Dilemmas of methodological setting

Appropriate attitudes (or lack thereof) to the relationship between national legislation and sport are a sign or legacy of the constellation in place, that is, the relationships among actors and their activities. In this respect, there appear to be three variants of coexistence: national legislation and sport – *two distinct areas* that still affect each other (albeit in the manner all other components of society influence one another); the *normative setting* – its areas of concern only seemingly different, but in fact identical; *interdependent setting* – which emphasizes autonomy while strongly emphasizing the given mission. The level of interdependence is arrived through analysis of its position within societal structure. Thus, it must be understood that national legislation represents an expression of the will of the ruling class, while areas such as sport serve as a platform for the conflict resolution among classes. The correlation of national legislation and sport is reflected in the following directions: *structural* – they appear complete or in combinations of sections; *functional* – their functions are complementary; *formalistic* – manifestation forms of one represent the essence and functioning of the other.

Such an arrangement presupposes factual and normative settings as the historic and logical foundations for regulating social relations. This kind of complex relationship suggests an approach that goes beyond purely technical or mechanical method, i.e. focusing on a particular aspect (e.g. existing good governance principles in sport). It implies an attitude that leads to an organic unity of legislation and sporting society. Noticeably, development of the current scientific approach is directed towards the *analytical method*, while splitting various theoretical foundations apart. Furthermore, an analytical orientation in processing and focusing on particular elements results in abolishment of all ties to the legislation or competent legal institutes that could form a proper understanding and resolution of a given challenge.

In order to address ongoing challenges that degrade not only values that sport stands for, but societal constellation in a particular country, rethinking existing scientific approaches should take

into consideration the synthetic *method*, with adequate structure and content to get proper insight and presentation of relationship realities and area connectedness. The value of the analytic method represents covering diverse aspects of the structure and its operations. It has created a basis for a gradual transformation into a synthetic approach. The introduction of the synthetic approach presumes the principle of internal coherence among various approaches, which must not be rigid, while still providing for order to be in place.

The problem of the research: To what extent are athletes, as a major constituent of the Sport Movement, involved in decision-making processes within NSFs?

Dependent variable: Involvement in decision-making processes.

Specification of involvement (independent variables):

- formal-informal;
- actual involvement in
 - a) Governance structures;
 - b) Administration
 - c) Dispute mechanisms;
 - d) Control mechanisms,

Hypothesis: Athletes are not sufficiently involved in decision-making processes within NSFs.

Main question: What are the main reasons for athletes not to be involved in decision-making processes?

Goal of the research: the results of the research will create necessary conditions for institutional positioning of athletes.

Methodology

Therefore, the methodology here will introduce a mixed method approach, using a multi-phase research design. Mixed methods are increasingly used, as they allow researchers to have multiple

worldviews and paradigms, with a variety of methods to address complex research problems.²¹² In this study, the mixed method approach presupposes going over the unilateral orientation on jurisprudence or governance theories. Specifically, the study will be processed in 3 complementary steps, reflective of the synthetic approach, to reconcile inadequacies from existing studies elaborated in the previous chapter:

1. As a starting point on accessing the institutional position of athletes in the sport system, analysis of the legislation should provide the necessary guidance in order to properly frame the structure of the stakeholders with emphasis on natural entities – athletes and their position in the chain of command. Analysis of the legal framework of the Montenegrin Sport System will be conducted in comparison to the constitutional position of sport, its normative settings and international binding norms and founding acts (e.g. European Sport Charter, Olympic Charter). It will look at ways in which decisions are made, the positions of stakeholders and interested parties, their mutual relationships and administrative arrangements. A supporting argument for this procedure can be found in the outcome of the study “Compliance of the National Sport Federations within the Legal System in Montenegro” conducted in 2014. It showed small, powerful and non-transparent organizational structures of the NSFs, which only considered the position of athletes in relation to the *ius cogens* provisions of articles 58 and 59 of the Law on Sport.²¹³
2. Legitimation of the organization depends on the democratic attitude, representation and power relations, formal vs. informal norms and resource sustainability. Of particular interest are the power relations where many authors have pointed out coercive (both formal and informal) and normative (national legislation, internal regulations and sport rules)

²¹² For more on mixed methods: Gelo, O., Braakmann, D. and Benetka, G. (2008). Quantitative and qualitative research: Beyond the debate. *Integrative Psychological and Behavioral Science*, 42(3): 266 – 290; Mertens, D. M. (2009). Research and evaluation in educational psychology: Integrating diversity with quantitative, qualitative, and mixed methods 3rd ed. Thousand Oaks, CA: Sage

²¹³ Begović, M. (2015). *Compliance of the National Sport Federations within Legal System in Montenegro*. Dissertation submitted in partial fulfilment of the requirement for the degree of: Master of Arts Olympic Studies. German Sport University.

pressures.²¹⁴ The power relations further imply shifting to more informal/ad-hoc functioning, exercising high levels of autonomy and autocratic structure. With this in mind, the results of the legal analysis will serve as a reference point for forming a desk-research questionnaire for the National Sport Federations. After looking at the application of regulation in the field of sport and its implications through desk-research, those results will be considered through semi-structured focus groups with athletes to acquire insight into the athletes' perception of the structure of the sport movement, their position in it and ways to improve their status (see Appendix 2). Invitations were sent to twenty athletes from Olympic and non-Olympic sports, ten women and ten men. Eighteen responded positively, and twelve participated actively. Of those twelve, 58% were women. The venue and date/time were selected to best suit all participants.

3. Understood as fluid, inter-institutional and with a certain level of complexity within a particular society, sport represents a structured and steady conflict reflecting social reality. There has been an evident transformation of sport due to the globalization/commercialization, in which, as Guttman notes, rationalization, bureaucratization and quantification are inherent elements.²¹⁵ In addition to Guttman, Coakley points out a change from an aesthetic to a heroic orientation, and Frey and Eitzen conclude that the industry of sport science serves for "performance enhancements."²¹⁶ The last authors also discuss Brohm's notion of "scientization" of sport, focusing on technical improvement, nutrition, engineering of performance, while neglecting rights and the position of athletes in sporting structures.²¹⁷ The mentioned constellation has inevitably had an impact on the organizational structure of sport organizations, and the aim of the third phase is to review national academic documents in order to provide a researched view on

²¹⁴ DiMaggio, P.J. and Powel, W.W. (1983). The iron cage revisited: Institutional isomorphism and collective rationality I organizational fields. *American Sociological Review*, 48(2): 147-160.

²¹⁵ Guttman, A. (1988). *A whole New Ball Game: An Interpretation of American Sports*. Chapel Hill: University North Caroline Press. p. 233.

²¹⁶ Coakley, J.J. (1990). *Sport in Society; Issues and Controversies*, 4th ed. St. Louis: Times Mirror/Mosby. P. 375 In: Frey, J.H. and Eitzen, D.S. (1991). *Sport and Society. Annu. Rev. Sociol.*, 17:503-22.

²¹⁷ Brohm, J.M. (1978). *Sport: A Prison of Measured Time*. London: Inks Links. p. 185. In: Frey, J.H. and Eitzen, D.S. (1991). *Sport and Society. Annu. Rev. Sociol.*, 1991. 17: 503-22.

the nature of sport organizations (Sport organizations vs. Organization for conducting sporting activity), from a perspective of good governance and athlete representation.

Limitations

A major limitation of the methodology is the fact that data collection, especially via questionnaires, depends on the willingness of NSFs and their responsible representatives to cooperate. This is mainly due to the fact that representatives of the political and public institutions constitute a majority of decision-makers within NSFs.

Another limitation is the lack of research by Montenegrin scholars, that is, a lacuna in both theory and practice concerning questions of good governance and organizational structure of the sport movement as well as the position of natural entities in sporting organizations.

Examining the institutional position of athletes

In order to access the governance structure of Montenegro's Sport Movement and the position of athletes to representation and decision-making, the questionnaire is divided into four sections. Influenced by the methodology of Geeraert in Sports Governance Observer,²¹⁸ the proposed questionnaire reflects the results from the Analysis of the Legal Framework of the Montenegrin Sport System which had 4 sections useful for further examination:

- *Transparency* – indicating the level of openness of the work and functioning of the sport entity;²¹⁹
- *Democracy* – indicating the level of involvement of interested parties of a particular sport in the decision-making process;²²⁰

²¹⁸ Geeraert, A. (2015). *The legitimacy crisis in international sports governance*. Sports Governance Observer 2015 Report.

²¹⁹ Mulgan, R. (2008). Transparency: The Key to Better Governance? In: Christopher Hood and David Heald eds., *Australian Journal of Public Administration*, 67: 237–239. doi:10.1111/j.1467-8500.2008.00584

²²⁰ Houlihan, B. (2004). Civil rights, doping control and the world anti-doping code. *Sport and Society*, 7(3):. 420-421.

- *Balance in governance* – indicating the level of mutual control within an organization;²²¹
- *Social credibility* – indicating the level of accountability of all decision-makers within a particular sport.²²²

Further, indicators placed in the four question sections reflect the functioning and organizational structure of the NSFs, derived from the analysis of legislation. With 4 sections in place, this further step includes the creation of an in-depth questionnaire in order to obtain views on how the Sport Movement in Montenegro functions, i.e. the ways in which decisions are made, position of stakeholders and interested parties and their mutual relationships. The questionnaires are disseminated to all the NSFs in the Register of Sport Organizations (RSO) with the Ministry for Sport (the Ministry was established on 29 November 2016). Keeping in mind the unconstitutionality, inapplicability, inaccuracies and non-compliance of binding provisions of the Law on Sport (as the summarized results from the legal framework analysis show), particular attention is given to:

- Representation;
- Electoral systems / procedures;
- Control mechanisms;
- Dispute mechanisms;
- Administrative arrangements;
- Social sustainability.

Particular emphasis is paid to representation, since as the prerequisite for democracy, it is arguably the *conditio sine qua non* for proper functioning of the Sport Movement and the implementation of good governance principles. The analysis is conducted in two phases:

- 1st phase will include ranking of the organizations based on the scoring. The scoring range is 1 for “Yes” and 0 for “No,” referring to pass or no pass in each particular category. To avoid potential subjectivity, progressive grading was avoided;

²²¹ Auld, C. J. and Godbey, G. (1998). Influence in Canadian national sport organizations: Perceptions of professionals and volunteers. *Journal of Sport Management*, 12(1), 20-38.

²²² Geeraert, A. (2016). *Indicators and benchmarking tools for sport governance*. In: Global Corruption Report: Sport. Transparency International. Routledge. p. 57.

- 2nd phase includes document analysis of requested data, i.e. performance analysis of the strategy, rulebook/bylaws, regulations, reports and decisions *vis-à-vis* statutes, the national strategy and legislation in the field of sport.

Explanation

The set of indicators are designed to provide insight into the implementation of good governance principles in NSFs. Going beyond use of existing literature, the indicators are developed from looking at the legal framework in the field of sport. Therefore, the indicators in the four categories are devised on a normative and theoretical basis.

Definitions

- **Governance Board:** the decision-making body within the NSF (General Assembly or Executive Committee)
- **General Assembly:** the legislative and constitutional body of the NSF.
- **Executive Committee:** the operational body of the NSF.
- **Working body/commission:** established body for particular segment of NSF ToR.
- **Supervisory body:** internal audit body.
- **Organizational structure:** the (typically) hierarchical arrangement of lines of authority, communications, rights and duties of an organization
- **Strategy:** a four-year document outlining long-term goals.
- **Action plan:** a document that lists measures and actions that should be implemented on an annual basis.
- **Remuneration:** payment or compensation received for services or employment.
- **The act of organization of work and systematization of posts:** an internal act that reflects the actual state and organization of the company.
- **Term limits:** a statutory limit on the number of terms an official may serve.
- **ToR:** definition of the purpose and structures of the organization/institution/body.
- **Code of Ethics:** a written set of guidelines issued by an organization to its members and decision-makers to help them conduct their actions in accordance with ethical values, norms and standards.

- **Dispute resolution mechanisms:** structured system/process that addresses disputes arising between two or more parties.
- **Arbitration:** a way to resolve disputes outside the court
- **Social responsibility:** acting for the benefit of society as whole.
- **Environmental management system:** a set of practices that enable the organization to reduce its negative environmental impacts.

Selection of NSFs

- Rationale 1: Include large, medium and small size NSFs.
- Rationale 2: include NSFs of sports recognized by the IOC.
- Rationale 3: include NSFs funded by the competent state authority.
- Rationale 4: include NSF of newly arrived (recognized) sports in Montenegro.²²³
- Rationale 5: include NSFs in charge of fundamental/core sports.²²⁴
- Rationale 6: include NSF of gaming sports.
- Rationale 7: include NSFs of team and individual sports.
- Rationale 8: include umbrella federations.²²⁵

²²³ Triathlon Federation of Montenegro.

²²⁴ Athletics, swimming and gymnastics are core sports.

²²⁵ Montenegrin Olympic Committee, Paralympic Committee of Montenegro and Students Sports Association of Montenegro.

Chapter Six: Legal Framework of the Montenegrin Sport System

Introduction

The state and legislation are complementary to one another, keeping in mind that both are the result of regulation of the social framework and constraints that follows. This further involves the application of law through the behaviour of subjects in accordance with the norms and extraction of rights and obligations.²²⁶ The basic elements of the legislation are norms; grouped, they constitute the legal institute that regulates a particular social constellation. As an essential precondition for development of an adequate analysis, it is necessary to bear in mind that the right for association is proclaimed as one of the basic legal institutes in numerous binding international pieces of legislation; moreover, article 20 of the Universal Declaration of Human Rights states that “everyone has the right to freedom of peaceful assembly and association.” In addition, article 11 of the European Convention on Human Rights, which considers any natural or legal entity, underlines that:

“Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.”

Such order further implies public jurisdiction for all parties under state/local competences, i.e. with a recognized nexus, particularly through the convergence of the national legislation with provisions from the convention. The *ratio legis* in a particular country reflects competences of the public authorities with no interference to the association process, and the enforcement of any norm must proceed from this premise (*refraining process*). Thus, the civic point of view must be to expect reduction in state/public constraint to the freedom/right for association. According to Dahl’s theory, participation is vital prerequisite for the existence of democracy; from the political point of view, various forms of association provide the necessary interaction crucial for equal representation in the decision-making process.

²²⁶ Lukić, R. (1957). *Teorija države i prava II*. BIGZ: Beograd.

Sport and public authorities – an intergovernmental reflection

Sport as a public service is vital for the social and cultural development of a community, on all levels. For that reason, it is related to a wide range of policymaking and planning in the community, such as health, social welfare, education, urban planning, conservation, arts and leisure. As sport plays a key role in society by contributing to social cohesion and overcoming prejudice, its development must be supported and encouraged on all levels of society.²²⁷ The role of the public authorities is crucial in facilitating and supporting the social function of sport for the equal benefit and access for all. Enabling two-way cooperation with the sport movement, public authorities should promote values and a whole range of benefits from sport.²²⁸ The role of public authorities could be complementary to various NGOs promoting healthy lifestyles and informal education, insofar as its main role includes definition and enforcement of the regulatory framework that guides the development of sports and provision of funding for certain aspects of this development.

The responsibility of the public authorities in the field of sport is not, of course, the same at the national (state), regional and local level. This depends on the constitutional and legal system of each country, meaning that there are significant differences throughout the world. The interest of academia for many sports-related disputes which has taken place over the last 30-40 years has also had an impact on the pan-European legislation regarding sports development. Of course, different perception of sports (business or social tool for development) open the necessity to investigate different national legal regulations of sport systems. The cornerstone of understanding sport

²²⁷ Authors agree on this point, particularly in economic and social segments, for three reasons. First, sport is of strong cultural significance to most developed nations, which is demonstrated by the amount of media attention devoted to national team success and the support for the construction of major stadia and other sporting infrastructure with public funds. Second, sport is considered a resource that can be used to help deliver non-sport objectives, such as demonstrating political power, combating social exclusion, reducing childhood obesity, improving economic development and facilitating urban regeneration. Third, sport is multi-dimensional in that it is not only a public service, but also an important aspect of welfare provision and facet of economic activity. Thus, it can contribute in many ways to the achievement of government objectives outside of sport policy that is focused on instrumental aspects of sport, such as improving the performance of elite athletes and increasing participation in sport. Bergsgard, N. A., Houlihan, B., Mangset, P., Nodland, S. I. and Rommetvedt, H. (2007). *Sport Policy: A comparative analysis of stability and change*. Oxford: Butterworth-Heinemann.

²²⁸ Based on Article 3 of The Sport Movement from the European Sport Charter.

systems internationally, serving to review principles of national legislation, lies in the European Sport Charter:

"Sport" means all forms of physical activity which, through casual or organised participation, aim at expressing or improving physical fitness and mental well-being, forming social relationships or obtaining results in competition at all levels.

Further, the composition of sport movement includes all stakeholders engaged directly/indirectly in the field of public interest noting the importance of two-way cooperation:

"The role of the public authorities is primarily complementary to the action of the sports movement. Therefore, close co-operation with non-governmental sports organisations is essential in order to ensure the fulfilment of the aims of this Charter, including where necessary the establishment of machinery for the development and co-ordination of sport. The development of the voluntary ethos and movement in sport shall be encouraged, particularly through support for the work of voluntary sports organisations. Voluntary sports organisations have the right to establish autonomous decision-making processes within the law. Both governments and sports organisations shall recognise the need for a mutual respect of their decisions. The implementation of some of the provisions of this Charter may be entrusted to governmental or non-governmental sports authorities or sports organisations. Sports organisations should be encouraged to establish mutually beneficial arrangements with each other and with potential partners, such as the commercial sector, the media, etc, while ensuring that exploitation of sport or sportspeople is avoided."

Sporting activities presuppose the existence of an open, accessible and risk-free environment:

"No discrimination on the grounds of sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status, shall be permitted in the access to sports facilities or to sports activities. Measures shall be taken to ensure that all citizens have opportunities to take part in sport and, where necessary, additional measures shall be taken aimed at enabling either young gifted people, as well as disadvantaged or disabled individuals or groups to be able to exercise such opportunities effectively. Since the scale of participation in sport is dependent in part on the extent, the variety and the accessibility of facilities, their overall planning shall be accepted as a matter for public authorities. The range of facilities to be provided shall take account of public, private, commercial and other facilities which are available. Those responsible shall take account of national, regional and local requirements, and incorporate measures designed to ensure good management and their safe and full use. Appropriate steps should be taken by the owners of sports facilities to enable disadvantaged persons including those with physical or mental disabilities

to have access to such facilities...to encourage the practice of sport by the young people, notably: by ensuring that programmes of and, facilities for sport, recreation and physical education are made available to all pupils and that appropriate time is set aside for this; by ensuring the training of qualified teachers in this area at all schools; by ensuring that appropriate opportunities exist for continuing the practice of sport after compulsory education; by encouraging the development of appropriate links between schools or other educational establishments, school sports clubs and local sports clubs; by facilitating and developing the use of sports facilities by schools and by the local community; by encouraging a climate of opinion in which parents, teachers, coaches and leaders stimulate young people to take regular physical exercise; by providing education in sports ethics for pupils from primary school onwards.”

Building on the Charter, in the White Paper on Sport, the Commission adopted the Council of Europe’s definition of “sport,” acknowledging in its introduction the importance of sport as “a growing social and economic phenomenon which makes an important contribution to the European Union’s strategic objectives of solidarity and prosperity.” The purpose of the White Paper on Sport is expressed in the following terms (para. 1):

“This initiative marks the first time that the Commission is addressing sport-related issues in a comprehensive manner. Its overall objective is to give strategic orientation on the role of sport in Europe, to encourage debate on specific problems, to enhance the visibility of sport in EU policymaking and to raise public awareness of the needs and specificities of sector. The initiative aims to illustrate important issues such as the application of EU law to sport. It also seeks to set out further sports-related action at EU level.”

Identified by the Paper, there is a wide range of activities covered in the EU and can be grouped into 3 thematic pillars: (1) *the social role of sport* – activities affecting the general population directly (regular physical activity, social inclusion, diversity and dual career; (2) *the economic dimension* – activities ranging from adopting appropriate legislation, socio-economic implications and understanding an economic potential of sport/specific sports; (3) *the organizational dimension* – directly related to the sport movement (its organizational structure, integrity, safeguard of athletes/sport professionals and financial accountability). Although set in 3 pillars, these three activities are intertwined and rely heavily on the strategic documents of the Council of Europe, thus providing the necessary legal support for the development of the appropriate national based

legislation. A good example of this is the provision set by the Charter, regarding participation, sustainable development and financing, where all 3 pillars are integrated:

“The practice of sport, whether it be for the purpose of leisure and recreation, of health promotion, or of improving performance, shall be promoted for all parts of the population through the provision of appropriate facilities and programmes of all kinds and of qualified instructors, leaders or "animators". Encouraging the provision of opportunities to participate in sport at work places shall be regarded as an integral part of a balanced sports policy... increasing people's knowledge and awareness of the relations between sport and sustainable development and their understanding of nature... Appropriate support and resources from public funds (i.e. at central, regional and local levels) shall be made available for the fulfilment of the aims and purposes of this Charter. Mixed public and private financial support for sport should be encouraged, including the generation by the sports sector itself of resources necessary for its further development.”

However, the sport systems across the Pan-EU level are characterized as heterogenous, from the operational perspective, according to Andre-Noel Chaker's study “Good Governance in sport, a European survey,” and access to the legal regulation of sport can vary, based on the two models, in relation to three main questions:

“Whether the state law regulates the terms structure and responsibilities of a significant part of the sports movement (interventionist approach) or to regulate only partially (non-interventionist approach), 2) whether state competence set is done centrally or decentralization of power, and 3) type of the sport movement; set to be on top pyramid is an organization that embraces both Olympic Committee and all national sports federations (consolidated system), and in this respect there is no difference between the Olympic Committee and other national associations, or even a general national sports federation (unconsolidated system).”²²⁹

Sport and public authorities – a national reflection

The expression “State Law” was first used by Hegel, in his position that the state was the only source of legal power in a society.²³⁰ As discussed earlier, the legal grounds for physical activity and sport (physical education culture) in the 1974 Constitution of socialist Yugoslavia recognized

²²⁹ Chaker, A-N. (2004). *Good governance in sport – A European survey*. Strasbourg: CoE

²³⁰ Đorđević, J., (1975). *Ustavno Pravo*, Savremena Administracija, Beograd, p.6.

the citizens' rights to nurture and develop their persons, presupposing an increased need for play, recreation and other similar activities. Furthermore, the community, especially the municipalities and labor organizations are required to care for the creation of conditions for the development of physical culture, rest and recreation.²³¹ Legal continuity meant that these provisions have remained in the constitutional order of contemporary, sovereign Montenegro. In Article 77 of the Montenegrin Constitution, sport and physical culture are recognized in the "Science, Culture and Art" section:

"Montenegro is obliged to encourage and support education, science, culture, art, sport, physical and technical culture."²³²

The key legal basis for the planning and coordination of the public policies within the state administration is based on the Rules of Procedure of Government,²³³ Decree on Government,²³⁴ the Law on State Administration²³⁵ and the Law on Budget and Fiscal Responsibility.²³⁶ It defines the institutional mandate of the Government, its power to make decisions, relations with the Parliament and the overall ToR of state administration, where distribution of responsibilities are stipulated with the Decree on organization and operation of the state authorities.²³⁷ Article 33a of the Decree stipulates that the Directorate for Youth and Sport (DYS) implements sport related legislation and policy:

"Status, rights and obligations of athletes; employment status of athletes and sport professional; sport activity of persons with disabilities; performing sporting activities by sport organizations and entrepreneurs; promotion and implementation of the National Plan; the establishment and operation of sport organizations; creation of conditions for the construction and maintenance of sport facilities; encouraging and monitoring the activities of the Montenegrin Olympic Committee and the NSFs; cooperation with ISF...Development and improvement of sport and physical culture; as well as other activities within its competences."

²³¹ Ibid., 405.

²³² http://www.skupstina.me/cms/site_data/ustav/Ustav%20Crne%20Gore.pdf (Accessed 12 October 2018).

²³³ Official Gazette No. 3/2012.

²³⁴ Official Gazette No. 80/08.

²³⁵ Official Gazette No. 38/08.

²³⁶ Official Gazette No. 20/14.

²³⁷ Official Gazette No. 61/12.

Article 53 of the Decree further envisages, in terms of the hierarchy of public administration, that the Ministry of Education (MO) performs supervision of legality of administrative acts and administrative procedure over DYS, although the competences prescribed by Article 11 of the Decree for the MO are related to the educational policy. The legal landmark of planning and operational activities is based on the Law on Sport, the Law on Ratification of International Convention against Doping in Sports,²³⁸ the Law on Prevention of *Spectator Violence and Misbehaviour at Sports Events*,²³⁹ the Law on Public Ski Slopes,²⁴⁰ sport federation statutes, internal regulations, international and national based sport rules (Montenegrin Olympic Committee, 47 National Sports Federations and all sports organizations).²⁴¹

National Plan

The DYS, taking into consideration local municipalities and their opinion, proposes to the Government of Montenegro the adoption and application of a National Plan (NPRS) – a multi-year or strategic document.²⁴² Montenegro achieves public interest through sport by providing conditions for the implementation of activities of public interest. Public interest is defined as any material or nonmaterial interest for the good and prosperity of all citizens under equal conditions.²⁴³ Objectives that have guided the legislators, based on the NPRS and served as grounds for drafting the Law on Sport, take Montenegro to be:

- a country where sport is accessible to everyone;
- a country with a developed sport infrastructure;
- a country of top sporting achievements;

²³⁸ Official Gazette, No. 6/08.

²³⁹ Official Gazette, No. 27/07.

²⁴⁰ Official Gazette No. 13/2007.

²⁴¹ On Montenegrin Olympic Committee members and their statutes (only Montenegrin version available): <http://www.cokcg.org/onama/clanstvo/> (Accessed 8 October 2018).

²⁴² National Plan (Montenegrin version only) from: <http://www.upravazamladeisport.me/me/nacionalni-program-razvoja-sporta> (Accessed 9 October 2018).

²⁴³ Official Gazette No 53/14.

- a country where sport is a factor of overall development;
- a country where the sport nurtures talent;
- a country in which the rights and obligations of sporting subjects are guaranteed and protected by legal norms.

Objectives are based on basic principles that serve as a landmark to draft the Law on Sport. In a theoretical, rather than practical manner, the principles laid down outline a system where sport is available to everyone:

- *The principle of sport as an activity of public interest* – fluid by nature, sport is seen as tool and as an asset. It stimulates both individual and collective social development through its activities/organization, emphasizing human need for physical exercise, physical and mental prosperity. Sport plays a key role in every society, contributes to social cohesion, overcoming prejudices, increasing the positive impact by spreading and promoting highest ethical principles and Olympic values.
- *The principle of free accessibility of sport for everyone* – the concept of the umbrella normative act for the field of sport is based on the free engagement in sport activities and equal access to these activities to all citizens without any discrimination.
- The principle of freedom of association – as constitutional provisions related to the freedom of association, the private entrepreneurship and equality of all forms of ownership, it acknowledges broad framework for the free autonomy within its constituents. Athletes, as recognized subjects of the sport system, are defined as amateurs or professionals and sport organizations may choose their legal/organizational status (non-profit vs. profit).
- *The principle of encouraging people to practice sports, especially women, children and people with disabilities* – a normative framework that creates and encourages an environment for the promotion of sport activities to satisfy citizens' needs and interests. It stipulates that everyone has the right to engage in sport, and that sport should be humane, free, voluntary, healthy and safe, accessible to all citizens under equal terms, regardless of

age, level of physical fitness, the degree of disability, gender and other personal characteristics.

- *The principle of the athlete's health protection* – legislation envisions obligatory medical control of athletes, prohibition of forcing athletes to train and compete and prohibition of using any kinds of doping or banned substances.
- *The principle of expertise/competence* – in addition to the positive impact on the human body, sport activities contain a certain risk to the health of the participants. Therefore, professional work in sport and management of sport activities can be performed only under supervision by a qualified (trained) or a professionally trained staff.
- *The principle of appropriate use of sport facilities* – due to the fact that sports facilities are the most expensive resource in the field of sport and an irreplaceable condition for sport and development through sport, work on the future norms in the field of sport need to prohibit any change of use sports facility, except under very defined conditions and with the approval of the competent state authority for the field of sport.

Structure of the NPRS

The NPRS defines priorities in the field of sport and three long-term objectives and priorities for the development of sport and determination of organizational, financial, administrative and other measures for their achievement. In particular it includes: (1) the state of affairs in the field of sport; (2) the fundamental principles constituting the basis for the development of sport in Montenegro; (3) short-term, mid-term and long-term objectives of the development of sport, as well as the stakeholders responsible for the achievement of these objectives; (4) the model of sport financing; (5) the content, extent and estimated value of activities required for the achievement of the planned sport development objectives; (6) the obligations and tasks of the bodies and organizations involved in the achievement of the sport development objectives; (7) the plan for construction of sports facilities. Although, NPRS serves as a political landmark, the process of monitoring and evaluation of the implementation of the activities are not incorporated in the policy document.

Moreover, it has limiting power, since the sport movement did not proceed with the adoption of its own strategies in order to meet state priorities. Because of the way the strategic document of the NPRS is constructed, it is not possible to assess a particular segment of sport policy. Considering high-performance sports, the authors of the NPRS omitted to take into consideration various competitive categories, specificities of sports and needs. The question of justification of the NPRS remains, especially noting the lack of a clear organizational structure or its fragmentation, in setting clear responsibilities for stakeholders of high performance sport or a talent identification system for example.²⁴⁴ Some of the main characteristics of elite sport, including but not limited to high performance sport, have been noted by de Bossecher and others: (1) early spotting through school; (2) high frequency embedded in the school system; (3) high priority of applied scientific research – these items were excluded from policy planning.²⁴⁵ Therefore, the sport system is not recognized as a whole and measures are implemented ad hoc and more declaratively than substantively.

Structure of the Law on Sport – explanation with analysis of basic legal institutes

General provisions

- The Concept of Sport
- The Definition of Sport
- Sport principles
- Access to Sport
- Types of Sport
- Sport as an activity
- Sporting activities

²⁴⁴ Begović, M. (2017). *Contemporary approach in developing legislation in the field of sport*. InSSSED Proceeding. 2(2). ISSN 2490-323X

²⁴⁵ de Bossecher, V., De Knop, P., van Bottenburg, M. and Shibli, S. (2006). A Conceptual Framework for Analysing Sports Policy Factors Leading to International Sporting Success. *European Sport Management Quarterly*, 6(2); 185–215.

- The Application of Sport Rules
- Enforcement of Legislation
- Use of Gender-Sensitive Language

Law recitals regulate the importance of sport for Montenegro and offer basic definitions of terms. Special attention is given to securing the freedom of participating with equal opportunities in sport. The rights and obligations stipulated in this Law apply to all organizations in the field of sports, along with rules imposed by the International Olympic Committee and/or the competent International Sport Federation. Based on the Law, the Montenegrin Olympic Committee determines/recognizes types of sport disciplines. Regarding procedural arrangements, decisions and enforcement of legislation, the Law on Administrative Procedure as *lex generalis* exercises jurisdiction, whereas public institutions *in extenso* (including local institutions) implement provisions *iure imperii* bearing in mind *ratio materiae*. To a large extent, it remains unclear what are methods for free access, i.e. enabling equal opportunities, considering legislative provisions for sport organizations to transform into nongovernmental and non-for-profit or profit organizations.

Public interest

- Area of Public Interest
- Exercising Public Interest
- The National Plan
- Adoption of National Plan
- The Local Plan
- The Sport Council
- The Competences of the Sport Council
- Local/Municipal Sport Council

The Law sets out in Article 11 that sport as a whole is an activity of public interest for Montenegro. The development of sport, especially among the youth, maintaining and development of sport facilities, spurring the organization and functioning of Sport Movement in Montenegro, securing an adequate environment for conducting sporting activities, organization of sport events, nurturing

categorized athletes, athletes with disability, development of extracurricular activities and supporting scientific cooperation – are seen as activities of public interest. Further, NPRS is defined along with adoption and implementation procedures. The Sport Council is founded directly by a decision of the Government of Montenegro, with advisory competence neglecting to provide a ToR. Even though the Constitution of Montenegro envisages a doctrine of monism when it comes to the application of the obligatory international norms/standards, the draft of the normative frameworks (both Law and NPRS) lacks a harmonization procedure, e.g. enacting the Prohibited list (WADA).

Sport subjects/entities

- Sport entities
- Natural entities within Sport
- Recompense
- Premium
- Sport-related Disability Recompense
- Method of Implementing Entitlements
- Obligations of Top-Level Athletes
- Categorized Athletes
- Coaches
- Professionals Trained to Work in Sport
- Meritorious Sport Professionals
- Professional affairs in Sport
- Legal Entities in Sport
- The Sport Organization
- Types of Sport Organizations
- Status of Sport Organizations
- Establishing Sport Organizations
- Founding acts of Sport Organizations
- Statute of Sport Organizations
- Requirements for Establishing Sport Organizations

- A register of Sport Organizations
- Admission into the Register of Sport Organizations
- Termination of Operation of the Sport Organization
- Requirements for performing sporting activities by natural entities
- Prohibition to Participate in Professional and Managing Bodies/Ineligibility
- Sport Club
- Amateur Sport Club
- Private-Public Partnership
- Professional Sport Club
- Organizing a Professional Sport Club
- Membership within Professional Sport Club
- Obligation to Transform from an Amateur Sport Club to a Professional Sport Club
- Transformation Proceedings
- Sport-recreational Organizations
- Sport Organizations for Disabled Persons
- The National Sport Federation
- Competences of the National Sport Federation
- Sporting Rules
- Association of Sport Organizations
- The Montenegrin Olympic Committee (COK)
- Competences of the COK
- Organizations for Performing Sporting Activities
- Requirements for the Operation of Organizations for Performing Sporting Activities

Considering international legal norms/standards, special attention is given to the protection of participants, natural entities in the field of sport, i.e. athletes, coaches, referees and other sport professionals. The European Sport Charter provides for public authorities:

“Governments...shall take the steps...to ensure that everyone should have the opportunity to take part in sport and physical recreation in a safe and healthy environment...to protect and develop the

moral and ethical bases of sport...from practices that are abusive or debasing...particularly of children, young people and women.”

Furthermore, the Code of Sports Ethics seeks to:

“...identify and promote educational and preventive measures intended to reinforce best practice taking into account needs to promote fair play among children and youth...to ensure that the structure of competition acknowledges the special requirements of growing children and young people...to ensure that safeguards are in place within the context of an overall framework of support and protection for children and youth...to ensure that all those within or associated with a sports organization who have responsibility for children and youth are qualified at an appropriate level to guide, train and educate them bearing in mind physiological and psychological changes associated with the child’s maturation process...to make the health, safety and welfare of the child or young sportsperson the first priority and ensure that such considerations come before all else...”²⁴⁶

Under the TFEU, the EU is exercising competence in the field of sport, i.e. its activities are limited to coordinating, where appropriate, sports-related initiatives undertaken within member states. It further presupposes for the sport movement not to embody individual interests, but on the contrary, the need to constitute it precisely in order to bring together and represent the overall interests of stakeholders in their respective sports, in a spirit of cooperation and progress. Article 165 expressly excludes any harmonizing legislation, but notes that sport is not above the law:

“Union action shall be aimed at...developing the European dimension in sport ...by protecting the physical and moral integrity of sportsmen and sportswomen, especially the youngest sportsmen and sportswomen.”²⁴⁷

Contrary to international binding norms where freedom of association is a guaranteed right to anyone, on formal (legal status) or on informal ground (non-legal status), Article 53 of the Constitution of Montenegro provides guaranteed protection only for organizations that are registered with the competent authority.²⁴⁸ Considering enumerated sport entities, the legislator disregarded important chains of contemporary sport systems: (1) higher educational institution for

²⁴⁶ Recommendation No. R (92) 14 REV.

²⁴⁷ Treaty on the Functioning of the European Union.

²⁴⁸ Official Gazette No. 1/07.

sport, responsible for applied research and vocational training in the field of sport; (2) organizational units responsible for the domain of health care in sport.

Normative arrangements for natural entities

An athlete may engage in sport activities independently or within an organization in the field of sport, either as an amateur or as a professional. A clear differentiation in terms of earnings/compensation between professional and amateur athlete is not in place, which functions as an aggravating factor in determining the status of a particular athlete. This is especially important for reasons of ensuring social, health and pension insurance, or insurance against injuries or accidents for athletes. It further understands the needs for clear distinction between transfer and assignment contract of athletes followed by legally valid procedures based on the competent law and rules within a particular sport. Rights, obligations and responsibilities of professional athletes are partly regulated by the law, where responsibilities are transferred under the competent NSF. This arrangement presupposes a collective agreement or adoption of the appropriate rulebook with the employment contract between the athlete and sport organization in place. However, the provisions concerning contractual relations are vague, even if the literature gives the view that the rules on liability for legal and material defect fulfillment should apply to all parties within obligatory contract arrangements,²⁴⁹ which is recognized by Articles 2-11 and Article 20 of the Law on Obligations.²⁵⁰ The Law on Sport stipulates and recognizes only professional athletes as entrepreneurs. This question seems to be overlooked, especially bearing in mind the importance of third parties (managers or intermediaries) in the field of professional sport and the overall impact on economic safety of athletes. A particularly sensitive issue is the transfer of minors: Article 17 of the Labor Law states that parental/guardian written consent is required and also obligating the sport organization to inform the responsible state authority, making sure to be in concert with the competent ISF, especially in the case of change of residence. Furthermore, not all rights and obligations of the parties that are defined by the aforementioned *lex generalis*,²⁵¹ were included in

²⁴⁹ Petrić, S. (2006). Odgovornost za materijalne nedostatke stvari prema novom Zakonu o obveznim odnosima. Zb. Prav. fak. Sveuč. Rij. 27(1): 87-128.

²⁵⁰ Official Gazette No. 47/08.

²⁵¹ Official Gazette No 66/12.

the provisions of the Law on Sport, which allows for interpretative freedom. This constellation has its repercussions on specific rights associated primarily with competitive sport: potential negative impacts on athletes, their rights and the overall image of sports. In particular, the prevention of negative phenomena in the transfer procedure of athletes whereby the majority of the transfer fees goes to third parties (i.e. managers), seems not to have received the needed attention. Moreover, the law does not stipulate that the contracts under which a third party acquires exclusive rights over economic futures economic rights sports organizations in future transfers athletes could be void/invalid.

Such provisions can be derived from the Directive on the Protection of Young People at Work,²⁵² Article 1, which addresses the question of sport:

“They shall ensure that young people are protected against economic exploitation and against any work likely to harm their safety, health or physical, mental, moral or social development or to jeopardize their education.”

In the context of the need to protect athletes from any kind of exploitation, especially given that they are a vulnerable group, the law remains incomplete. Take for example the “Bosman” case²⁵³ at the European Court of Justice. With this in mind, any contractual provision between athlete and legal entity that is discriminatory should automatically be invalid and allowing such practices would contravene constitutionally guaranteed rights. Termination of contract between athlete and sport organization should not affect the sporting activities of athlete and the right to participate in

²⁵² DIRECTIVE 94/33/EC (1994). on the protection of young people at work.

²⁵³ The verdict that provided the basis for the Bosman ruling is the *Case C-36/74 Walrave and Koch* [1974] ECR 1405 “This case addressed nationality rules in sport set by the Union Cycliste Internationale (UCI). The rule was challenged by two Dutch pacemakers who wished to work for non-Dutch teams at the World Championships. The European Court of Justice (ECJ) underlined in its decision for the first time that the prohibition of discrimination on grounds of nationality applies as well to rules of sports federations and stressed that sports falls within the scope of EU law as far as it constitutes an economic activity.” In *Bosman* (Case C-415/93 [1995] ECR I-4921), the European Court of Justice stated (para. 106): “In view of the considerable social importance of sporting activities and in particular football in the Community, the aims of maintaining a balance between clubs by preserving a certain degree of equality and uncertainty as to results and of encouraging the recruitment and training of young players must be accepted as legitimate.”

official competitions. Violation of the prohibition of discrimination gives a particular athlete the right to compensation for damages. In practice, inspection monitoring of the NSF has revealed that annexes or supplements of the contract were not accessible or have not been submitted in a lawful manner. On the other hand, the law does not stipulate rights for compensation of sport organizations in charge for enabling development or training of a particular athlete. In order to create a framework for an athlete's protection/recognition, *iure imperii* has been transferred to the MOC to adopt and implement the bylaw on categorization of sports and athletes. It seems that in addition to the way in which the categorization process should be carried out, there was no need for categorization of sport professionals, NSFs and sport facilities. Having said that, there is no specified period or adequate criteria for the process of categorization of sports and athletes to be in place. Meritorious sport professionals (top athletes) are entitled to a lifetime monthly compensation, and the right to a bonus for top sport results achieved. It implies the right for recompenses (compensation), in accordance with the prescribed criteria. Legislators stipulated the detailed scope and terms for acquiring the status of top athlete with the appropriate bylaw, especially in Article 3:

“Top athletes shall be a natural person and Montenegrin citizen that achieve in individual or team sport one of first three places at the Olympic, Paralympic, or European or World Championship (senior level) in sport on the IOC or the IPC program.”²⁵⁴

There is also a provision (in team sports) for the captain (coach) of the First National team of Montenegro (provided they are Montenegrin citizens) to be elected as sportsman of the year by the COK. The right to receive payment of lifetime monthly compensation can be achieved after age 40. The criteria for determining the amount of compensation or premium is determined by Government Decree. The adopted Decree²⁵⁵ prescribes the compensation amount and premiums for achieving sporting results. Although a distinction is made according to the placement in the official ranking system which recognizes the national team coach as well, the legislator does not make a differentiation among the status of athletes (amateur vs. professional) or specificity of sports and sport disciplines.

²⁵⁴ Official Gazette No 31/15.

²⁵⁵ Official Gazette No 53/15.

The Law determines professional affairs in sport, specifying who can take them up (coach, teacher, and professor of physical education and sport experts qualified to work in sport).²⁵⁶ The procedure and rules for obtaining the appropriate licenses are to be prescribed by the NSF with the prior approval from the competent state authority in the field of sport. There is no stipulation of requirement/qualification to work within the service industry (fitness, various sports offered as a commercial activity), creating a large area that is not under the control of either the financial or the relevant sporting supervision. A prerequisite for the development of sport and its activities is availability of significant number of trained professionals at all levels (coaching, administrative and managing). It could be on a voluntary or professional basis, but the competent international standards note the importance of quality staff, especially for dealing with children and the youth, in order to better understand the physical and psychological changes associated with maturation.²⁵⁷

In the case of voluntary engagement, the legislator does not provide a specific method to determine the nature of the relationship between the organization and the natural person, other than the provisions set by *lex specialis* on volunteer work, in particular with regard of ToR, contractual obligations and record-keeping.²⁵⁸ Similarly in the case of contracts, since NSF inspection monitoring has revealed that a majority of them does not have approval from the competent state authority, nor do they conduct any licensing procedure.²⁵⁹

The conditions for conducting a sporting activity for physical persons (as entrepreneurs) as well as for legal entities, along with the articles limiting membership or participation in professional or governing bodies of sport organizations, primarily regard articles of Criminal Law, viz. articles of regulation of violence at sport events. Although international standards²⁶⁰ exclude political interference (“*Governments or other public authorities shall not designate any members of a*

²⁵⁶ Not as commercial activity- it is related to high performance sport.

²⁵⁷ RESOLUTION (76)41 “The European Sport for All Charter”; RECOMMENDATION NO. R (92) 14 REV “Code of Sports Ethics.”

²⁵⁸ Official Gazette No 14/12.

²⁵⁹ Begović, M. (2015). *Compliance of the National Sport Federations within the Legal System of Montenegro*. Master Thesis.

²⁶⁰ Olympic Charter. chapter 4, provision 28.

NOC”), Article 12 of the Law on Prevention of Corruption encourages public officials to exercise a decision-making function in sport organizations.²⁶¹

Normative arrangements for legal entities

The Law defines a sport organization as a legal entity, along with its status, organizational character, establishment and termination procedures and protocols. The process of establishment requires the founder(s) to submit the founding act and appropriate statute, as well as evidence of the fulfilment of the conditions necessary for the operation of organization. The registration procedure, record keeping methods and ex-officio removal from the Register of Sport Organizations by the competent state authority. The law does not recognize all existing forms of organization in the field of sport, the nature of activities and territorial affiliation, i.e. union of athletes, sport professionals, delegates or entourage. Some organizational forms are fully regulated, and some only in areas that are specific to the field of sport, while other aspects still require formulation. This is especially important since there is a significant number of NGOs in the field of sport registered with the Ministry of Interior. It is, therefore, impossible to determine the scope of competences of those. In this area, the general conditions that need to be met by sport organizations are defined and regulated in order to perform sport activities. Specifically, each sport organization must adopt and prepare:

- Founding act
- Statute
- Affiliated or contracts of involved athletes
- Number of athletes involved depending on the type of activity
- Provide adequate space, sports facilities and sports equipment
- An adequate internal organization and financial resources is taking part in sport competitions
- Ensure the safety of athletes and other participants in the performance of sport activities.

²⁶¹ Official Gazette No 53/14.

As stipulated by the legislator, the founding act contains *numerus clausus* or “inventory” issues, with which an applicant is obliged to comply. As in the previous case but with a more general nature, the legislator stipulates *numerus clausus*, based on which the competent state authority imparts permit/consent. Except the Founding act, the Statute also serves as a legal institute based on which competent state authority acts *prima facie*, assessing whether the sport principles/activities of public interest have been met. Although it is not *explicite*, *ratio legis* presupposes that the Statute will be determine the various responsibilities of persons in the organizational structure, where acquired rights are not inherited nor can be transferred to third parties. On the other hand, since the Law does not comply with the provisions from the EU Service Directive (that aims to remove barriers in order to enhance rights, fostering cooperation and simplifying administrative procedures), this calls into question the provision’s constitutionality given Art. 9 of the Constitution – international treaties and accepted rules of international law have juridical power (supremacy) over national legislation.²⁶² A further aggravating factor is the provision regarding the *registered number of athletes* in applicant organizations: founders are required to submit proof thereof, even though the sport organization has not begun with its operational/sporting activities yet. Prescribed by the Law, the Statute of the sport organization contains information on who is who in the applicant organization, along with the overall mission and how it will be governed. It seems that regarding the requirements and manner of carrying out activities, the legislator did not consider Article 8 of the European Convention on Human Rights, which guarantees the right to privacy (except in cases of importance to national security). Also, it remains unclear whether minors have rights to association in the field of sport based on Article 15, Convention on the Rights of the Child:

“States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.”²⁶³

²⁶² Directive 2006/123/EC.

²⁶³ General Assembly resolution 44/25.

Although a certain number of athletes registering with an organization is a primary condition for state approval, there is no information on how athletes can exercise their rights within the organizational structure. Inspection control reveal that athletes depend on the good will of the founders/decision-makers of the sport organizations, even in cases that directly affect their sporting and life trajectory.²⁶⁴ With the gathered data and complete documentation, an applicant is obligated to submit the request for registration prior to conduct of any sporting activity. The legislator did not foresee a membership model or procedure of admission in that respect. However, it presupposes that the procedure needs to comply with the constitutional provisions concerning equal rights and the prohibition of discrimination or *lex generalis* in that respect.²⁶⁵ The core aggravated factor is the inability of the competent authority to adopt the bylaw for the fulfillment of minimum requirements for conducting a sporting activity as stipulated by the legislator in the Article 41 of the Law.

The law recognizes means for termination of operation if: (1) one no longer meets the requirements for the sport activities; (2) one does not meet the objectives for which it was established; (3) one does not provide sporting activities for more than year; (4) one has committed some other violation stipulated by the law – leaving this provision of the law broadly defined, especially in terms of protecting the athletes’ rights and enabling equal opportunities in sport for all. It can be concluded that much liberty has been left the decision-makers in the way they operate (in contrast to potential lack of liability). It further implies, that membership rights have not been clearly defined, which creates a strong possibility that the governing and decision-making processes do not result in the members’ will or expression, thus creating an imbalance between general (sporting) and private interest. The problem is even greater when bearing in mind that for any damage or abuse of office, decision-makers will not be liable before the competent judiciary or respectful members. Sport organizations are not obliged to publish their own Statute, financial and audit reports as a prerequisite for transparency and accountability. Thus, it is understood that the lawmaker provided extensive functional autonomy for establishing sport organizations and stipulated the foundation of appropriate bodies and powers through competences. Although the concept of autonomy is not a synonym for independence, the legislator does not recognize the mechanism of checks and

²⁶⁴ Inspection monitoring concluded that there is no single case with athletes’ as part of decision-making process.

²⁶⁵ Official Gazette No 46/10.

balances that would preempt any misuse of power. Furthermore, it seems that legislators did not take into account the existing international standards on good governance, where democracy, transparency, accountability and credibility are noted as core principles of governing sport entity. The Recommendation Rec (2005)⁸ on good governance in sport specifies that the minimum requirements should rely on democracy (clear and regular electoral procedures), ethics (question of the conflict of interest), accountability (in the process of decision-making and financial aspect), transparency (in the process of decision-making and financial aspect) and fairness (equality and solidarity aspects):

“...ensure that these principles of good governance are integrated into sports policies and practices at national level, both in governmental and in non-governmental structures...use these principles as the basis for setting an equitable partnership between the public authorities and the sports movement...call upon all national institutions, non-governmental organizations and other groups concerned in sport to devise, implement, strengthen and support initiatives based on the principles of good governance in sport...invite all sectors – non-governmental sports organizations, civil society groups and voluntary institutions – to cooperate closely with the national authorities in order to achieve and implement the principles of this Recommendation...set up mechanisms to monitor the implementation of good governance in sport principles, and put in place mechanisms to deal with inappropriate or unethical behaviors in sport, including prosecution where necessary.”²⁶⁶

Membership in sport organization needs to be an expression of the basic postulates or principles that sport represents. Although they are the basis for existence of sport organizations, it is important to note that the pyramidal structure of sport (as the European model is) places athletes and their needs at the bottom of importance in the sense that no rights can be accessed directly.

The law recognizes nonprofit organizations involved in formal competition as amateur clubs. An amateur club can be established by either five natural persons or one legal entity. The founding act must state the percentage of funds entered into club, called the founding stake.²⁶⁷ Further, the law regulates the establishment and operation of sport organizations as a professional entity or company or through the process of transforming an existing amateur club into a professional one. The transformation proceedings are bound to a particular case where the club has more than 50% of

²⁶⁶ Recommendation CM/Rec(2005)8.

²⁶⁷ Organized by the competent NSF.

senior/professional athletes with signed contracts of employment and the functioning of such entity falls under the Law on Business Organizations.²⁶⁸ There is little in relation to ensuring economic fair play or provisions that presuppose certain commitment from the responsible individuals (owners) and their respectful legal entities – sport organizations. In addition, law does not anticipate disposal of asset or revenues in order to safeguard particular organization and sport itself. In the case of service-based entities, or as legislation recognizes them, organizations that perform sport activities (instructions, sport academy/fitness center, etc.), such entities are not entitled to use the word “club” or “federation” in their names and may be founded by a natural or a legal entity. Since they are service oriented, i.e. conduct an economic (commercial) activity, it remains unclear for these types of organizations how the norms given in the Law on Business Organizations will be applied.

Regulations on NSFs

In most cases, NSF represents an ISF and a particular sport in its country of origin.²⁶⁹ With this in mind, the sport’s rules in a particular sport or sporting disciplines are the result of the IOC/ISF imposed rules with competent national legal provisions. NSF is supposed to implement operational activities abiding by the legal framework of the particular country. Bearing in mind the constitutional and legal position of the sport, state authorities seek to safeguard public interest.²⁷⁰ Research has pointed out the main obligations (summarized version) for any NSF:

- to establish national goals and foster attainment of those goals
- to serve as the coordinating body for national activities in its sport
- to conduct competitions in its sport
- to represent the country in the international federation that governs its sport.²⁷¹

²⁶⁸ Official Gazette No 36/11.

²⁶⁹ Ruben, A.H. (2002). *Managing Sports Organisations*. Champaign: Human Kinetics Publishers, Inc. pp. 22

²⁷⁰ Schlaeppli, E., and McCabe, C. (2008). Rule of Law, Justice Sector Reforms and Development Cooperation: SDC Concept Paper, Swiss Agency for Development and Cooperation

²⁷¹ Thoma, J.E. and Chalip, L. (1996). *Sport in the Global community*. Morgantown: Graphic Image Group, Inc. p. 67

As stipulated by the Law, sport organizations tend to connect in order to jointly organize competitions and develop the sport to which they belong. In this pursuit, they receive various forms of connectivity, establishing a pyramidal organizational structure. At the top of the pyramid is the National Sport Federation (NSF) – supreme/umbrella organization establishing the rules and regulations within a particular sport. The NSF (1) coordinates the activities of its members; (2) determines and organizes the competition system; (3) registers and keeps records of members, athletes and other sports professionals, conducts contract depositing; (4) takes care to improve professional work and training of professionals, categorized and professional athletes; (5) cooperates with authorities, organizations and institutions; (6) implements other activities stipulated by the law and statute/internal regulations of the NSF. It is bound to a specific sport that has jurisdiction over implementing sport rules, in accordance with international rules and standards of specific sport. NSF is obliged to issue following rulebooks: (1) rulebook on the organization of sports competitions; (2) rulebook on athletes' transfers; (3) rulebook on fight against doping; (4) rulebook on licensing coaches; (5) rulebook on licensing referees and delegates; (6) rulebook on admission of the sport organizations; (7) rulebook on measures to ensure safety of participants in sport competitions. The NSF is responsible for implementing activities of the public interest regarding sport specific activities. Responsibilities of the NSF towards adopting necessary insurance policies for members of the national team (athletes and other natural entities engaged in the program) remain unclear. Linking the status of natural persons in the sport, the legislator has made provisions 31-32 of the Law transferred competences to the NSFs to implement a licensing procedure through the adoption of appropriate internal regulation, keeping in mind the task and specific nature of each particular sport. Transferred jurisdiction in this sense represents a particular misstep in the state competences, given that by the Decree on Organization and Operation of the state authorities, the responsible authority for the educational policy (vocational as well) is under the jurisdiction of the ME and its respective organizational units. Moreover, considering the specific nature of sport and its particular disciplines, the legislator has not foreseen the need for adoption of an adequate educational/vocational profile as enacted in the system for the recognition of professional qualifications based on the European Qualifications Framework (EQF) and the European Credit System for Vocational Education and Training (ECVET).²⁷² Procedures of

²⁷² Directive 2005/36/EC.

implementing this process include a formal approval of the competent state authority in the field of sport, which prerequisite lies on adopting the appropriate bylaw. This has not occurred, resulting in a vague constellation in regard to how activities of public interest in the field of sport are to be implemented.

The legislator also remained vague in stipulating provisions on prevention of corruption and abuse of office within NSFs. Bearing in mind the need to prevent conflicts of interest, the necessity for implementing principles of good governance in sport and the fact that being a decision-maker should be an accountable duty, the law neglected to stipulate that the liable persons in the given NSF cannot be in similar position(s) or representatives of another organization in the field of sport. The lawmaker neglected to prescribe supplemental provisions concerning the prevention of potential corruptive practices that are described in detail in legally binding documents and additional protocols of criminal and civil provisions, and fight against corruption.²⁷³

It should be noted that a criminal offence in sport is recognized only directly by Article 244a of the Criminal Code “arranging the outcome of the competition,”²⁷⁴ where any activity is presupposed sole involvement of the competent state authority for law and order, bearing in mind provisions of the Criminal Procedure Code.²⁷⁵ Furthermore, the Criminal Code recognizes active/passive bribery, offences related to accounting corruption, criminal liability of a more general manner for legal entities/persons.

The lawmaker enacted provisions according to which each sport has one umbrella organization – the NSF. Given that they are the only entities allowed to partake in the current and continual commercialization and revenues, natural entities have no possibility to be represented and take part in decision-making processes. An NSF is a sport organization (club), where subjects, such as athletes and sport professionals, do not have the opportunity for direct representation in order to be

²⁷³ Criminal Law Convention on Corruption ETS 173 & CETS 191; Civil Law Convention on Corruption ETS 174; Resolution (97) 24 On the Twenty Guiding Principles for the Fight against Corruption; Recommendation No. R (2000) 10 On Codes of Conduct for Public Officials. The aforementioned documents are of higher level demands for member countries from existing UN documents concerning the fight against corruption and transnational crime i.e. General Assembly resolution 55/25 and General Assembly resolution 58/4.

²⁷⁴ Official Gazette No 70/03.

²⁷⁵ Official Gazette No 57/09.

part of decision-making process. Moreover, nonbinding recommendations and provisions enacted within the Olympic Charter of the IOC are neglected. More precisely, section 2, regarding membership:

“Composition of the IOC – Eligibility, recruitment, election, admittance and status of IOC members: 1.1 IOC members are natural persons. The total number of IOC members may not exceed 115, subject to BLR 16...a majority of members whose memberships are not linked to any specific function or office, including up to five members who may be elected in special cases; their total number may not exceed 70; except for the five members referred to above, BLR 16.2.2.5 shall be applicable and there may be no more than one such member national of any given country, as defined in and subject to BLR 16;...*active athletes*, as defined in BLR 16.2.2.2, the total number of whom may not exceed 15...Members of the IOC will not accept from governments, organisations, or other parties, any mandate or instructions liable to interfere with the freedom of their action and vote.”²⁷⁶

The Law recognizes two ways of affiliation in sports. At the local level, a federation of sports is seen as an opportunity for institutional synchronization of similar and joint activities/goals. At the national level, the COK is an association of NSFs that fully implement the IOC Olympic Charter. As the only association of NSFs, the COK contributes to the concept of a consolidated sport system. The COK decides upon the request of a national sport federation for membership in the COK in accordance with the statute and internal regulations. Only the umbrella national organization can exercise executive power in the system of sport in terms of: (1) promotion the fundamental Olympic values in Montenegro; (2) coordinating activities of NSFs to implement development programs; (3) forming arbitration as a final instance for sport-related disputes; (4) recognition of sports or sporting disciplines.

Sports and their NSFs that are not on the program of Olympic Games still have an opportunity to participate in the work of the COK. Due to statutory provisions, the Law can be seen as limiting to NSFs for non-Olympic sports in terms of association, i.e. joining their activities/goals. It could be considered unconstitutional and noncompliant with international binding document. In relation to the legal nature of establishing/registering the umbrella sport organizations, the COK acts *iure*

²⁷⁶ Olympic Charter. Chapter 2, provision 16.

gestionis vs. any other NSF even when considering the transferred *iure imperii*. ToR of the COK stipulated by the Law is in line with provisions of the Charter:

“to promote the fundamental principles and values of Olympism in their countries, in particular, in the fields of sport and education, by promoting Olympic educational programs in all levels of schools, sports and physical education institutions and universities, as well as by encouraging the creation of institutions dedicated to Olympic education, such as National Olympic Academies, Olympic Museums and other programmes, including cultural, related to the Olympic Movement [...] to ensure the observance of the Olympic Charter in their countries; to encourage the development of high performance sport as well as sport for all; to help in the training of sports administrators by organising courses and ensuring that such courses contribute to the propagation of the Fundamental Principles of Olympism; to take action against any form of discrimination and violence in sport; to adopt and implement the World Anti-Doping Code; to encourage and support measures relating to the medical care and health of athletes.”²⁷⁷

Furthermore, the composition of the NSFs in relation to sport entities, there is a discrepancy between the legally prescribed way of NSF formation and the composition predicted by the Charter where a particular NSF is “obliged to comply in all aspects” with the Charter and IFS rules:

“...all IOC members in their country, if any. Such members have the right to vote in the general assemblies of the NOC. In addition, the IOC members in the country referred to in Rule 16.1.1.1 and Rule 16.1.1.2 are ex officio members of the NOC executive body, within which they have the right to vote...all national federations affiliated to the IFs governing sports included in the programme of the Olympic Games or their representatives; *elected representatives of athletes*. Those representatives must have taken part in the Olympic Games. They must retire from their posts at the latest by the end of the third Olympiad after the last Olympic Games in which they took part. Upon request by the NOC, the IOC Executive Board may grant an exemption to the requirement that such representatives must have taken part in the Olympic Games...Governments or other public authorities shall not designate any members of the NOC”²⁷⁸

In regard to the fight against conflicts of interest, the IOC has adopted its Code of Ethics, mandatory for any recognized IFS or country through the appropriate NSF wishing to take part or organize major sporting events. Following universal values within the corpus of human rights, particular care is given to the integrity of rules and fulfillment of the Basic Universal Principles of good

²⁷⁷ Olympic Charter. Chapter 4, provision 27.

²⁷⁸ Olympic Charter. Chapter 4, provision 28.

governance.²⁷⁹ Additional obligation for the sport movement in line with this is stipulated under Article 7 of the IOC Code against the Manipulation of Sport Competitions.²⁸⁰ Taking into consideration commitments in the sports movement, in its recommendations, the Agenda 2020 dedicated special attention to non-discrimination (rec. 14), compliance (rec. 31), ethics (rec. 32), targeted recruitment (rec. 38), engaging with communities (rec. 23) and fostering dialogue with society (rec. 39).²⁸¹

Organization of school sport

The Law recognizes the need for pupils to be engaged in extracurricular activities. School sport club is an organization formed/established and run by a particular school act. However, the legislator did not take into consideration numerous international norms/standards on child protection when it comes providing a safe and sustainable environment.²⁸² In order to organize a local competition system, school sport organizations/clubs are obliged by their specific local community to form a Local School Sport Federation (LSSF). School sport clubs and the LSSFs can form further Montenegrin School Sport Federation (MSSF), having all competences as any other NSF. There are several uncertainties about competences and power relations. It seems to be prescribed directly only for MSSF as NSF to be financed from the competent state authority, where constituents (school sport clubs) are not registered, nor operate under the Law. Further, the requirements for conducting sporting activity are undetermined, since the school sport clubs should be formed for a specific sport. In the organizational units at universities, the Law stipulates an opportunity for establishing Student Sport Clubs. A minimum of three SSC can form a Student Sport Association of Montenegro (SSSCG). As with school sport clubs, student sport clubs have the same question mark about the registration, admission and operation procedure. For both MSSF

²⁷⁹ The IOC Code of Ethics.

²⁸⁰ Olympic Movement Code on the Prevention of the Manipulation of Competitions.

²⁸¹ IOC Agenda 2020.

²⁸² General Assembly resolution 217A Art. 25-26 of the *Universal Declaration on Human Rights*; General Assembly resolution 1386 10 principles of the *Declaration of the Rights of the Child*"; the *International Charter on Physical Education and Sport*.

and SSSCG as any other NSF, the obligations are set by the Law, where constituents do not have same obligations as any other sport organization.

Organization of sport events

The Law provides for forms/types of sport events, prescribes responsibilities for its organizers, requirements to fulfil and criteria for granting approval for organizing major international competitions. Special attention is given to the set of requirements for organizers of sporting events. The organizer(s) is obliged to ensure smooth and safe maintenance of sport events: (1) to take appropriate measures for the prevention of risk to participants, spectators and third parties; (2) measures to influence and lowering risks (safety of sport facility, correctness and the adequacy of installed and other equipment, emergency service, event management, etc.). However, internationally binding procedures that foresee licensing procedures for the infrastructure are not part of this legislation. The “conditions/cases in which it is prohibited to participate in a sport system” in noncompliance with norms regarding misbehavior at sport events, the legislator rightfully diverted provisions to the competent *lex specialis*.²⁸³ Application of this law is implemented with accompanying provisions from the Public Assembly Act,²⁸⁴ and the Law on Public Peace and Order.²⁸⁵ However, in relation to the provisions envisaged by binding international documents, the existing provisions are too general and without set responsibilities, i.e. distribution of power among competent state authorities.²⁸⁶ In particular, the absence of provisions to provide for a national coordinating body of the affiliated public and sport institutions along with the ToR and proper strategy in place based on risk assessment, represent major obstacles in reaching administrative compliance with the Convention. It is difficult to determine whether any prevention policies are in place. Regarding the policy on sanctions, it remains unclear whether and on what basis certain provisions of the Criminal Code can be enforced. Requirements for major sport events (those scheduled by the IFS or the IOC) are stipulated more in bureaucratic terms: (1)

²⁸³ Official Gazette No 27/2007.

²⁸⁴ Official Gazette No 31/2005.

²⁸⁵ Official Gazette No 64/2011.

²⁸⁶ European Convention on Spectator Violence and Misbehavior at Sports Events and in particular at Football Matches CETS 120.

forming an initiative committee (for bidding processes); (2) preparing a feasibility study; (3) obtaining consent from the COK and the Government via prepared opinion from the competent state authority in the field of sport based on following criteria:

- a positive impact on the development particular sport
- an economic feasibility/justification
- media attractiveness
- impact on values of the particular sport
- organizational and particular sport tradition in Montenegro.

Management of sport facilities

The legislator enacted provisions regarding the concept and network of sport facilities, foreseeing responsibilities for its owners (regardless of legal status) along with special attention given to the public sport facilities. The law recognizes any space equipped for particular sporting activity as a sport facility and it envisages provisions for enabling accessibility for all. An owner of particular sport facility is obliged to:

- use the facility in accordance with regulations and its intended purpose
- maintain technical aspects of the facility along with appropriate sanitary and hygienic conditions
- take appropriate measures for risk prevention for the costumers/beneficiaries and third persons.

Any work/reconstruction is provided for under ISFs rules and regulations with permission from the competent state authority in the field of urbanism and construction. The legal solution recognizes the need to create the Network of Sport Facilities database. In respect to the public sport facilities – even though attention was paid to equal access for all, legal provisions neglect to define in more detail the procedure for them or enter appropriate bylaws. This constellation has resulted in ambiguity regarding what is a public sport facility with the conditions that include an organizational character. Furthermore, the legislator omitted to clearly define the purpose of the public sport facility as well as the manner and requirements for use by the general population of public sports facilities and conditions for performing sport activities. Unclear provisions in terms of securing

character of the public sport facilities, could lead the change of purpose for the sport facilities – privatized or changed the nature (promijeni namjenu)

Although it seems to be of strategic importance and despite international standards and norms, the legislator has not specified the obligations on the national and local level for ensuring appropriate provisions for procedures and ways of adoption of spatial and urban plans taking into account current and future needs of the general population through sport and physical activity.²⁸⁷ In addition, besides the availability of sport facilities, the legislator neglected to adopt appropriate safety measures for all participants and the quality of personnel to implement them.

Provisions on health protection of athletes

Ensuring health protection of athletes in the normative framework presupposes enacted provisions on: (1) protocols to determine medical/fitness ability/capacity of athletes; (2) prohibition of use of banned substances; (3) facilitation of procedures regarding conducting doping control; (4) transferred obligations for the NSFs in regard to conducting doping control; (5) establishment of the National Committee for Eliminating Doping in Sport. Any individual/athlete/natural person with determined medical fitness/ability by an accredited physician or sports medicine doctor is permitted to participate in organized competitions under the patronage of the NSF. For pupils and students, the medical capacity shall be determined by the accredited physician. The requirements, type and scope of the procedure for determining medical capacity of athletes is in jurisdiction (adoption of appropriate legal act – bylaw) of the Ministry of Health with previously obtained opinion from the DYS.²⁸⁸ Differences among various groups of athletes (minors vs. adults; amateur vs. professional) and their specific rights and needs were not taken into account in adopting these provisions.²⁸⁹ In addition, Article 14 of the Directive 89/391/EEC introduces measures to encourage improvements in the safety and health of workers at work, scrutiny of medical safety

²⁸⁷ European Urban Charter (1992).

²⁸⁸ Official Gazette No 53/15.

²⁸⁹ Official Gazette No 3/2016 & Official Gazette No 39/2004.

(avoiding risks, evaluating the risks, etc.).²⁹⁰ Although the legislator prescribed a battery of medical tests, the specificity of sport or sport discipline, as well as an institution for sport medicine have not been introduced or recognized by the legislation. The legislator does not provide for an amateur athlete having health insurance, although there is legislation on compulsory health insurance and health safety, especially in the case of minors, which could be consulted in this respect.²⁹¹ Even though NSFs could identify other persons (beside athletes) to be tested, there is no protocol how to implement that provision. As an indivisible part of health protection of athletes (and sport professionals), the fight against doping entails authoritative provisions for all sport subjects regarding use or distribution of banned substances, respecting international standards in the field. Moreover, ratification of the binding international norms presupposes that competent ministry for the field of sport will form the National Commission for Fight against Doping in Sports with the competence to follow implementation of the standards regarding anti-doping policy. Observing the level of compliance with international standards, although Montenegro has ratified the majority of binding norms, the Additional Protocol of the Anti-Doping Convention of the Council of Europe has not been accepted. With this in mind, there is no definition of the competences of the responsible governmental authority in implementing the Convention and the permanent fight against doping, although they do have budgetary allocation for the National Commission. The expected political commitment is thus partially fulfilled. Elaborating further, definitions set up by the legislator on role of the sport subjects in fight against doping does not *expressis verbis* rely on the definition of doping within the Convention, meaning that a broad definition could cause misinterpretation. When it comes to the implementation of the WADA Prohibited List, nothing is stated about the rules and procedures on the adoption of the List in the domestic legislation, that is, how the List will be enforced. Moreover, the National Commission has not adopted ToR for its functioning stipulated by the Law, nor signed the Code Acceptance Form of WADA in order to reflect the level of the responsibility for implementation of the Code provisions. In technical terms, the fulfillment of international obligations is reflected in the lack of establishing an accredited laboratory as given in the Convention. Furthermore, as stated the above, the legislator omitted to recognize and stipulate provision on sport professionals involved in anti-doping issues. Article 59

²⁹⁰ Directive 89/391/EEC (1989). On the introduction of measures to encourage improvements in the safety and health of workers at work.

²⁹¹ Official Gazette No 3/2016 & Official Gazette No 39/2004.

of the Law broadly stipulates that NSFs are responsible to pass rules in sport in accordance with the Law and international sporting rules, which includes the Code and standards of WADA. In this respect, the rules adopted by the Montenegrin Olympic Committee's National Anti-Doping Agency, do not foresee by law how the NSFs will comply with it. However, some of those rules need to be revised based on the 2015 Code in order to remove discrepancies between international and national rules on anti-doping. Disciplinary procedures determined by the same rules prescribes sets of standards and principles for fair and timely hearing along with fairness, impartiality and independence. The Appeals procedure is provided clearly to the CAS when it comes to the cases involving international stage competitions and athletes, but of the national events remain unclear, making the Executive board of the COK the competent institute. Bearing in mind the legal status its nature, given the direct link to the COK anticipated by the Convention, it seems not possible to apply checks and balances in Montenegro, since its Anti-Doping Disciplinary Panel is not independent in either formation or operation. There is a legal contradiction in that according to the Law, particular NSFs are obligated to conduct sanctioning of doping violation, while according to the COK Anti-Doping rules, the responsible body to conduct hearings and impose sanctions is the Montenegro Anti-Doping Disciplinary Panel. Except for athletes, there are no specific sanctions in place predicted for the sport professionals, entourage or decision-makers.

Records and database

In order to monitor sport development progress in an organized and systematic manner, the legislator stipulated an obligation of keeping proper databases/records at the Central Registry for Sport. Sport entities, sport facilities and major international sport events are subject to this procedure. The DYS prescribed appropriate bylaws, the types of records, and the form, content, manner of keeping, maintenance and use of data at the Central Registry, transferring jurisdiction to the administrative authority in the field of sport.²⁹² The transferred jurisdiction obliges NSFs to keep a register of athletes and coaches. Specifically, for the COK and the PKCG are stipulated to keep registers of categorized athletes and major international sport events. According to the legislation relating to their status, organizational character and scope of action of the legal entities,

²⁹² Official Gazette No 36/15

the DYS is responsible for all other data sets. However, the law does not stipulate a protocol regarding disclosure of information in any means. Article 24 of the Law on Protection of Personal Data states that prior to disclosure of any data, necessary measures should be taken to ensure that (primarily natural) entities are not negatively affected by the disclosure.²⁹³

Regulation on funding mechanism

The legislator enacted provisions on funding mechanism which includes: (1) a procedure on generating and acquiring revenues; (2) tax relief for entities investing in the development of sport; (3) audit procedure; (4) establishment of sport trust funds and foundations. In basic terms, generally recognized methods of generating revenue via *numerus clausis*, which is in accordance with the Council of Europe Recommendation no. 50: sport entities may generate and acquire revenues for the purpose of financing sporting activities, from: (1) membership/registration fees, donations and gifts; (2) contributions, subsidies, inheritance; (3) interest, rent, dividends; (4) funds; (5) services; (6) sponsorships and marketing activities, TV rights; (7) revenues from games of chance and funds allocated by the competent state and the local authority as support to perform sporting activities, in accordance with the Law.²⁹⁴ Application of the financing model is seen as a social particularity, defined by the NPRS as a “combined” approach. The DYS adopted the Bylaw for direct regulation of financing model.²⁹⁵ The legislator’s orientation is focused on the aspects related to the high performance of sport – Art. 7 of the bylaw provides for sport programs to meet public interest fund, in particular: (1) development of youth categories; (2) development of a competitive system; (3) coaching education; (4) health protection of athletes. However, it has remained unclear how supportive regulation effects (namely categorization of sports/sporting disciplines and athletes) the distribution of public funds. The bylaw does not specify evaluation criteria, punitive policy in the case of abuse of competences or improper use of allocated funds, nor anticorruption prevention measures. This produces ambiguity in the Law containing the Decision on the allocation of funds, which is under jurisdiction of the ME. Even though it is not recognized by the legislation in the field of sport, an additional source for public funds comes from allocation of the gambling

²⁹³ Official Gazette No 44/12

²⁹⁴ Recommendation CM/Rec (2007) 14

²⁹⁵ Official Gazette 16/14

revenue.²⁹⁶ For the purpose of allocating a portion of the gambling revenues, the government appointed the Commission in charge of allocating funds in accordance with the Decree on criteria for determining beneficiaries and the manner of distribution. The fact that the COK is co-financing national and local needs in the field of sport as well, with no supporting act, only adds to the ambiguity. Therefore, the combined method has no restrictions to sport organizations (either at the local or national level) to apply, in the same year, for state, local or the COK funding opportunities. Any funds or investment in sport by a company or entrepreneur is acknowledged as operating costs in accordance with tax legislation. In accordance with the *acquis communautaire*,²⁹⁷ which provides for the exemptions from VAT and lower rates for sporting activities, Montenegrin legislation goes one step further: Article 26, paragraph 7, “VAT Exemptions” of the Law on Value Added Tax stipulates that services related to sport and sport education performed by nonprofit organizations (sport organizations, associations, etc.) shall be fully exempted as an activity of public interest.²⁹⁸ Any service based activity that includes compensation is, according to the Law on Corporate Income Tax, a commercial activity, and therefore implies an obligation of appropriate procedure in terms of transformation into a company based organization or an entrepreneurship, for which the public authority is, via *jure imepii*, entitled to inspection of affairs and determining the nature of the sport organization.²⁹⁹ The audit process is not regulated as a separate provision, i.e. the law does not define which sport entity is required to conduct the audit/revision procedure. In defining sport entities, the legislator prescribed the possibility to establish sport trust funds or foundations, but the legal status of the latter remains unclear.

Regulation regarding the supervision of law enforcement

The Ministry of Education acts as the final instance in the process of supervision, while the DYS is the first instance in both the legal and administrative manner. The implementation of law, in procedural terms, is under the ME – exercising this responsibility in accordance with the

²⁹⁶ Official Gazette 41/2011.

²⁹⁷ Directive 2006/112/EC.

²⁹⁸ Official Gazette No 065/01 & No 009/15.

²⁹⁹ Official Gazette No 86/09.

Administration for Inspection Affairs (competences for which are transferred from the Government Conclusions to the Administration for Inspection Affairs) through the Inspector for Sport. The scope of competences and action include: (1) registration procedure; (2) governance and management of bodies within sport entities; (3) application of adopted legislation; (4) any other responsibility under the Law on Inspection Control. The Law stipulates a set of consequences/penalties for certain violations/offenses for sport entities and responsible authorities. The determination of violations is under the competences of the Inspector for sport.

In order to urgently address disputes in sport, the COK is responsible to establish the Court of Arbitration for each NSF, and the NSF may transfer authority to the COK, although the Law does not regulate how to proceed with the transfer procedure.

Concluding remarks

Generally, the legislator has constituted legal institutes and stipulated provisions primarily to serve as protection of activities of the competent state authority – bureaucratic apparatus – where development of the sport as an activity of public interest is put aside. Through a normative lens, the challenge lies in resolving two contrary tendencies: (1) to strengthen relationships already built as a coherent whole, contributing to greater respect for the principle of legal certainty but at the same time not closing the way for further evolution of civil rights; (2) the continuous improvement of the legal order as a whole. With this in mind, the core principles of understanding the legal nature of the sport movement and its constituents, along with *lex generalis* that enables the fundamental nature of non-profit and non-governmental associations, were neglected.

The level of involvement depends on the normative framework of the sport system in a given society. Andre-Noel Chaker's study shows that there is no unique approach regarding the legal position of sports system at the Pan-EU level. Thus, the White Paper on Sport acknowledges limits of EU cross-national legal limitations and attempts to act where necessary (sport as economic activity) on the one hand, and accepting self-regulating principles and particular legal systems of the global sport movement that strengthen the autonomy of sports organizations through establishment of the globally harmonized *lex sportiva*, on the other hand. In Chaker's configuration, sport systems are *interventionist* – structures/roles/responsibilities of the constituents of the sport

movement are regulated within the Law on sport along with appropriate bylaws; *centralized* – key legal bases for the planning and coordinating public policies in the state administration are centralized in the competent state authority with responsibilities to determine the scope, competences and jurisdiction for all constituents of the sport movement; *consolidated* – based on the Article 63 of the Law on Sport, the COK is recognized as the umbrella association of all the NSFs.

Involvement of the public authorities is necessary from the regulatory point of view in order to serve the public interest by providing equal opportunities for exercising positive benefits from sport. Public authorities on all levels are responsible, either directly or by training others to improve access to sport and sports facilities to all people, regardless of their social origin, economic status, income, age, gender or ethnic affiliation. Sport should not be a *sui generis* activity – an exclusive right of protected categories of people. Public authorities are obliged to adopt strategic documents and operational plans for implementation of all activities of public interest encouraging mass participation and mass use of sport facilities with special attention on kids, youth and athletes. In its general overview, an analysis of the Montenegrin legal framework could be summarized as:

- certain provisions of the Law on Sport are unconstitutional – these refer primarily to the status of the sport organizations and the registration procedure
- inability to facilitate/provide equal opportunities for all – non-competitive sport is largely disregarded
- inapplicability and inaccuracies of certain provisions – in respect to the registration procedures and status of the natural entities
- non-compliance with enforced internationally binding norms – fight against doping
- unregulated position of constituents/subjects of sport system along with clearly specified ToR
- incompatible system of financial assistance for the activities of public interest through sport

With regard to athletes' position as legally recognized natural entities in the sport system particularly worries are:

- misrepresentation in policy planning and decision-making processes
- inadequate health protection system

- absence of dual career system
- economic rights (contractual relations and transfers with special focus on minors)
- categorization of sports and athletes
- absence of principle of equality of arms in dispute and arbitration proceedings.

The Law does not stipulate the prohibition of any discrimination of athletes and sport professionals, conspicuous in restricting the rights of athletes in the decision-making process and transfer procedures. Further, the lack of contractual obligations and the existence of the classified contractual obligations (most of the contracts are composed jointly) has led to avoiding liability to register contracts between athletes and sport organizations and responsibilities under the financial and business legislation. Furthermore, notable in examining the financial documentation of the NSFs is the lack of transparency of availability of athlete transfer amounts, as well as the involvement of third parties (managers). The uncontrolled outflow of young athletes abroad is of a great concern for competitive sport and has a significant impact on the overall development of minors. It is therefore important to determine appropriate transfer/migration policies that would be in minors' best interest. Although the Law properly encourages and facilitates needs to resolve disputes in sport via arbitration or disciplinary board (keeping comparative legislation in mind), significant irregularities can be noted in the constitution and operation of the permanent bodies within the Sport Movement in Montenegro, resulting in discouragement of sport subjects to fully exercise their rights. In this respect, not only are the international legal regulations in the field of sport being neglected, but also the constitutionally guaranteed human and labour rights are constantly violated.

Adopting an appropriate organizational chart of the sport system is a prerequisite to determining competences, scope and responsibilities of the constituents. Moreover, most of the proposed activities of the NPRS have not been implemented due to the lack of jurisdiction of the stakeholders in the sport system and lack of legal clarity in the positioning of the competent authorities in the field of sport. Based on the four parameters, the system is characterized as bureaucratic – role of the public authorities; level of coordination/engagement; roles of the voluntary, public and private

sectors; adaptability of the system.³⁰⁰ In organizational terms, the legislator recognizes the NSF as an umbrella organization in the pyramidal structure of clubs and municipal associations, in charge of running all activities in specific sport. Although it is properly stipulated that for one sport there can be one appropriate NSF recognized by the ISF, the NSF structure itself does not recognize all the constituents of particular sport, and thus imposed decisions usually do not meet the actual needs of interested parties.³⁰¹ Considering the need to safeguard sport, as well as prevent all forms of abuse of office, a significant deficiency in the Law is the absence of clear provisions for who is who in the sport system, i.e. the structural set-up of all sport subjects in particular sport organizations. There is continuous misuse of autonomy in imposing restrictive (often discriminatory) obligations, resulting in withholding of rights, especially in terms of representation and the decision-making process.

³⁰⁰ VOCASPORT Research Group, 2004. *Vocational education and training in the field of sport in the European Union: situation, trends and outlook*. Lyon: Euroepan Observatoire of Sport and Employment.

³⁰¹ This provision could be questioned and challenged on the basis of constitutionality.

Chapter Seven: Assessment of the Institutional Position of Athletes

Introduction

The purpose of this chapter is to look at the implementation of good governance principles, focusing on the decision-making processes while assessing institutional representation and position of athletes. Particular emphasis is given to the representation and electoral systems/procedures, control mechanisms, dispute mechanisms and administrative arrangements. Four categories were used to analyze the functioning and organizational structure of the NSFs, derived from the analysis of normative framework. The chapter presents individual summarized results (of each NSF), followed by a discussion and concluding remarks.

Results

The average good governance score for indexed NSFs is 34%. Overall results indicate that NSFs have a monopolistic position within each given sport. Given the presence of the politically exposed persons and other public officials backed by the dominantly presidential system – procedures are stipulated in an obligatory manner, restricting or limiting for broad stakeholder groups. In addition, decision-makers direct or frame organizational environment and its decision-making processes devoid of other interested parties.

Football Association of Montenegro (FSCG)

Normative setting and governance structure – the founding act is missing and according to the representative of the FSCG not retrievable. The Statute and internal regulation, however, are available via official website and formed in accordance with the Law on Sport. Competences that issue from Article 58 and refer to the adoption of the necessary documents in accordance with Article 59 were adopted and synchronized with updated national legislation and FIFA standards. (These include the Rulebook on the organization of sports competitions; Rulebook on athlete transfer; Rulebook on fight against doping; Rulebook on licensing coaches; Rulebook on licensing

referees and delegates; Rulebook on admission of the sport organizations; Rulebook on disciplinary liability; Rulebook on health and safety.) Along with this, the working bodies/commissions of the FSCG are formed by the Statute and are responsible for the implementation of these rulebooks. Procedures for the appointment/reappointment of the members of the governing bodies, rules and procedures for elections (including use of secret ballots) are defined by the appropriate internal regulation.³⁰² Individual functions/profiles or restrictions vis-à-vis term limits are not provided in the Statute or internal regulations. Although the statute and internal regulations envisage the possibility of association for natural entities and provide for representatives of natural entities to be directly represented in the work of the FSCG, in practice this is not the case. Working bodies/commissions have limited impact on governing bodies, due to the statutory provisions which stipulate extensive authority and control over the FSCG.³⁰³ The agenda/minutes/decisions of the governing body (GA and EB) meetings are available via official website for the current year. FSCG provides biographical information about individual board members, including their professional background. Several members of both governing bodies are active politicians and decision-makers in public administration. The statement/report on the remuneration and remuneration policy (ToR) was not available in the annual report.

Administrative and organizational procedures – the Handbook on Internal Organization and Task Division is not available. There was no clear policy in this regard and number of employees along with their profiles as well. Neither the strategy nor the action plan were adopted, and activities/decisions depend on the president's unilateral actions and responsibilities transferred from both FIFA and UEFA. Such a constellation represents significant limitations for contribution of natural entities to policy making. In addition, there are no measures to encourage actions towards encouraging promotion/representation of women or reaching gender balanced bodies. In terms of health protection (including insurance policy), economic (labor) rights, fight against doping and match-fixing, under pressure from FIFA and UEFA, FSCG developed basic policies incorporated within appropriate internal regulations. This however exclude more advanced approaches which

³⁰² For rules on procedure for General Assembly see: <http://fscg.me/images/stories/pravilnici/poslovnik.pdf> (Accessed 11 July 2017).

³⁰³ Art. 27 of the Statute see: <http://www.fscg.me/images/pdf/pravilnici/2016/Statut-FSCG.pdf> (Accessed 11 July 2017).

presuppose the adoption of a dual-career system or involvement of entourage in athletes' careers. From the social point of view, the federation lacks multi-year policy plans with regard to social responsibility, environmental protection, gender mainstreaming and anti-discrimination policies. On the other hand, FSCG did adopt a policy to promote social dialogue between natural entities and clubs, and measures to sanction any deviation in that respect.

Dispute resolution and control mechanisms – an internal control mechanism is established in the form of an independent audit institution that serves as an external controlling service with competences derived from the Audit Act.³⁰⁴ It is under GA competences to approve the audit of the institution. However, the rulebook for the mechanism procedure that includes task/operations has not been adopted. Even though elements of the code of conduct are mentioned in the Rulebook on disciplinary liability, there are no provisions that applies to decision-makers with regard to integrity, rules on expenses or conflict of interest. Internal regulations provide for procedures to process/submit/investigate complaints but with no possibility for natural entities to be given legal aid or pro bono counsel.³⁰⁵ An additional aggravating factor represents the inability to file an anonymous complaint. In spite of the fact that the statute views arbitration as a one-instance proceeding, there is no rulebook to determine the procedure, apart from the federation's recognition of the jurisdiction of the CAS.³⁰⁶

Conclusion:

1. Governance score is 58%.
2. There is a gap between opportunity for association of athletes and possibility for direct representation within governing bodies. There is no representative of athletes within the governing bodies.
3. Decisions are made in the presidential system, who propose members of the governing and working bodies/commissions.

³⁰⁴ Official Gazette No 1/2017.

³⁰⁵ For Art. 128-131 of the Rulebook on disciplinary liability, see http://fscg.me/images/pdf/pravilnici/2017/Disciplinski_pravilnik_FSCG.pdf (Accessed 10 July 2017)

³⁰⁶ For Art. 65 of the Statute, see <http://www.fscg.me/images/pdf/pravilnici/2016/Statut-FSCG.pdf> (Accessed 11 July 2017)

4. To a certain extent, due to the external (FIFA&UEFA) pressure, FSCG provides health care (including insurance) and labor rights protection.
5. To a certain extent, due to the external (FIFA&UEFA) pressure, FSCG provides means for tackling doping and match-fixing challenges.
6. Athletes have no influence over the administration.
7. Athletes have no influence over GA decisions to approve the audit institution to act as control mechanism.
8. Beside protection of labor rights, athletes have no representative within the dispute-resolution mechanism. In addition, in arbitration proceedings, athletes have no possibility to choose the arbitrator or to receive legal aid (including pro bono counsel).

Basketball Federation of Montenegro (KSCG)

Normative setting and governance structure – the founding act is missing and according to the representative of the KSCG it is not retrievable. However, the Statute and internal regulation are available via official website and formed in accordance with the Law on Sport. Competences that issue from the Article 58 and refer to the adoption of the necessary documents in accordance with Article 59 were adopted and synchronized with updated national legislation and FIBA standards. (These include the Rulebook on the organization of sports competitions; Rulebook on athletes' transfer; Rulebook on admission of the sport organizations; Rulebook on licensing coaches; Rulebook on disciplinary liability.) Along with this, the working bodies/commissions of the KSCG are formed by the Statute and are responsible to implement the rulebooks. The procedures for the appointment/reappointment of the members of the governing bodies, rules and procedures for elections (excluding use of secret ballots) are defined by the appropriate internal regulation.³⁰⁷ Individual functions/profiles or restrictions vis-à-vis term limits are not prescribed by the Statute or internal regulations. Although the Statute and internal regulations envisage the possibility that representatives of the natural entities could be directly represented within the work of the KSCG, the rules and procedures for the association of natural entities is not developed.³⁰⁸ Working

³⁰⁷ Rules on procedure for General Assembly see: http://kscg.me/files/Statut_kscg.pdf (Accessed 15 July 2017).

³⁰⁸ Art.19 of the Statute see: http://kscg.me/files/Statut_kscg.pdf (Accessed 15 July 2017).

bodies/commissions have limited impact of the governing bodies, due to the statutory provisions which stipulate extensive authority and control over the KSCG.³⁰⁹ The agenda/minutes/decisions of the governing body (GA and EB including Presidency) meetings are available via official website for the current year.³¹⁰ The KSCG provides biographical information about individual board members. Several members of both governing bodies are active politicians and decision-makers in the public administration. Statement/report on the remuneration or remuneration policy (ToR) was not available in the annual report.

Administrative and organizational procedures – the Handbook on Internal Organization and Task Division is unavailable. Therefore, the KSCG does not have a determined HR and management policy with a detailed profile and number of employees. Neither the strategy nor the action plans have been adopted, and activities/decisions depend on the president's unilaterally actions and responsibilities transferred from FIBA. Such a constellation represents significant limitations to contributions of natural entities to policy making. In addition, there are no measures to encourage the promotion/representation of women or reaching gender balanced bodies. In terms of health protection (including insurance policy), economic (labor) rights, fight against doping and match-fixing, KSCG does not have even basic policies in place. In addition, there is no provision for a dual-career system or involvement of entourage in athletes' careers. From the social view, the federation lacks multi-year policy plans for social responsibility, environmental protection, gender mainstreaming and anti-discrimination policies. On the other hand, KSCG has adopted a policy to promote social dialogue between natural entities and clubs, as well as measures to sanction any deviation in that respect.

Dispute resolution and control mechanisms – the internal control mechanism is established in the form of a Supervisory board. It is under GA competences to approve the audit institution. However, the rulebook for the control mechanism procedure, including task/operations, is foreseen but not adopted.³¹¹ There is no code of conduct. The Rulebook on disciplinary liability includes no

³⁰⁹ Art. 37 of the Statute see: http://kscg.me/files/Statut_kscg.pdf (Accessed 15 July 2017).

³¹⁰ Presidency is additional governing body responsible with executive nature foreseen by the Art. 28 of the Statute see: http://kscg.me/files/Statut_kscg.pdf (Accessed 14 July 2017)

³¹¹ Art. 34-35 of the Statute see: http://kscg.me/files/Statut_kscg.pdf (Accessed 14 July 2017)

provisions that apply to decision-makers with regard to integrity, rules on expenses or conflict of interest. Internal regulations do not include procedures for athletes to process/submit/investigate complaints.³¹² In spite of the fact that the statute provides for arbitration proceedings, there is no rulebook to determine such a procedure, except for the federation recognizing the jurisdiction of the Montenegrin Olympic Committee Court of Arbitrage, FIBA disciplinary resolution mechanisms and CAS.³¹³

Conclusion:

1. Governance score is 45%.
2. There is a representative of athletes within Governing Assembly. However, there is no representative of athletes within Executive board and Presidency.
3. Decision are made in the presidential system, who proposes members of the governing and working bodies/commissions.
4. KSCG does not apply measures to provide health care (including insurance) and labor rights protection.
5. KSCG does not provide means for tackling doping and match-fixing challenges.
6. Athletes have no influence over the administration.
7. Athletes have no influence over GA decision to approve the audit institution to act as a control mechanism.
8. Athletes have no possibility to initiate disciplinary proceedings. In addition, in arbitration proceedings, athletes have no possibility to choose an arbitrator or to receive legal aid (including pro bono counsel).

Water polo and Swimming Association of Montenegro (VPSCG)

Normative setting and governance structure – the founding act is incorporated in the Statute of the VPS. The Statute and internal regulation are available via official website and formed in accordance with the Law on Sport. Competences that issue from the Article 58 and refer to the

³¹² Art. 32od the Rulebook on disciplinary liability see

http://kscg.me/index.php?option=com_content&view=article&id=61&Itemid=54f (Accessed 16 July 2017)

³¹³ Art. 42-44 of the Statute see http://kscg.me/files/Statut_kscg.pdf (Accessed 16 July 2017)

adoption of the necessary documents in accordance with Article 59 were adopted and synchronized with updated national legislation and FINA standards. (These include the Rulebook on the organization of sports competitions; Rulebook on athletes' registration; Rulebook on licensing coaches; Rulebook on licensing referees; Rulebook on national teams; Rulebook on VPS Tribunal.) Along with this, the working bodies/commissions of the VPS are formed in accordance with the Statute, which are responsible to implement above rulebooks. Procedures for the appointment/reappointment of the members of the governing bodies, rules and procedures for elections are defined by the statutory provisions.³¹⁴ Individual functions/profiles or restrictions vis-à-vis term limits are not foreseen by the Statute or internal regulations. The Statute or internal regulations does not provide a possibility of association for natural entities.³¹⁵ Working bodies/commissions have limited impact of the governing bodies, due to the statutory provisions which stipulate extensive authority and control over the VPS.³¹⁶ The agenda/minutes/decisions of the governing body (GA and EB) meetings are not available via official website. VPS does not provide information about individual board members. Several members of both governing bodies are active politicians and decision-makers in the public administration. The statement/report on the remuneration or remuneration policy (ToR) was not available in the annual report.

Administrative and organizational procedures – the Handbook on Internal Organization and Task Division is unavailable. Therefore, the VPSCG does not have a determined HR and management policy with a detailed profile and number of employees. Neither the strategy nor action plans were adopted, and activities/decisions depend on the unilaterally actions and responsibilities of the GA. Such a constellation represents significant limitations for contributions of natural entities to policy making. In addition, there no measures to encourage the promotion/representation of women or reaching gender balanced bodies. In terms of health protection (including insurance policy) and economic (labor) rights, VPS has developed basic policies, incorporated in appropriate internal regulations. This however exclude policies on fight against doping/match-fixing and more advanced approaches with regard to the dual-career system.

³¹⁴ For Art. 28 of the Statute on rules on procedure for General Assembly, see:

<http://www.wpolo.me/galerija/publikacije> (Accessed 16 July 2017).

³¹⁵ For Art. 9 of the Statute, see: <http://www.wpolo.me/galerija/publikacije> (Accessed 16 July 2017).

³¹⁶ For Art 18 of the Statute, see: <http://www.wpolo.me/galerija/publikacije> (Accessed 16 July 2017).

From the social point of view, the federation lacks a draft of a multi-year policy for social responsibility, environmental protection, gender mainstreaming, anti-discrimination policies and promotion social dialogue between natural entities and clubs.

Dispute resolution and control mechanisms – internal control mechanism is established in the form of a Supervisory board with members elected by the GA. Members of the SB cannot be affiliated with the GA.³¹⁷ The Rulebook of procedure for a controlling mechanism, including task/operations has not been adopted. There is no code of conduct. However, the Statute of the VPS provides for the adoption of the Tribunal with competences to act and safeguard the normative framework and affiliated members of the VPS (including natural entities). There are no provisions that apply to decision-makers with regard to integrity, rules on expenses or conflict of interest. Rulebook on VPS Tribunal provide procedures to process/submit/investigate complaints but with no possibility for natural entities to get legal aid or pro bono counsel.³¹⁸ An additional aggravating factor represents the inability to file an anonymous complaint. Arbitration is set as a two-instance proceeding and recognizes the jurisdiction of the Montenegrin Olympic Committee Court of Arbitrage.³¹⁹

Conclusion:

1. Governance score is 38%.
2. There is no representative of athletes in governing bodies.
3. Decision are made in the executive system comprised dominantly by active politicians and public administration representatives.
4. To a certain extent, VPS provides health care (including insurance) and labor rights protection.
5. VPS does not provide means for tackling doping and match-fixing challenges.
6. Athletes have no influence over the administration.

³¹⁷ For Art. 55 of the Statute, see <http://www.wpolo.me/galerija/publikacije> (Accessed 16 July 2017).

³¹⁸ For Art. 13 and Art. 17 of the Rulebook on VPS Tribunal, see: <http://www.wpolo.me/galerija/publikacije> (Accessed 16 July 2017).

³¹⁹ For Art. 57 of the Statute, see <http://www.wpolo.me/galerija/publikacije> (Accessed 16 July 2017).

7. Athletes have no influence over the GA's decision to approve an audit institution to act as control mechanism.
8. Besides protection of labor rights, athletes have no representative in the dispute resolution mechanism. In addition, in arbitration proceedings athletes have no possibility to choose an arbitrator or to receive legal aid (including pro bono counsel).

Handball Federation of Montenegro (RSCG)

Normative setting and governance structure – the founding act is available and provides for natural entities to take an equal share in forming governing bodies. The Statute and internal regulation are available via official website and formed in accordance with the Law on Sport. Competences that issue from the Article 58 and refer to the adoption of the necessary documents in accordance with Article 59 were adopted and synchronized with updated national legislation. (This includes the Rulebook on the organization of sports competitions; Rulebook on licensing coaches; Rulebook on licensing referees and delegates; Rulebook on admission of the sport organizations; Rulebook on disciplinary and material liability.) Along with this, the working bodies/commissions of the RSCG are formed in accordance with the Statute, which are responsible for implementing rulebooks. Procedures for the appointment/reappointment of the members of the governing bodies, rules and procedures for elections are defined by the appropriate internal regulation.³²⁰ Individual functions/profiles or restrictions vis-à-vis term limits are not made in the Statute or internal regulations. The Statute envisages the possibility of association for natural entities and allows representatives of natural entities to be directly represented within the work of the RSCG.³²¹ Working bodies/commissions have limited impact of the governing bodies, due to the statutory provisions which stipulate extensive authority and control by the Executive board.³²² The agenda/minutes/decisions of the governing body (GA and EB) meetings are not available via

³²⁰ For Art. 32 of the Statute, see <http://rscg.co.me/wp-content/uploads/2014/10/STATUT-Rukometnog-saveza-Crne-Gore.pdf> (Accessed 17 July 2017).

³²¹ For Art. 2 of the Statute, see: <http://rscg.co.me/wp-content/uploads/2014/10/STATUT-Rukometnog-saveza-Crne-Gore.pdf> (Accessed 17 July 2017).

³²² For Art. 38 of the Statute, see: <http://rscg.co.me/wp-content/uploads/2014/10/STATUT-Rukometnog-saveza-Crne-Gore.pdf> (Accessed 17 July 2017).

official website. RSCG does not provide information about individual board members. Several members of both governing bodies are active politicians and decision-makers in the public administration. The statement/report on the remuneration or remuneration policy (ToR) was not available in the annual report.

Administrative and organizational procedures – the Handbook on Internal Organization and Task Division is unavailable. Therefore, the RSCG does not have a determined HR and management policy with a detailed profile and number of employees. A four-year strategy was adopted and is expected to enter into force by the autumn 2017. Even though athletes and other natural entities are recognized as RSCG constituents, they (through their representative) were not involved in either consulting or work on the strategy. Such a constellation represents significant limitations for contribution of natural entities to policy making. In addition, there are no measures to encourage the promotion/representation of women or reaching gender balanced bodies. In terms of health protection (including insurance policy), economic (labor) rights and fight against doping, RSCG has developed basic policies incorporated within appropriate internal regulation. This however excludes provisions of a more advanced approach, which presupposes the adoption of dual-career system or involvement of entourage in athletes' careers. From the social point of view, the federation lacks a multi-year policy plan in regard to social responsibility, environmental protection, gender mainstreaming and anti-discrimination policies. On the other hand, RSCG has adopted a policy to promote social dialogue between natural entities and clubs and measures to sanction any deviation in that respect.

Dispute resolution and control mechanisms – the internal control mechanism is established in the form of a Supervisory board with members elected by the GA.³²³ The Rulebook on the controlling mechanism procedure which includes task/operations has not been adopted. There are no provisions that apply to decision-makers with regard to integrity, rules on expenses or conflict of interest (code of conduct). Internal regulations provide procedures to process/submit/investigate complaints but with no possibility for natural entities to be provided legal aid or pro bono

³²³ For Art. 43 of the Statute, see: <http://rscg.co.me/wp-content/uploads/2014/10/STATUT-Rukometnog-saveza-Crne-Gore.pdf> (Accessed 17 July 2017).

counsel.³²⁴ An additional aggravating factor represents the inability to file an anonymous complaint. The RSCG recognizes the jurisdiction of the Montenegrin Olympic Committee Court of Arbitrage. In addition, the Statute of the federation provides arbitration proceedings within EHF and IHF along with the CAS.³²⁵

Conclusion:

1. Governance score is 47%.
2. There is athlete representative in the Governing Assembly. However, there is no athlete representative on the Executive board.
3. Decisions are made in the executive system comprising predominantly active politicians and public administration representatives.
4. To a certain extent, the RSCG provides health care (including insurance) and labor rights protection.
5. The RSCG provides means for tackling doping challenges. However, there is no provision for tackling match-fixing challenges.
6. Athletes have no influence over the administration.
7. Athletes have influence over the GA's decision to approve an audit institution to act as control mechanism.
8. Besides protection of labor rights, athletes have no representative in dispute resolution mechanisms, where Executive board serves as an appeals authority.

Montenegrin Tennis Association (TSCG)

Normative setting and governance structure – the founding act is missing and according to the representative of the TSCG is not retrievable. However, the statute and (part of the) internal regulation are available via official website. Some of the sustaining documents (e.g. Rulebook on

³²⁴ For Art. 2 of the Rulebook on disciplinary and material liability, see: <http://rscg.co.me/wp-content/uploads/2014/10/Pravilnik-o-disciplinskoj-i-materijalnoj-odgovornosti-2016.pdf> (Accessed 17 July 2017)

³²⁵ For Art. 56 of the Statute, see: <http://rscg.co.me/wp-content/uploads/2014/10/STATUT-Rukometnog-saveza-Crne-Gore.pdf> (Accessed 19 July 2017).

disciplinary liability) are outdated and not adopted in accordance with the Law on Sport.³²⁶ Procedures for the appointment/reappointment of the members of the governing bodies, rules and procedures for elections are defined by the statutory provisions.³²⁷ Individual functions/profiles or restrictions vis-à-vis term limits are not given in the Statute or internal regulations. The Statute and internal regulations do not provide the possibility of association for natural entities.³²⁸ Working bodies/commissions have limited impact on governing bodies, due to statutory provisions which stipulate extensive authority and control over the TSCG.³²⁹ The agenda/minutes/decisions of the governing body (GA and EB) meetings are not available via official website. TSCG does not provide information about individual board members. Members of both governing bodies are active politicians and decision-makers in the public administration. The statement/report on the remuneration or remuneration policy (ToR) was not available with the annual report.

Administrative and organizational procedures – the Handbook on Internal Organization and Task Division is unavailable. Therefore, the TSCG does not have a determined HR and management policy with a detailed profile and number of employees. Neither the strategy nor the action plans were adopted, and activities/decisions depend on the president's unilateral actions. Such a constellation represents significant limitations for contribution of natural entities to policy making. In addition, there are no measures to encourage promotion/representation of women or reaching gender balanced bodies. There are no policies regarding health protection (including insurance policy), economic (labor) rights, on fight against doping/match-fixing and more advanced approach in regard to a dual-career system. From the social view, the federation lacks a multi-year policy plans in regard to social responsibility, environmental protection, gender

³²⁶ Law on sport is adopted in June 2011. It was expected from sport movement to accede necessary changes of the statute and internal regulations. The Rulebook on disciplinary liability is from April 2010. The Rulebook on athletes' registration is from March 2006.

³²⁷ Art. 21 of the Statute on rules on procedure for governing bodies see: <http://www.mta.co.me/dokumenta/Statut%20TSCG%202016.pdf> (Accessed 19 July 2017).

³²⁸ Art. 12 of the Statute see: <http://www.mta.co.me/dokumenta/Statut%20TSCG%202016.pdf> (Accessed 19 July 2017).

³²⁹ For Art 50 of the Statute, see: <http://www.mta.co.me/dokumenta/Statut%20TSCG%202016.pdf> (Accessed 19 July 2017).

mainstreaming, anti-discrimination policies and promotion social dialogue between natural entities and clubs.

Dispute resolution and control mechanisms – the internal control mechanism is established in the form of a supervisory board with members elected by the GA. Members of the SB cannot be affiliated with the GA.³³⁰ The Rulebook of rules on procedure for controlling mechanism which includes task/operations has not been adopted. There is no code of conduct or provisions that apply to decision-makers with regard to integrity, rules on expenses or conflict of interest. The outdated Rulebook on disciplinary liability provides procedures to process/submit/investigate complaints but with no possibility for natural entities to be heard or be given legal aid or pro bono counsel.³³¹ An additional aggravating factor represents the impossibility of filing an anonymous complaint. The Statute of the federation has established Sport Arbitration, but there are no formal decisions or rulebook to follow.³³² TSCG recognizes the jurisdiction of the Montenegrin Olympic Committee Court of Arbitrage.³³³

Conclusion:

1. Governance score is 25%.
2. There is no athlete representative in governing bodies.
3. Decisions are made through a presidential system (supported by Executive board).
4. TSCG does not apply measures to provide health care (including insurance) and labor rights protection.
5. TSCG does not provide means for tackling doping and match-fixing challenges.
6. Athletes have no influence over administration.

³³⁰ For Art. 72 of the Statute, see <http://www.mta.co.me/dokumenta/Statut%20TSCG%202016.pdf> (Accessed 19 July 2017).

³³¹ For Art. 4 and art. 17 of the Rulebook on disciplinary liability, see: <http://www.mta.co.me/dokumenta/DisciplinskiPravilnik.pdf> (Accessed 19 July 2017).

³³² For Art. 31 and 64 of the Statute, see: <http://www.mta.co.me/dokumenta/Statut%20TSCG%202016.pdf> (Accessed 19 July 2017).

³³³ For Art. 33 of the Statute, see <http://www.mta.co.me/dokumenta/Statut%20TSCG%202016.pdf> (Accessed 19 July 2017).

7. Athletes have no influence over the GA's decision to approve an audit institution to act as a control mechanism.
8. Athletes have no representative in the dispute resolution mechanism. In addition, in arbitration proceedings, athletes have no possibility to choose an arbitrator or to receive legal aid (including pro bono counsel).

Gymnastic Federation of Montenegro (GSCG)

Normative setting and governance structure – although the founding act is missing and according to the representative of the GSCG not retrievable, the Statute is available via official website. Internal regulations have not been adopted. Procedures for the appointment/reappointment of the members of the governing bodies, rules and procedures for elections are defined by statutory provisions.³³⁴ Individual functions/profiles or restrictions vis-à-vis term limits are not foreseen by the Statute or internal regulations. The Statute or internal regulations do not provide the possibility of association for natural entities.³³⁵ The agenda/minutes/decisions of the governing body (GA and EB) meetings are not available via official. GSCG does not provide information about individual board members. The statement/report on the remuneration or remuneration policy (ToR) is not available with the annual report.³³⁶

Administrative and organizational procedures – the Handbook on Internal Organization and Task Division is unavailable. Therefore, the GSCG does not have a determined HR and management policy with a detailed profile and number of employees. There is a strategy in form of a short bulletin which summarizes the main topics from the NPRS.³³⁷ The action plans have not been adopted. Such a constellation represents significant limitations for contribution of natural entities to policy making. In addition, there are no measures to encourage promotion/representation

³³⁴ For Art. 29 of the Statute on rules on procedure for General Assembly, see:

<http://www.gscg.me/index.php/mn/2015-02-12-19-37-15/2015-02-12-19-40-36> (Accessed 20 July 2017).

³³⁵ For Art. 2 of the Statute, see: <http://www.gscg.me/index.php/mn/2015-02-12-19-37-15/2015-02-12-19-40-36> (Accessed 20 July 2017).

³³⁶ The report from the competitions is available.

³³⁷ https://issuu.com/gimnastickisavezcrnegore/docs/strategija_razvoja_gimnastike_u_crn (Accessed 20 July 2017).

of women or reaching gender balanced bodies. There are no policies regarding health protection (including insurance policy), economic (labor) rights, for the fight against doping/match-fixing and more advanced approaches in regard to a dual-career system. From the social point of view, the federation lacks a multi-year policy plan in regard to social responsibility, environmental protection, gender mainstreaming, anti-discrimination policies and promotion of social dialogue between natural entities and clubs.

Dispute resolution and control mechanisms – an internal control mechanism is established in the form of a supervisory board. The Competences of the SB are stipulated by the Statute to act as a mediator in arbitration proceedings, obliging its members to be affiliated with the GSCG.³³⁸ There is no code of conduct or provisions that applies to decision-makers with regard to integrity, rules on expenses or conflict of interest. There is no provision regarding procedures to process/submit/investigate complaints. GSCG recognizes the jurisdiction of the Montenegrin Olympic Committee Court of Arbitrage.³³⁹

Conclusion:

1. Governance score is 20%.
2. There is no athlete representative in governing bodies.
3. It is not clear how decisions are made.
4. GSCG does not apply measures to provide health care (including insurance) and labor rights protection.
5. GSCG does not provide the means for tackling doping and match-fixing challenges.
6. Athletes have no influence over the administration.
7. Athletes have no influence over the GA's decision to approve an audit institution to act as a control mechanism.
8. There is no dispute resolution mechanism.

³³⁸ For Art. 36 of the Statute, see <http://www.gscg.me/index.php/mn/2015-02-12-19-37-15/2015-02-12-19-40-36> (Accessed 22 July 2017).

³³⁹ For Art. 36 of the Statute, see <http://www.gscg.me/index.php/mn/2015-02-12-19-37-15/2015-02-12-19-40-36> (Accessed 22 July 2017).

Athletic Federation of Montenegro (ASCG)

Normative setting and governance structure – the founding act is not available. The Statute and internal regulations are available via official website and formed in accordance with the Law on Sport. Competences that issue from the Article 58 and refer to the adoption of the necessary documents in accordance with Article 59 were adopted and synchronized with updated national legislation and IAAF recommendations. (These include the Rulebook on the organization of sports competitions; Rulebook on athletes' transfer; Rulebook on fight against doping; Rulebook on licensing coaches; Rulebook on licensing referees and delegates; Rulebook on admission of the sport organizations; Rulebook on disciplinary liability; Rulebook on health safety.) Along with this, the working bodies/commissions of the ASCG are formed in accordance with the Statute, which are responsible to implement the rulebooks. The procedures for the appointment/reappointment of the members of the governing bodies, rules and procedures for elections (excluding use of secret ballots) are defined by the appropriate internal regulation.³⁴⁰ Individual functions/profiles or restrictions vis-à-vis term limits are not provided by the Statute or internal regulations. Although the statute and internal regulations envisage the possibility of association for natural entities and provide for natural entities to be directly represented in the work of the ASCG, in the case of athletes there is no practice of this. Coaches and referees' representatives are involved within GA.³⁴¹ Working bodies/commissions have limited impact on the governing bodies, due to the statutory provisions which stipulate extensive authority and control over the ASCG.³⁴² The agenda/minutes/decisions of the governing body (GA and EB) meetings are not available via official website for the current year. The ASCG provides basic information about individual board members. Several members of both governing bodies are active politicians and decision-makers in the public administration. The statement/report on the remuneration or remuneration policy (ToR) was not available in the annual report.

³⁴⁰ Rules on procedure for General Assembly see: <http://www.ascg.co.me/dokumenta/> (Accessed 22 July 2017).

³⁴¹ Art. 25 of the Statute see: http://www.ascg.co.me/dokumenta/images_files/StatutASCG.pdf (Accessed 22 July 2017).

³⁴² Art. 28 of the Statute see:

https://issuu.com/gimnastickisavezcrnegore/docs/strategija_razvoja_gimnastike_u_crnhhttp://www.ascg.co.me/dokumenta/images_files/StatutASCG.pdf (Accessed 22 July 2017).

Administrative and organizational procedures - the Handbook on Internal Organization and Task Division is unavailable. Therefore, the ASCG does not have a determined HR and management policy with a detailed profile and number of employees. Neither the strategy nor the action plans were adopted, and activities/decisions depend on the president's and general secretary's actions, with their responsibilities transferred from the IAAF (when it comes to competition format and fight against doping policies). Such a constellation represents significant limitations for contribution of athletes to policy making. In addition, there are no measures to encourage promotion/representation of women or reaching gender balanced bodies. In terms of health protection (including insurance policy), economic (labor) rights, fight against doping, the ASCG developed policies incorporated through appropriate internal regulations. This, however, excludes more advanced approaches which presuppose adoption of a dual-career system or involvement of entourage in athletes' career. From the social point of view, the federation lacks a multi-year policy plans in regard to social responsibility, environmental protection, gender mainstreaming, anti-discrimination policies and policies to promote social dialog between natural entities and clubs.

Dispute resolution and control mechanisms – an internal control mechanism is established in the form of a supervisory board. It is under GA's competences to approve the SB, and the rulebook on procedures for controlling mechanisms that include these task/operations have not been adopted.³⁴³ Even though there is a code of conduct, it does not include provisions that apply to decision-makers with regard to integrity, rules on expenses or conflict of interest.³⁴⁴ Internal regulations provide procedures to process/submit/investigate complaints but without the possibility for natural entities to be provided legal aid or pro bono counsel.³⁴⁵ An additional aggravating factor is impossibility

³⁴³ For Art. 36-37 of the Statute, see: http://www.ascg.co.me/dokumenta/images_files/StatutASCG.pdf (Accessed 22 July 2017).

³⁴⁴ The code of conduct covers Olympic values and is related to the competitive segment of the federation. See: <http://www.ascg.co.me/dokumenta/> (Accessed 22 July 2017).

³⁴⁵ For Art. 38-39 of the Rulebook on disciplinary liability, see <http://www.ascg.co.me/dokumenta/> (Accessed 22 July 2017).

of filing an anonymous complaint. The ASCG recognizes the jurisdiction and decisions of the Montenegrin Olympic Committee Court of Arbitration.³⁴⁶

Conclusion:

1. Governance score is 45%.
2. There is no athlete representative in governing bodies.
3. Decisions are made in the presidential system (backed by a general secretary), who proposes members of the governing and working bodies/commissions.
4. To a certain extent, the ASCG provides health care (including insurance) and labor rights protection.
5. To a certain extent, the ASCG provides means for tackling doping.
6. Athletes have no influence over the administration.
7. Athletes have no influence over the GA's decision to approve the SB to act as a control mechanism.
8. Besides protection of labor rights, athletes have no representative in dispute resolution mechanisms. Further, in arbitration proceedings, athletes have no possibility to choose an arbitrator or to receive legal aid (including pro bono counsel).

Boxing Association of Montenegro (BSCG)

Normative setting and governance structure – founding is incorporated in the Statute. The Statute and (part of the) internal regulation are available via official website and formed in accordance with the Law on Sport. Competences that issue from the Article 58 and refer to the adoption of the necessary documents in accordance with Article 59 were partly adopted and synchronized with updated national legislation and AIBO standards. (These include the Rulebook on the organization of sports competitions; Rulebook on athletes' transfer; Rulebook on disciplinary liability.) Major regulations that provide the ToR of the constituents and organizational

³⁴⁶ For Art. 49 of the Statute, see http://www.ascg.co.me/dokumenta/images_files/StatutASCG.pdf (Accessed 22 July 2017).

nature of the federation have not been adopted.³⁴⁷ Along with this, the working bodies/commissions of the BSCG, which are responsible for the implementation of the rulebooks, have not been provided by the statute and internal regulations. Procedures for the appointment/reappointment of the members of the governing bodies, rules and procedures for elections (excluding use of secret ballots) are defined by the statute.³⁴⁸ Individual functions/profiles or restrictions vis-à-vis term limits are not provided by the Statute or internal regulations. The Statute does not envisage the possibility of association for natural entities. The agenda/minutes/decisions of the governing body (GA and EB) meetings are not available via official website for the current year. BSCG does not provide biographical information about individual board members, nor about their professional background. However, several members of both governing bodies are active politicians and decision-makers in the public administration. The statement/report on the remuneration or remuneration policy (ToR) was not available in the annual report.

Administrative and organizational procedures – the Handbook on Internal Organization and Task Division is unavailable. Therefore, the BSCG does not have a determined HR and management policy with a detailed profile and number of employees. Neither the strategy nor the action plans were adopted, and activities/decisions depend on the president's unilaterally actions. Such a constellation represents significant limitations for contribution of natural entities to policy making. In addition, there are no measures to encourage promotion/representation of women or reaching gender balanced bodies. In terms of health protection (including insurance policy), economic (labor) rights, fight against doping and match-fixing, BSCG has no policies. From the social point of view, the federation lacks a multi-year policy plan in regard to social responsibility, environmental protection, gender mainstreaming, anti-discrimination policies and promotion of social dialogue between natural entities and clubs.

³⁴⁷ All of them are foreseen by the art. 47 of the Statute. See section "Dokumentacija" <http://www.bsmne.me> (Accessed 23 July 2017).

³⁴⁸ For the rules on the procedure for General Assembly, see section "Dokumentacija" <http://www.bsmne.me> (Accessed 23 July 2017).

Dispute resolution and control mechanisms – an internal control mechanism is established in the form of a supervisory board.³⁴⁹ However, the Rulebook on procedure for controlling mechanism, which includes task/operations, has not been adopted. The executive board could nominate an audit institution to serve as an external controlling service with competences derived from the Audit Act.³⁵⁰ There is no decision in this respect. Even though that code of conduct was supposed to be adopted, it is not available. In the Rulebook on disciplinary liability, there are no provisions that apply to decision-makers with regard to integrity, rules on expenses or conflict of interest. Internal regulations provide procedures to process/submit/investigate complaints but with no possibility for natural entities to provide legal aid or pro bono counsel.³⁵¹ An additional aggravating factor is the impossibility of filing an anonymous complaint. The BSCG recognizes the jurisdiction and decisions of the Montenegrin Olympic Committee Court of Arbitrage.³⁵²

Conclusion:

1. Governance score is 27%.
2. There is no athlete representative in governing bodies.
3. Decision are made in the presidential system, who proposes members of the Executive board.
4. BSCG does not apply measures to provide health care (including insurance) and labor rights protection.
5. BSCG does not provide means for tackling doping and match-fixing challenges
6. Athletes have no influence over the administration.
7. Athletes have no influence over the GA's decision to approve an audit institution to act as a control mechanism.
8. Athletes have no representative in the dispute resolution mechanism. In addition, in the arbitration proceedings, athletes have no possibility to choose an arbitrator or to receive legal aid (including pro bono counsel).

³⁴⁹ For Art. 84 of the Statute, see section “Dokumentacija” <http://www.bsmne.me> (Accessed 23 July 2017).

³⁵⁰ Official Gazette No 1/2017.

³⁵¹ For Art. 26 of the Rulebook on disciplinary liability, see section “Dokumentacija” <http://www.bsmne.me> (Accessed 23 July 2017).

³⁵² For Art. 110 of the Statute, see <http://www.bsmne.me/> (Accessed 23 July 2017).

Judo Federation of Montenegro (DžSCG)

Normative setting and governance structure – although the founding act is missing and according to the representative of the DžSCG is not retrievable, the Statute and internal regulation are available via official website and formed in accordance with the Law on Sport. Competences that issue from the Article 58 and refer to the adoption of the necessary documents in accordance with Article 59 were adopted and synchronized with updated national legislation. (These include the Rulebook on the organization of sports competitions; Rulebook on fight against doping; Rulebook on licensing coaches; Rulebook on licensing referees and delegates; Rulebook on admission of the sport organizations; Rulebook on disciplinary and material liability.) Along with this, the working bodies/commissions of the DžSCG are formed in accordance with the Statute, which are responsible for the implementation of the rulebooks. Procedures for the appointment/reappointment of the members of the governing bodies, rules and procedures for election (including use of secret ballots) are defined by the appropriate internal regulation.³⁵³ The Statute does not envisage the possibility of association for natural entities. Working bodies/commissions have limited impact of the governing bodies, due to the statutory provisions which stipulate extensive authority and control over the DžSCG.³⁵⁴ The agenda/minutes/decisions of the governing body (GA and EB) meetings are available via official website for the current year. DžSCG provides basic information about individual board members. Several members of both governing bodies are active politicians and decision-makers in the public administration. The statement/report on the remuneration or remuneration policy (ToR) was not available in the annual report.

Administrative and organizational procedures – the Handbook on Internal Organization and Task Division is unavailable. Therefore, the DžSCG does not have a determined HR and management policy with a detailed profile and number of employees. Neither the strategy nor the

³⁵³ For the rules on procedure for General Assembly, see: <http://www.judomne.org/dzscg/dokumenta/> (Accessed 24 July 2017).

³⁵⁴ For Art. 47 of the Statute, see: <http://www.judomne.org/dzscg/dokumenta/> (Accessed 24 July 2017).

action plan was adopted, and activities/decisions depend on the president's unilateral actions backed by the Executive board. Such a constellation represents significant limitation to contributions of natural entities to policy making. In addition, there are no measures to encourage promotion/representation of women or reaching gender balanced bodies. In terms of health protection (including insurance policy), fight against doping, DžSCG has developed basic policies incorporated through appropriate internal regulations. This however excludes economic (labor) rights and a more advanced approach which presupposes the adoption of a dual-career system or involvement of entourage in athletes' careers. From the social point of view, the federation lacks multi-year policy plan in regard to social responsibility, environmental protection, gender mainstreaming, anti-discrimination policies and to promote social dialogue between natural entities and clubs.

Dispute resolution and control mechanisms – an internal control mechanism is established in the form of a supervisory board. It is under GA's competences to elect SB representatives from its members.³⁵⁵ The Rulebook on procedure for controlling mechanism, which includes task/operations, has been adopted, but is outdated.³⁵⁶ The code of conduct has been adopted and tied to the national team and athletes.³⁵⁷ The Rulebook on disciplinary and material liability contains no provisions that apply to decision-makers with regard to integrity, rules on expenses or conflict of interest.³⁵⁸ Internal regulations provide procedures to process/submit/investigate complaints but no possibility for natural entities to be provided legal aid or pro bono counsel.³⁵⁹ An additional aggravating factor is the impossibility to file an anonymous complaint. In spite of the fact that the Statute provides arbitration comprising of arbitrators chosen by the Executive

³⁵⁵ For Art. 61 of the Statute, see: <http://www.judomne.org/dzscg/dokumenta/> (Accessed 24 July 2017).

³⁵⁶ The Statute has been in effect since February 2015, while the SB Rulebook has been valid since March 2010.

³⁵⁷ For the code of Conduct for National team, see: <http://www.judomne.org/dzscg/dokumenta/> (Accessed 24 July 2017).

³⁵⁸ Except in case of misuse of federation funds. This provision is stipulated in Art. 36 of the Rulebook on disciplinary and material liability.

³⁵⁹ For Art. 58 of the Rulebook on disciplinary and material liability, see <http://www.judomne.org/dzscg/dokumenta/> (Accessed 24 July 2017).

board, there is no Rulebook to determine the procedure, aside from the federation recognizing the jurisdiction of the Montenegrin Olympic Committee Court of Arbitration.³⁶⁰

Conclusion:

1. Governance score is 33%.
2. There is no athlete representative in governing bodies.
3. Decisions are made in the presidential system supported by the Executive board.
4. To a certain extent, DŽSCG provides the means for tackling doping challenges.
5. DŽSCG does not apply measures to provide health care (including insurance), labor rights protection nor means for tackling match-fixing challenges.
6. Athletes have no influence over the administration.
7. Athletes have no influence over the GA's decision to approve an audit institution to act as a control mechanism.
8. Athletes have no representative in the dispute resolution mechanism. In addition, in arbitration proceedings, athletes have no possibility to choose an arbitrator or receive legal aid (including pro bono counsel).

Paralympic Committee of Montenegro (PKCG)

Normative setting and governance structure – although the founding act is missing and according to the representative of the PKCG not retrievable, the Statute is available via official website and formed in accordance with the Law on Sport. Competences that issue from the Article 58 and refer to the adoption of the necessary documents in accordance with Article 59 were not adopted. (These include the Rulebook on the organization of sports competitions; Rulebook on athletes' transfer; Rulebook on fight against doping; Rulebook on licensing coaches; Rulebook on licensing referees and delegates; Rulebook on admission of the sport organizations; Rulebook on disciplinary liability; Rulebook on health safety.) Along with this, there is no decision that states that the working bodies/commissions of the PKCG, Procedures for the appointment/reappointment of the members of the governing bodies, rules and procedures for elections (excluding use of secret

³⁶⁰ For Art. 99 and 103 of the Statute, see <http://www.judomne.org/dzscg/dokumenta/> (Accessed 24 July 2017).

ballots) are defined by the Statute.³⁶¹ Individual functions/profiles or restrictions vis-à-vis term limits are not provided in the Statute or internal regulations. The Statute does not envisage a possibility of association for natural entities. The agenda/minutes/decisions of the governing body (GA and EB) meetings are available via official website for the current year. PKCG does not provide biographical information about individual board members, including their professional background. The statement/report on the remuneration or remuneration policy (ToR) was not available in the annual report.

Administrative and organizational procedures – the Handbook on Internal Organization and Task Division is unavailable. Therefore, the PKCG does not have a determined HR and management policy with a detailed profile and number of employees. Neither the strategy nor the action plan were adopted, and activities/decisions depends on the president's and general secretary's unilateral actions and responsibilities, transferred from the IPC. Such a constellation represents significant limitations for contribution of natural entities to policy making. In addition, there are no measures to encourage promotion/representation of women or reaching gender balanced bodies. There are no policies regarding health protections (including insurance policy), economic (labor) rights, or the fight against doping/match-fixing, or a more advanced approach in regard to a dual-career system. From the social point of view, PKCG lacks a multi-year policy plan in regard to social responsibility, environmental protection, gender mainstreaming, anti-discrimination policies and promotion of social dialogue between natural entities and clubs.

Dispute resolution and control mechanisms – neither internal nor external control mechanisms are established. It is under the GA's competences to approve the audit of the institution, even though the Rulebook on procedure for controlling mechanism, which includes task/operations has not been adopted. There is no code of conduct or provisions that apply to decision-makers with regard to integrity, rules on expenses or conflict of interest. There is no provision regarding procedures to process/submit/investigate complaints. The Statute provides for the establishment of ad hoc arbitration, with the appropriate Rulebook and procedures, but there is no action in this respect.³⁶²

³⁶¹ For the rules on procedure for General Assembly, see: <https://www.pokcg.org/index.php/dokumenta> (Accessed 24 July 2017).

³⁶² For Art. 34 of the Statute, see: <https://www.pokcg.org/index.php/dokumenta> (Accessed 25 July 2017).

Conclusion:

1. Governance score is 20%.
2. There is no athlete representative in governing bodies.
3. It is not clear how decisions are made.
4. PKCG does not apply measures to provide health care (including insurance) and labor rights protection.
5. PKCG does not provide means for tackling doping and match-fixing challenges.
6. Athletes have no influence over the administration.
7. Athletes have no influence over the GA's decision to approve an audit institution to act as a control mechanism.
8. Provisions regarding dispute resolution mechanisms are not clear.

Montenegrin Olympic Committee (COK)

Normative setting and governance structure – the founding act is incorporated within the Statute. The Statute and part of internal regulations are available via official website and are formed in accordance with the Law on Sport. Competences that issue from the Article 58 and refer to the adoption of the necessary documents in accordance with Article 59 and Article 62 are adopted and synchronized with updated national legislation and the IOC regulations (although not in a full compliance). (This includes the Rulebook on the categorization of athletes; Code on Arbitrage.) Along with this, the working bodies/commissions of the COK are partly formed in accordance with the Statute, which are responsible to implement above rulebooks. The procedures for the appointment/reappointment of the members of the governing bodies, rules and procedures for election (including use of secret ballots) are defined by the appropriate internal regulation.³⁶³ Individual functions/profiles or restrictions vis-à-vis term limits are not given in the Statute or internal regulations. Although the Statute and internal regulations envisage the possibility of association for natural entities and provide that representatives of natural entities could be directly

³⁶³ For rules on the procedure for General Assembly, see: <http://www.cok.me/o-nama/statut/> (Accessed 25 July 2017)

represented in the work of the COK, in practice it has limited effect.³⁶⁴ Working bodies/commissions have limited impact of the governing bodies, due to the statutory provisions which stipulate extensive authority and control over the COK.³⁶⁵ The agenda/minutes/decisions of the governing body (GA and EB) meetings are not available via official website for the current year. COK provides basic information about individual board members. Several members of both governing bodies are active politicians and decision-makers in the public administration. The statement/report on the remuneration or remuneration policy (ToR) was not available in the annual report.

Administrative and organizational procedures – the Handbook on Internal Organization and Task Division is unavailable. Therefore, the COK does not have a determined HR and management policy with a detailed profile and number of employees. Neither the strategy nor the action plans were adopted, and activities/decisions depend on the president's unilateral actions and responsibilities transferred from the IOC. Such a constellation represents significant limitations for contribution of natural entities to policy making. In addition, there are no measures to encourage promotion/representation of women or reaching gender balanced bodies. In terms of health protection, economic (labor) rights, fight against doping and match-fixing, the COK has limited impact, since competent policies are not developed or incorporated in the appropriate internal regulations. There are no policies for a more advanced approach which presuppose adoption of a dual-career system or involvement of entourage in athletes' careers. From the social point of view, the federation lacks a multi-year policy plan in regard to social responsibility, environmental protection, gender mainstreaming and anti-discrimination policies.

Dispute resolution and control mechanisms – an internal control mechanism is established in the form of a Supervisory board. It is under the GA's competences to approve an audit institution, even though a Rulebook on procedure for controlling mechanism which includes task/operations has not been adopted.³⁶⁶ There is no external control mechanism in place. There are no provisions that apply to decision-makers with regard to integrity, rules on expenses or conflict of interest.

³⁶⁴ Art. 14-22 of the Statute see: <http://www.cok.me/o-nama/statut/> (Accessed 25 July 2017)

³⁶⁵ Art. 43 of the Statute see: <http://www.cok.me/o-nama/statut/> (Accessed 25 July 2017)

³⁶⁶ For Art. 68-72 of the Statute, see: <http://www.cok.me/o-nama/statut/> (Accessed 25 July 2017).

Internal regulations provide procedures to process/submit/investigate complaints but no possibility for natural entities to be provided with legal aid or pro bono counsel.³⁶⁷ An additional aggravating factor is the impossibility to file an anonymous complaint.

Conclusion:

1. Governance score is 40%.
2. There is a gap between opportunity for association of athletes and possibility for direct representation within governing bodies. There is no athlete representative in governing bodies.
3. Decisions are made in the presidential system, who proposes members of the governing and working bodies/commissions.
4. In the absence of competent policies, the COK has limited effects in regard to health protection, economic (labor) rights, fight against doping and match-fixing challenges.
5. Athletes have no influence over the administration.
6. Athletes have no influence over the GA's decision to approve an audit institution to act as a control mechanism.
7. Athletes have no representative in dispute resolution mechanisms. In addition, in arbitration proceedings, athletes have no possibility to choose an arbitrator or to receive legal aid (including pro bono counsel).

Student Sport Association of Montenegro (SSSCG)

Normative setting and governance structure – the founding act is incorporated in the Statute. The Statute and internal regulation are not available on the official website, but they are available to the members of the federation. Competences that issue from Article 58 and refer to the adoption of the necessary documents in accordance with Article 59 were adopted and synchronized with updated national legislation and EUSA/FISU standards. (This includes the Rulebook on the organization of sports competitions; Rulebook on admission of the sport organizations; Code of

³⁶⁷ For , Art. 32 od the Code of Arbitration, see: <http://www.cok.me/wp-content/uploads/2012/07/cok-arbitraza-pravila.pdf> (Accessed 25 July 2017).

conduct during competitions; Rulebook on working bodies; Rulebook on disciplinary liability.) Along with this, the working bodies/commissions of the SSSCG were formed in accordance with the Statute and are responsible to implement above rulebooks. Procedures for the appointment/reappointment of the members of the governing bodies, rules and procedures for elections (including use of secret ballots) are defined by the appropriate internal regulation.³⁶⁸ Individual functions/profiles or restrictions vis-à-vis term limits are provided in the Statute.³⁶⁹ However, the Statute does not envisage the possibility of association for natural entities. Working bodies/commissions have limited impact on the governing bodies, due to the statutory provisions which stipulate extensive authority and control over the SSSCG.³⁷⁰ The agenda/minutes/decisions of the governing body (GA and EB) meetings are available on the official website for the current year. The SSSCG does not provide biographical information about individual board members, including their professional background. Several members of both governing bodies are active politicians and decision-makers in the public administration. The statement/report on the remuneration or remuneration policy (ToR) is not available in the annual report.

Administrative and organizational procedures – the Handbook on Internal Organization and Task Division is unavailable. Therefore, the SSSCG does not have a determined HR and management policy with a detailed profile and number of employees. The strategy is not adopted, while the annual plan covers organized competitions throughout current year. Activities/decisions depend on the president's unilateral actions.³⁷¹ Such a constellation represents significant limitation for contribution of natural entities to policy making. In addition, there is no evidence regarding measures to encourage promotion/representation of women or reaching gender balanced bodies. There are no policies regarding health protection (including insurance policy) or the fight against doping/match-fixing. There is no evidence of adopted multi-year policy plans in regard to social responsibility, environmental protection, gender mainstreaming, anti-discrimination policies and promotion of social dialogue between natural entities and clubs.

³⁶⁸ Art. 25 of the Statute.

³⁶⁹ Maximum of one consecutive re-election for the position of president. See Art. 32 of the Statute.

³⁷⁰ Art. 38 of the Statute.

³⁷¹

Dispute resolution and control mechanisms – an internal control mechanism is established in the form of a Supervisory board. It is under the GA's competences to approve the Supervisory board, although the Rulebook on procedure for controlling mechanism which includes task/operations is not adopted.³⁷² There is no external controlling mechanism in place. Even though a code of conduct is adopted, there are no provisions that apply to decision-makers with regard to integrity, rules on expenses or conflict of interest. Internal regulations provide procedures to process/submit/investigate complaints but with no possibility for natural entities to be provided legal aid or pro bono counsel.³⁷³ An additional aggravating factor represents the impossibility of filing an anonymous complaint. The Statute provides two-instance proceedings, where the appealing authority is the Montenegrin Olympic Committee Court of Arbitrage.³⁷⁴

Conclusion:

1. Governance score is 39%.
2. There is no athlete representative in governing bodies.
3. Decision are made in the presidential system, who proposes members of the governing and working bodies/commissions.
4. SSSCG does not apply measures to provide health care (including insurance).
5. SSSCG does not provide means for tackling doping and match-fixing challenges.
6. Athletes have no influence over the administration.
7. Athletes have no influence over the GA's decision to approve the Supervisory board to act as a control mechanism.
8. Athletes have no representative in the dispute resolution mechanism. In addition, in arbitration proceedings, athletes have no possibility to choose an arbitrator or to receive legal aid (including pro bono counsel).

³⁷² Art. 27-28 of the Statute.

³⁷³ Art. 4 of the Rulebook on disciplinary liability.

³⁷⁴ Art. 28 of the Code of Arbitrage.

Triathlon Federation of Montenegro (TSCG)

Normative setting and governance structure – the founding act is incorporated in the Statute, which is available on the official website and, along with internal regulations, is formed in accordance with the Law on Sport. Competences that issue from Article 58 and refer to the adoption of the necessary documents in accordance with Article 59 were adopted and synchronized with updated national legislation and ITU standards. (This includes the Rulebook on the organization of sports competitions; Rulebook on athletes' transfer; Rulebook on admission of the sport organizations; Rulebook on disciplinary liability; Rulebook on health safety.) Along with this, the working bodies/commissions of the TSCG are formed in accordance with the Statute and are responsible to implement above rulebooks. Procedures for the appointment/reappointment of the members of the governing bodies, rules and procedures for elections (including use of secret ballots) are defined by the Statute.³⁷⁵ Individual functions/profiles or restrictions vis-à-vis term limits are not given in either the Statute or internal regulations. The Statute does not envisage the possibility of association for natural entities. Working bodies/commissions have limited impact on the governing bodies, due to the statutory provisions which stipulate extensive authority and control over the TSCG.³⁷⁶ The agenda/minutes/decisions of the governing body (GA and EB) meetings are available via official website for the current year. The TSCG provides biographical information about individual board members, including their professional background. There are no active politicians or public administration decision-makers on either governing body. The statement/report on the remuneration or remuneration policy (ToR) is not available in the annual report.

Administrative and organizational procedures – the Handbook on Internal Organization and Task Division is unavailable. Therefore, the TSCG does not have a determined HR and management policy with a detailed profile and number of employees. Neither the strategy nor the action plan was adopted, and activities/decisions depend on executive actions. Such a constellation represents significant limitations for contribution of natural entities to policy making. In addition,

³⁷⁵ For Art. 33 of the Statute, see: http://www.triatlon.me/images/Docs/Statut_Triatlon_Saveza_Crne_Gore_.pdf (Accessed 27 July 2017).

³⁷⁶ For Art. 27 of the Statute, see: http://www.triatlon.me/images/Docs/Statut_Triatlon_Saveza_Crne_Gore_.pdf (Accessed 27 July 2017).

there are no measures to encourage promotion/representation of women or reaching gender balanced bodies. In terms of health protection (excluding insurance policy) and fight against doping, the TSCG has developed basic policies, incorporated within appropriate internal regulations. This however excludes more advanced approaches which presuppose adoption of a dual-career system or involvement of entourage in athletes' careers. From the social view, the federation lacks a multi-year policy plan in regard to social responsibility, environmental protection, gender mainstreaming, anti-discrimination policies and social dialogue between natural entities and clubs.

Dispute resolution and control mechanisms – an internal control mechanism is established in the form of a supervisory board. It is under the GA's competences to approve an audit institution, even though the Rulebook on procedure for controlling mechanism which includes task/operations has not been adopted.³⁷⁷ There is no code of conduct. In the Rulebook on disciplinary liability there are no provisions that apply to decision-makers in regard to integrity, rules on expenses or conflict of interest. Internal regulations give procedures to process/submit/investigate complaints but with no possibility for natural entities to be provided legal aid or pro bono counsel.³⁷⁸ An additional aggravating factor is the impossibility of filing an anonymous complaint. The federation transfers competences to the Montenegrin Olympic Committee Court of Arbitrage for arbitration proceedings.³⁷⁹

Conclusion:

1. Governance score is 45%.
2. There is no athlete representative in governing bodies.
3. Decisions are made in the executive system.

³⁷⁷ For Art. 32 of the Statute, see: http://www.triatlon.me/images/Docs/Statut_Triatlon_Saveza_Crne_Gore_.pdf (Accessed 27 July 2017).

³⁷⁸ For Art.31 of the Rulebook on disciplinary liability, see http://www.triatlon.me/images/Docs/pravilnici/Disciplinski_pravilnik.pdf (Accessed 27 July 2017).

³⁷⁹ For Art. 61 of the Statute, see http://www.triatlon.me/images/Docs/Statut_Triatlon_Saveza_Crne_Gore_.pdf (Accessed 27 July 2017).

4. To a certain extent, the TSCG provides health care (including insurance).
5. To a certain extent, the TSCG provides means for tackling doping challenges.
6. There is no policy in place for labor rights protection.
7. Athletes have no influence over the administration.
8. Athletes have no influence over the GA's decision to approve an audit institution to act as a control mechanism.
9. Athletes have no representative in dispute resolution mechanism. In addition, in arbitration proceedings, athletes have no possibility to choose an arbitrator or to receive legal aid (including pro bono counsel).

Chess Federation of Montenegro (ŠSCG)

Normative setting and governance structure – the founding act is incorporated within the Statute, and along with internal regulations, it is available on the official website. It is formed in accordance with the Law on Sport. Competences that issue from Article 58 and refer to the adoption of the necessary documents in accordance with Article 59 were adopted and synchronized with updated national legislation and FIDE/ECU standards. (This includes the Rulebook on the organization of sports competitions; Rulebook on athletes' transfer; Rulebook on admission of the sport organizations; Rulebook on disciplinary liability). Along with this, the working bodies/commissions of the TSCG are formed in accordance with the Statute, which are responsible to implement the rulebooks. Procedures for the appointment/reappointment of the members of the governing bodies, rules and procedures for elections (including use of secret ballots) are defined by the Statute.³⁸⁰ Individual functions/profiles or restrictions vis-à-vis term limits are given by the Statute.³⁸¹ The Statute does not envisage the possibility of association for natural entities. Working bodies/commissions have limited impact on governing bodies, due to statutory provisions which stipulate extensive authority and control over the ŠSCG.³⁸² The agenda/minutes/decisions of the

³⁸⁰ For Art. 31 of the Statute, see: http://sahcg.me/wp-content/uploads/2014/10/STATUT_SSCG_17-052014.pdf (Accessed 28 July 2017).

³⁸¹ For Art. 38 of the Statute, see: http://sahcg.me/wp-content/uploads/2014/10/STATUT_SSCG_17-052014.pdf (Accessed 28 July 2017).

³⁸² Ibid.

governing body (GA and EB) meetings are available via official website for the current year.³⁸³ The ŠSCG provides biographical information about individual board members.³⁸⁴ Several members of both governing bodies are active politicians and decision-makers in the public administration. The Statement/report on the remuneration or remuneration policy (ToR) is not available in annual report.

Administrative and organizational procedures – the Handbook on Internal Organization and Task Division is unavailable. Therefore, the ŠSCG does not have a determined HR and management policy with a detailed profile and number of employees. Neither the strategy nor action plan was adopted, and activities/decisions depend on executive actions. Such a constellation represents significant limitations for contribution of natural entities to policy making. In addition, there are no measures to encourage promotion/representation of women or reaching gender balanced bodies. In terms of health protection (including insurance policy), economic (labor) rights protection, fight against doping and match-fixing, ŠSCG does not even have basic policies in place. In addition, there is no provision for a dual-career system or involvement of entourage in athletes' careers. From the social view, the federation lacks a multi-year policy plan in regard to social responsibility, environmental protection, gender mainstreaming and anti-discrimination policies. On the other hand, ŠSCG has adopted a policy to promote social dialog between natural entities and clubs and measures to sanction any deviation in that respect.

Dispute resolution and control mechanisms – an internal control mechanism is established in the form of a Supervisory board. It is under the GA's competences to approve an audit institution, even though the Rulebook on procedure for controlling mechanism which includes task/operations has not been adopted.³⁸⁵ There is no code of conduct. In the Rulebook on disciplinary liability there are no provisions that apply to decision-makers in regard to integrity, rules on expenses or conflict of interest. Internal regulations give procedures to process/submit/investigate complaints but with

³⁸³ <http://sahcg.me/category/saopstenja/> (Accessed 28 July 2017).

³⁸⁴ <http://sahcg.me/upravni-odbor/> (Accessed 28 July 2017).

³⁸⁵ For Art. 37 of the Statute, see: http://sahcg.me/wp-content/uploads/2014/10/STATUT_SSCG_17-052014.pdf (Accessed 28 July 2017).

no possibility for natural entities to be provided legal aid or pro bono counsel.³⁸⁶ An additional aggravating factor represents the impossibility of filing an anonymous complaint. In spite of the fact that statute provides arbitration as a one-instance proceeding, there is no Rulebook to determine the procedure except that the federation recognizes jurisdiction of the Montenegrin Olympic Committee Court of Arbitrage.³⁸⁷

Conclusion:

1. Governance score is 36%.
2. There is no athlete representative in governing bodies.
3. Decisions are made in the executive system.
4. ŠSCG does not provide means for tackling doping and match-fixing challenges.
5. There is no policy in place on health care (including insurance) and economic (labor) rights protection.
6. Athletes have no influence over the administration.
7. Athletes have no influence over the GA's decision to approve audit institution to act as a control mechanism.
8. Athletes have no representative in dispute resolution mechanism. In addition, in arbitration proceedings, athletes have no possibility to choose an arbitrator or to receive legal aid (including pro bono counsel).

Wrestling Federation of Montenegro (RSCG)

Normative setting and governance structure – the founding act is missing and according to the representative of the RSCG is not retrievable. The Statute is not available on the official website. Internal regulations have not been adopted. Procedures for the appointment/reappointment of the members of the governing bodies, rules and procedures for elections are not defined by the statutory provisions. Individual functions/profiles or restrictions vis-à-vis term limits are not provided in the

³⁸⁶ For Art.20 of the Rulebook on disciplinary liability, see <http://sahcg.me/wp-content/uploads/2014/10/DISCIPLINSKI-PRAVILNIK-614-14-od-17-11-20141.pdf> (Accessed 30 July 2017).

³⁸⁷ For Art. 42 of the Statute, see http://sahcg.me/wp-content/uploads/2014/10/STATUT_SSCG_17-052014.pdf (Accessed 30 July 2017).

Statute or internal regulations. The Statute or internal regulations do not provide the possibility of association for natural entities. The agenda/minutes/decisions of the governing body (GA and EB) meetings are not available. The RSCG does not provide information about individual board members. The statement/report on the remuneration or remuneration policy (ToR) is not available along with annual report.

Administrative and organizational procedures – the Handbook on Internal Organization and Task Division is unavailable. Therefore, the RSCG does not have a determined HR and management policy with a detailed profile and number of employees. The strategy and action plans have not been adopted. Such a constellation represents significant limitations for contribution of natural entities to policy making. In addition, there are no measures to encourage promotion/representation of women or reaching gender balanced bodies. There are no policies regarding health protection (including insurance policy), economic (labor) rights, on fight against doping and more advanced approach in regard to a dual-career system. From the social view, the federation lacks a multi-year policy plan in regard to social responsibility, environmental protection, gender mainstreaming, anti-discrimination policies and promotion of social dialog between natural entities and clubs.

Dispute resolution and control mechanisms – an internal control mechanism is not established. There is no code of conduct or provisions that apply to decision-makers in regard to integrity, rules on expenses or conflict of interest. There is no provision regarding procedures to process/submit/investigate complaints. The RSCG recognize jurisdiction of the Montenegrin Olympic Committee Court of Arbitrage.

Conclusion:

1. Governance score is not available.
2. There is no athlete representative in governing bodies.
3. It is not clear how decisions are made.
4. The RSCG does not apply measures to provide health care (including insurance) and labor rights protection.
5. The RSCG does not provide means for tackling doping challenges.

6. Athletes have no influence over the administration.
7. There is no internal control mechanism in place.
8. There is no dispute resolution mechanism.

Discussion

The relationship between state authorities and the sport movement is important in terms of public policy implementation in the field of sport. In Montenegro, the normative setting of the sport movement is a product of provided competences by the legislator. Therefore, the NSF is responsible for various tasks stipulated by the existing legal framework, which in a way determines the nature and level of autonomy.³⁸⁸ Even though athletes and other natural entities should be considered major stakeholders, the Law on Sport recognized legal entities, e.g. clubs as the main (and in many cases, only) constituents of the NSF. Constituents exercise control over NSFs through both a legal framework and internal regulations. Constituents do not always tend to use controlling mechanisms. In most cases, the reason for this is that decision-makers are active politicians or public administration representatives and they use their position to influence (or in some cases decide entirely) on distribution of public funds for sport and other means of support. This constellation significantly degrades the legally envisaged implementation of control mechanisms. Athletes and other natural entities are not in the position to control the NSF or to hold decision-making positions. With all this in mind, the NSF has the dominant, monopolistic position in its particular sport by stipulating obligatory rules for formal constituents and other stakeholders, such as athletes. Such a constellation represents an aggravating factor for athletes to fully exercise their rights and responsibility in a given sport. The way in which procedures are set indicates the administrative and organizational culture. Since NSFs have a monopolistic position in a given sport, procedures are stipulated in an obligatory manner, restricting or limiting stakeholders' activities. Therefore, decision-makers direct or frame the organizational environment and these processes are inaccessible to other interested parties. Conspicuously closed off and non-transparent, it is a complicated situation for any attempt of monitoring the organizational functionality of NSFs. As normative prerequisites, the NSF's statute stipulates provisions for

³⁸⁸ Art. 59 of the Law on Sport.

dispute resolution and control mechanisms. Although these mechanisms are established to prevent corruption or abuse of power, in many cases there are no restrictions *vis-à-vis* composition of the disciplinary board or arbitration. Therefore, the same individuals serving as members of the governance body could, with no restrictions, be appointed to disciplinary boards or arbitration panels.

In contemporary Montenegrin sport movement, the concept of good governance does not receive appropriate attention. Based on the normative organization of sport system, the state could exercise both centralized and coercive role in the field of sport. The concept of good governance has historical roots in the sport system in Montenegro. Discrepancies are broad and interrelated: (1) inconsistency of internal regulations with legal framework; (2) limitations in the decision-making position for athletes and other natural entities; (3) phenomenon of the politically exposed individuals acting as sport decision-makers; (4) excessive bureaucratization of sport structures. In addition, this constellation results in the following anomalies: (1) presence of clientelist behavior; (2) lack of implementation of the delegate system; (3) inability of natural entities to be represented in decision-making bodies.

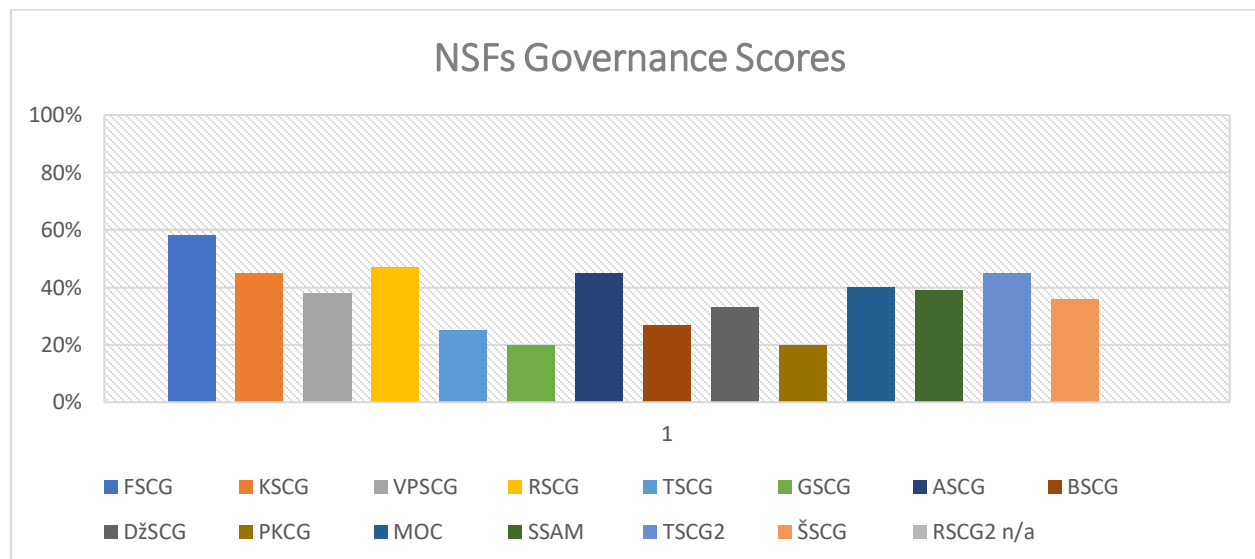


Table 1.

Normative setting and governance structure

While most federations publish their statutes and internal regulations, including sport rules, reporting should also include information about decision-makers, remuneration, declarations of conflicts of interest and risk assessments.

- Most of the NSF have their statutes (94%) available, while a not so overwhelming majority (64%) has adopted the appropriate internal regulation and formed working bodies/commissions to implement them.³⁸⁹
- There is an adequate election procedure in all selected NSFs (94%), while 10 NSFs (66%) make use of secret ballots.
- Only 9 NSFs (60%) publish the agenda/minutes/decisions of its governing/working bodies.
- None of the NSFs publish the statement/report on remuneration or remuneration policy.
- Only 7 NSFs (53.3%) provide biographical information about individual board members.
- Only 1 NSF (6.7%) has no active politicians or public administration decision-makers in its governance structure, while for 4 NSFs (26.7%) there is no available data.
- None of the NSFs adopted rules that limit office terms.

Administrative and organizational procedure

There is a lack of strategic and long-term planning in the general assembly, along with a deficiency in exercising competences provided by the statute. Federations score negatively in relation to the promotion of social responsibility, environmental protection, implementation of anti-doping policy, combating discrimination in and through sport and gender-based-violence in and through sport.

- None of the NSFs publish their Act on job classification and systematization of posts.
- Only 2 NSFs (13.3%) have a strategy in place.³⁹⁰

³⁸⁹ Partly fulfilled activities were not counted as adopted and synchronized.

³⁹⁰ Handball and Gymnastic federations.

- Only 1 NSF (6.7%) has an action plan in place.³⁹¹
- None of the NSFs have adopted social responsibility, environmental protection, gender mainstreaming and anti-discrimination policies.

Dispute resolution and control mechanisms

Federations are not prepared to tackle corruption or institutionally recognize conflict of interest. Most federations' decision-making bodies include active politicians or public officials.

- Majority of NSFs (87%) adopted an internal control mechanism (e.g. Supervisory board).
- Only 1 NSF (6.7%) has an external audit procedure in place.³⁹²
- Only 3 NSFs (20%) have an ethics code in place.³⁹³
- None of the NSFs have adopted integrated risk management and control systems.
- None of the NSFs have adopted provisions that apply to decision-makers in regard to integrity, rules on expenses or conflict of interest.
- There are 2 NSFs (13.3%) with no dispute resolution and control mechanism in place.

Institutional position of athletes

The impossibility for natural entities, primarily athletes, to be directly represented and to take part in decision-making processes, significantly derogates democratic capacities. Particularly worrisome is that federations score negatively in relation to promotion of a dual-career system. In respect to the disciplinary and arbitral proceedings, federations need to enable the application of the principle of equality of arms.

- Only 2 NSFs (13.3%) envisaged in their statutes that athletes could be represented in governance bodies.³⁹⁴

³⁹¹ Student Sport Association of Montenegro.

³⁹² Football Association of Montenegro.

³⁹³ Football, Athletic and Judo federations.

³⁹⁴ The Handball Federation and Montenegrin Olympic Committee. However, none of them has an actual policy that specifies how to involve and choose athlete representatives. Art. 18 of COK's Statute states the following: "the COK also has a number of active and former athletes who participated in the Olympic Game in bodies; with this in mind,

- None of the NSFs has adopted a policy that outlines ToR or actions aimed at involving athletes in policy planning and decision-making processes?
- None of the NSFs has initiated other actions aimed at involving athletes in policy planning and decision-making processes.
- None of the NSFs provides procedures to file an anonymous complaint.
- None of the NSFs provides legal aid for athletes in dispute resolution processes.
- None of the NSFs provides a procedure to choose an arbitrator in arbitration proceedings.

Conclusion

The institutional position of athletes within each NSF is complicated, due to their inability to have direct representation. Moreover, there is lack of action from NSFs to involve athletes in policy planning or decision-making. An additional aggravating fact is the impossibility to challenge decisions (by submitting anonymous complaints or receiving legal aid) adopted by governance bodies, or to protect one's rights based on the principle of equality of arms.³⁹⁵ This absence of a major stakeholder, i.e. athletes and coaches, from the decision-making process limits developing policies, activities and measures. It is likely to lead to more structural conflicts among the federations' main constituents. At the decision-making level, there is an emphasis on the incompatibility of performing a public function (a representative of public/local authorities or a political organization) with a role in a sport organization. Nevertheless, not only does this practice exist in Montenegro, the state enables representatives of political parties, as well as representatives of public authorities, to be in key positions of sport organisations' governance structures.

former athletes have to withdraw from its position no later than the end of the third Olympic cycle after the last Olympic Games they participated in.”

³⁹⁵ Jurisprudential principle issued by the European Court of Human Rights.

Chapter Eight: Athletes Voices

How athletes got involved in sport

In order to loosen what was a pretty tense atmosphere, athletes were asked to discuss the factors which lead them to take part in sport. The most common response could be understood as family-rooted and love for a specific sport (at first football/basketball). Usually, mostly influenced by either their father or brother, athletes (both female and male participants of the FG) got attracted to a specific sport.

My father was a handball coach, so I started regularly watching his games and soon I was attracted to practice handball. (Jovan)

In my case, my two older brothers played football, and I was driven to spend time with them because my parents were working and there was nobody to take care of me. After couple of months I asked my parents to join my brothers. So, I may say it is a mix of family-rooted reasons and love for football that got me into sport. (Miloš)

Due to the complex overall socio-economic situation, parents acted in a very protective manner. They pushed their kids to be more active in sport, in order to spend less time on the street.

I lived in an unstable neighborhood, and my parents didn't allow me to play outside after school. The only option was to start playing sport. Since I was an only child and a girl, my parents decided to enroll me into judo. (Jelena)

The positive aspect of the excessive commercialization of sport is reflected in the opportunity for kids to follow various sporting events. In this way, kids wanted to mimic their new heroes and their participation in sport stems from their desire to mimic their new heroes.

I couldn't peel myself away from the TV. I was watching Ronaldo 24/7, Rivaldo and other Brazilian superstars. (Petar)

There were cases where all family members were associated with the sport. It resulted in atmosphere in which I wanted to play tennis all day long. (Kristina)

A strong discussion occurred around the question of how much were institutions/organizations such as school or club influential in their involvement in a specific sport.

Often, we didn't have PE classes at all. Our PE teacher was occupied with things (which I do not want to discuss) that are not related to the physical education. (Miloš)

I could agree with Miloš, noting that I was only called on by the PE teacher when I was needed to compete for my school. (Sonja)

In our city, club membership demanded a monthly fee. I often heard my parents say they were amazed by the amount they needed to for me to participate. (Bojan&Vesna)

In my case, I could play for free, but for any competition outside of my hometown, my parents had to pay travel/accommodation costs. There was no support from the club. I cannot imagine that this example could serve as a role model for future athletes. (Sandra)

How athletes are involved in governing structures

Prior to getting into the conversation about their involvement in governing structures, athletes were asked how familiar they were with the legislation in the field of sport (primarily Law on Sport), and in particular regarding their rights and obligations. While the majority stressed that they were not familiar, they thought that they should be. An additional question regarded the level of their knowledge of statutory provisions and internal regulations. The feedback was quite similar, ranging from "I don't know" to "I heard something", or "there was a recent development within one federation that points out how athletes are in vulnerable position." When asked whether any of the

participants (or their teammates) were involved in the General Assembly, there were some interesting remarks.

I am sure that I didn't participate at any GA session ever. Most of them (members of the GA) are either politicians or decision-makers in the public administration. Sporting issues mostly depend on the president of the federation. (Petar)

Meetings of the GA were always shrouded in mystery and we never knew what was going on or what was decided. What I am sure is that the president has, what seems to be, unlimited power and influence on the GA. (Kristina)

Reading the statute of our federation, I am pretty sure (even though athletes' representative should take part) that we didn't have an opportunity to decide on who will represent us. What I am sure of, is that our (ex-)president (ex) decides – people like him, mostly politicians, do not like their authority to be questioned in any way. (Mirjana)

When it came to their involvement in the EB or SB, participants had the same responses – many of them think that presidents decide on the composition of the EB and SB. Since participants were familiar with the working bodies/commissions in the federations, athletes' remarks were not very positive.

In my sport, the commission's activities only serve as an aggravating factor, in terms of often changing format of the competition or selecting incompetent individuals to act as referees or delegates. (Goran)

I agree with Goran, wishing to add that anytime we asked for additional explanation, their feedback was that we should either play or leave the club, which was frustrating. (Sanja)

I never saw any evaluation reports of either the local competition or the national team coach and it seems that those bodies do not serve that purpose. I am pretty sure

that decisions made by these bodies reflect purely their own political profile and status. (Bojan)

In addition to the previous questions, when asked if they were involved in the policy process (focusing on development of strategies or action plans), most of the participants were sure they had no knowledge of existence any strategy of action plan.

I found out (from the media) that there is a strategy and action plan, recently adopted by my federation. I think this is very important for the further development of our sport. However, I am sure that none of my teammates were involved in drafting or were even given an opportunity to share her experience. (Mirjana)

I very much doubt that there is anyone in the federation capable of drafting or understanding what needs to be done. (Jelena)

There are people who know what needs to be done, but they are not the ones who makes the calls or decide. (Miloš)

Our sport situation reflects our society. A lack of accountability is obvious on every corner. We should not be surprised by challenges that we face in the sport. (Sanja)

Further, the athletes were asked whether they consulted or whether the federation initiated any action aimed at involving them in policy planning (short-term) or any decision-making process – to which the athletes responded jointly that it was not the case, but that they wished they could have been involved in some way to further develop their sport.

Administrative and organizational procedures/arrangements

Since all of the participants were either active or former members of the national teams, the athletes were asked on health protection (including insurance policy), economic (labor) rights, fight against

doping and match-fixing. Athletes were thoroughly familiarized with the legally binding norms for NSFs on this question.

To be frank, I am not aware of such provisions on economic rights, in terms of which an athlete must have contract with clearly stipulated rights and obligations. I do have a membership card in the form of a competitor's card. (Miloš)

In our case (football), the federation is bound by UEFA&FIFA regulations, but I think not every club follows these rules. (Petar)

We are all amateurs, according to our federation. Even though funds regularly come in, I didn't receive support to buy an additional pair of shoes. (Vesna)

Well, in my and some of my teammates' case, we have not received premiums since 2015. Regarding contracts, we only signed membership ones with club, which does not cover provisions on prize money or support. (Sanja)

The discussion continued with a focus on economic rights. Except for football, partly basketball (and water polo) and female handball, athletes were unsatisfied with the relationship with their clubs. There was no significant differences between individual and team sports. Participants from athletics and judo expressed particular dissatisfaction, indicating that either they might quit playing or move to play for other country. "Playing for another country" was also used by other participants.

There was a case, I think you all heard from the media, in which some of my teammates were planning to play for the Gulf States. I would not like to comment on their choice, except that I understand their position and choice. (Jovan)

I would like to support my colleagues, stressing that the situation is a bit better in female handball. We actually had players from other countries playing for our

national team. However, the focus is on one club, if you make it there, it will pay off. (Mirjana)

If there were an opening in my sport, I would not think twice. (Bojan)

Every time some of us raised questions on labor rights, we were immediately interrupted with statement that if “you don’t want to play you may leave the club, but you will bear the consequences.” And we knew about their political connections, so we kept quiet. (Goran)

That’s actually happened to me. I was prosecuted by the Disciplinary Commission and suspended for two years for no reason. My struggle was very intense, but finally I managed to reverse the first-level decision. (Sanja)

It seems that economic rights dominated the conversation, questions were repeated on health protection (including insurance policy), fight against doping and match-fixing. Participants tended to differ regarding the requirements to compete and health protection during a season. In terms of basic requirements, the overall majority agreed that standardized basic medical check is not implemented, and it consisted of going to the health center with the fee payment and picking up proof of medical eligibility, without any testing.

I lived for many years in the States (meaning USA), and before going to the camp (preparations), a serious medical examination was carried out by a team of university doctors. When I went to the general hospital in Montenegro, I was surprised by how quickly I finished with the necessary paperwork, with the proof of medical eligibility waiting for me. When I asked that doctor why I did not have any examinations, he replied that I looked healthy enough. (Kristina)

In addition to Kristina, when we had our yearly checkup in order to receive the certificate, the doctor asked us to do ten push-ups and 20 sit-ups. (Miloš)

Things were very different when it came to the extraordinary or special medical examination conducted for the purposes of the national team.

Before our departure for international competition preparation, we either go to Serbia or Croatia for a full examination or we go to a private clinic, where a team is formed in order to provide in-depth examination for each one of us. They are very thorough and professional during these examinations. Usually some of the (doctors) join us during the competition along with the proper physio. Compared to the other national teams, I would say that we are somewhere in the middle in terms of quality and size of the medical staff. One more remark – after the competition, we conduct medical checks on our own or within our clubs. (Mirjana)

In our case, bearing in mind that our qualifications are set on two-year cycle and matches are scheduled for the whole season, we are all gathering five to seven days before an official match. We have a very respectable number of medical staff with the national team. Our clubs are responsible for regular medical checks, and those differ from club to club. Internationally, medical examinations are conducted regularly/professionally with continuous measures and constant monitoring. In the national context, medical examinations don't exist. (Petar)

For our national team, we do not have the possibility of any type of medical examination. If we suffer any injury or illness, any treatment we undertake is borne by ourselves (or by our parents). (Kristina)

There was an overall consensus on the fight against doping and means provided by the federation. In general, our federation does not invest or provide means for preventions, education, monitoring or sanctions.

I never had any words either from my coach, club or the federation regarding a list of banned substances or nothing of the kind. Also, nobody ever tested me. (Bojan)

I have been tested on a several occasions. The first time, it was a bit shocking, since I was asked right after the match, to join a couple of WADA officials to their premises. I was not prepared for such an experience. I shocked for more than an hour or so, and so relieved when it was all over. (Jovan)

Well, I spoke with my coach on several occasions, but I may confirm that there is no policy in terms of education or prevention measures. Since I compete mostly internationally, where testing is a regular, actually I was asked by federation representatives to help them to organize a workshop. I found that very odd, since I am not a medical or WADA professional. However, I stated that I am willing to share my experience without getting into specifics. I was never called again. (Kristina)

Athletes were very silent on match-fixing issues. One group, due to their sport specificity, did not experience it in any way – “I am not sure that match-fixing is possible in our sport” was a frequent reply from the group.

Another group, however, was unhappy with the topic, bearing in mind scandals that surrounded their sport both domestically and internationally. They seem to be uncomfortable with the topic.

I know what is going on off the field, but it is hard to prove, where responsible ones are well connected with each other and with the both betting institutions or international partners. (Petar)

There is little we can do, especially when our federation does not inform us about any activity they are conducting regarding potential threats surrounding us. (Kristina)

There is no policy in place or ad hoc activities which could have educational and preventive actions. (Goran)

If I encountered a problem, I would not know to whom to report it. Also, who will guarantee my safety? (Sandra)

Many of the participants agreed with Sandra. It is obvious for them, that there is no system that would detect, monitor or sanction, as well as educate athletes.

When asked about individuals who are appointed or employed within particular NSFs, there was overall consent that in most of cases they do not reflect the sport and do not “come” from it. However, it was explained to the athletes that some of the responsibilities are related to the specific management or administrative roles which require certain formal and practical background. The athletes agreed with the following statement of one of their fellow participants.

From my point of view, some of us could be additionally trained or guided to complement our sporting career with an appropriate educational program. I do think that as we know our sport, our experience could be of importance for generations to come. Moreover, since most of us are guided by the love for sport, having an opportunity to stay in sport after our competitive career represents a great motivation. (Bojan)

Dispute resolution/control mechanism

When asked regarding the control mechanisms, the majority of the athletes responded that none of them are included in the appropriate control bodies (SB) or in the process that presupposes overseeing any segment of the federation: “I am sure that the president or board (meaning EB) decide who will constitute the control mechanism, and there is little that we (athletes) can do about it.”

In regard to the procedure for disciplinary or arbitration proceedings, most of the athletes were insufficiently aware of the formal processes that includes understanding stipulated internal regulations and procedures to file a complaint.

On the dispute resolution mechanism, participants stressed that none of them (including their teammates) is involved in the work of the disciplinary commission or arbitration. When it comes to the disciplinary procedure, the experiences varied significantly.

Personally (and luckily), I didn't have any experience with disciplinary proceedings. When it comes to the procedure on athletes, I heard that they are very operational, guided by the principle of urgency. However, we all know that certain individuals and their affiliated clubs are above of any rules. (Petar)

I am sure that there is no disciplinary commission established within our federation. (Vesna)

In our federation, members of the GA are members of the EB and disciplinary commission and I am sure that this commission does not serve any purpose, except to exist on paper. (Goran)

Since there was a scandal in our league – a club was competing without being a formally club (without being registered with the Ministry, I think) and just before the last round of the league, the club got suspended. It says a lot – even though commissions are established, the results of their work are (almost) nonexistent. Which means that our federation is run by the individuals, not by a system. Another example is related to the men's team. Two national team players (very dominant and important) decided to address the public after a brutal attack (in my opinion) by the state-oriented media. The position of the federation was that those two players decided to play for another national team. I will remind you that acting politicians are crucial figures in our federation. One of the players said he felt betrayed. He continued, although the national team has been neglected for years, because the women's team is a political project, I remain devoted to the national team and to Montenegro. There was a lot of pressure from the media, and the federation (and national coach) decided to call those two players to join the team. It seems shocking to me, especially that those two players are leaders and I know them personally,

very nice guys. When I think now about mechanisms or institutions for the protection of players, where are they? (Mirjana)

I would not like for any of athletes to experience the struggle that I had with the federation. I was a member of one club. They promised at that time all the necessary conditions needed for my development. From special care in term of nutrition, physio, to a great team of coaches. I signed a membership contract, with no specific obligation regarding future transfers to other clubs. Time passed, and little of what was promised was fulfilled. After a while and consulting with employees from the competent state institution for sport, I decided along with some of my teammates to form a club. The reasons were numerous – as a club I could apply for funds from different state and local institutions and the Montenegrin Olympic Committee and have control over the spending. Before, I was not aware of an amount a club received based on my results and amount that is allocated for my development. When I formally notified my ex-club and submitted an application for full membership in the federation, the president of the club filed a complaint against me. In it, they requested that I must pay several thousand euros (the amount allegedly invested in my development) as a buy-out/indemnity. The disciplinary proceedings were swift and with no opportunity for a public hearing. The first-instance decision was to suspend me, if I do not cover the full amount. Even today, after some years, I am not able to describe to you the sense of powerlessness and emptiness when I heard the decision. Even though I knew that a member of the disciplinary commission was friends with the president of the club (who is a member of the EB and other bodies within federation), I never expected that the ruling will be contrary to the provisions of the contract and legislation. I contacted a civil servant, who advised and helped me in the process of establishing a club. He and his fellow colleague decided once again to assist me in the process of protecting my rights as an athlete. They saw a formal deficiency of the disciplinary judgment and prepared an appeal for the EB (acting as second-instance body). In the same manner, the EB confirmed the decision of the disciplinary commission. I had an opportunity to request an arbitration proceeding in the Montenegrin Olympic Committee Court of

Arbitrage, but the advance cost for arbitration proceedings were close to a thousand euros, which I didn't have. I came from a low-income family, and we simply didn't have money to continue the procedure. Luckily for me, one of the civil servants decided to go directly to the federation and speak with the decision-makers. He went beyond his jurisdiction and decided to back me up. I am not sure what happened, but the EB decided to change their decision and I was free. The whole procedure felt like forever and I realized that as athlete, I am nobody. (Sanja)

Spurred by Sanja, I would like to share with you my experience. It was the end of January when I found out that there was going to be a competition (an unofficial one) to determine players that would compose the national team. Based on my experience, those or similar competitions are not the usual way for coaches to decide who should be part of the national team. Anyhow, I decided to participate and to try my best. The rules were set by the national coach – they presuppose a round-robin system and after a relegation and knock-out phase (including playing for third place), the first three players would constitute the team. Since we are all affiliated with the competitive sport, for the record, there were no delegates or referees involved in the competition. After the round-robin system, I made it the semis and should have played with the top ranked from the other group. If I won, I would be in the safe zone; if not, I would play for third spot. Before getting into the semis, the national coach informed us that regardless of the scores, they (coach and president of the federation) would decide who would play for the national team. I was in shock, especially when he turned to me and said, that no matter what, I would not be part of the team. I tried to calm myself asking, how can you change the rules of the competition – and the immediate response was even more shocking: “I can do whatever I want.” I decided to forfeit the match, stressing that due to the three matches played in less than 24 hours, I was not feeling well. I asked if the doctor could see me, and they said there was no need for that, if I am feeling sick, I should take myself to the hospital. When I came home, I decided to fight against this injustice. I sent an email to all members of the federation, including my teammates and parents, notifying them what happened. In the meantime, I received a text

message from the coach, inviting me to another set of trials. Nothing was happening, and I sent an email again, and submitted a complaint of discrimination. Based on the positive legislation, I assumed that the principle of urgency would be applied in this case, bearing in mind that international competition was to be in the near future. Nothing changed, except that the team left without me. I felt lost. After a month and so, I received an email from the federation notifying me that there is a complaint against me and that I have several days to submit a written statement. In the complaint, the coach said that I behaved against rules of the competition, that I was quarrelling with other players and their parents. At that point, it didn't frustrate me, since I was already out of the competition. Moreover, I know the sporting rules well (both domestic and international ones). The same day, I submitted the requested statement in written and a formal reminder (based on the Administrative Law) that, according to the competent rulebook, the disciplinary commission failed to reach a timely decision. After a month or so, I was physically attacked by the coach. After reporting this to law enforcement, I filed another complaint against the coach. The first level court convicted the coach and fined him. More than two months after my statement was submitted, I received three decisions from the disciplinary commission. Both of my complaints were dismissed, but complaints against me resulted in a two-year suspension from all domestic and international competitions. Still, I was not frustrated, since we have only one national tournament and this decision could not have international impact due the incompatibility with national legislation, international binding norms and international sporting rules. Of course, I submitted appeals on all three decisions and informed the competent state authority for inspection. Why inspection? There is an Inspectorate for education and sport under the Administration for inspection affairs. Still, no response. In the meantime, I went on several tournaments abroad, where I competed with no obstacles. After two months, I sent another formal reminder to the inspectorate – it is very important to follow up provisions from the Administrative Law and to act in a timely manner. They reacted after three months, but their reaction had an effect. The inspectorate conducted an inspection control and they concluded that EB failed to make a timely decision and thus they violated my rights. The inspectorate

instructed the EB to correct this deed and to make decisions based on the rulebook. Less than a month after that, the EB decided that disciplinary procedure is terminated against me. However, they rejected the other two appeals even though the Primary court convicted and sentenced the coach. You remember that I have mentioned the principle of urgency? It took me over a year, wading through the appropriate institutions to protect my basic rights as an athlete. From shock and emptiness, I become determined to compensate the non-material and material damage due to psychological pain, impairment, reputation, honour, freedom of expression and personality rights, and the loss of benefits. (Bojan)

Strategies for change

Participants were asked to provide their view on recommendations how to improve institutional position of athletes within NSFs.

Since politics are very much involved in all business, the key actors to initiate any change are politicians. It is crucial to let people from within the sport world run the sport. (Petar)

I agree with Petar, and if I may add, from a normative perspective, the legislation in the field of sport should be changed. Our rights should be acknowledged and respected. As athletes, we should be the center of the decisions. (Sanja)

I think that we bear part of burden. Most of us lack the proper education (both academic and practical). I was not aware of many issues, or better put, possibilities in the given framework to protect myself. With this in mind, there should be a two-way understanding. As Peter and Sanja stressed, it's mostly up to the political decision-makers, but we as athletes also need to be ready for possible changes. (Vesna)

There is no room for positive reflection. We heard a lot of striking stories, that should worry all of us. Athletes are not protected during or after their career. That should be broadly stressed, and we need support from NGOs and media. (Goran)

Chapter Nine: The Structural Nature of Sports Organizations

Introduction

The data collected and analyzed was taken from articles published in Sport Mont Journal (SMJ), both the print and electronic version. Published three times a year, SMJ is the official journal of the Montenegrin Sports Academy, published by the Faculty for Sport and Physical Education of University of Montenegro. SMJ is indexed among others in Scopus, SPORTDiscus and DOAJ.³⁹⁶ The examined SMJ articles cover the period from 2006 to 2017, that is, from Montenegro gaining its state independence through the present time. The rationale for focusing on SMJ is mainly that the issues related to sport have not been investigated by other social science journals in Montenegro.

Results

Based on the current legal framework, sport organizations could be classified as umbrella sport organizations (NSF, including COK) and local sport organizations (club). By legal status, clubs could be formed as a company or nonprofit organization. Since there are no strict provisions, the organizational structure or nature vary, depending on both internationally stipulated rules and domestic customs. From the perspective of outcome, sport organizations can be recreational, preparatory (sport academies/schools) or competitive.

In order to understand the local academic approach on the topic of structural nature of the sport organizations *vis-à-vis* good governance perspective and athletes' representation, four areas are of particular interest:

- Scientization – technical/tactical improvement, nutritional/psychological/physiological intervention.³⁹⁷

³⁹⁶ Sport Mont Journal, <http://www.sportmont.ucg.ac.me>, (Accessed 2 September 2017).

³⁹⁷ Brohm, J.M. (1978). Sport: A Prison of Measured Time. London: Inks Links. p. 185. In: Frey, J.H. and Eitzen, D.S. (1991). *Sport and Society. Annu. Rev. Sociol.*, 1991. 17: 503-22.

- The structural nature of SO – Sport organizations vs. Organization for conducting sporting activity; Good governance principles/sport policy/legal aspects.³⁹⁸ Good governance principles, sport policy and legal aspects were also added as supporting themes and for their relation to the major subjects.³⁹⁹
- Dispute resolution mechanisms.⁴⁰⁰
- Dual career as a part of both cultural and organizational aspects of the sport system.⁴⁰¹

Scientization – technical/tactical improvement, nutritional/psychological/physiological intervention

Author	Title	Contribution
Opavsky, P. (2006)	Validity of vertical jump tests	Physiological intervention
Kopas, J. (2006)	New-constructive tests for the assessment of the repetitive strength in judo	Physiological intervention
Nemec, P. (2006)	The application of “eks” test in sporting practice	Physiological intervention

³⁹⁸ Stevens, J. A. & Slack, T. (1998). Integrating social action and structural constraints: Towards more holistic explanation of organizational change. *International Review for the Sociology of Sport*. Vol. 3, Issue 2. pp. 143-154.

³⁹⁹ For more on good governance principles see Curtin, D. and Meijer, A.J. (2006). Does transparency strengthen legitimacy? *Information polity*, 11(2): 109-123. Considine, M. (2002). The end of the line? Accountable governance in the age of networks, partnerships and joined up services. *Governance*, 15(1): 21-40. Jarvie, G. (2006) *Sport, Culture and Society: An Introduction*. London: Routledge.

⁴⁰⁰ Nafziger, J.R.A. (2004). *Lex Sportiva*. The International Sports Law Journal. In: Blackshaw I.S., Sickman, R.C.R. and Sock, J. eds., *The Court of Arbitration for Sport 1984-2004*. The Hague.

⁴⁰¹ Stambulova, N. B. and T. V. Ryba, T. V. (2013). *Athletes' careers across cultures*. London and New York, NY: Routledge.

Mirvić, E. (2006)	Relationship between motor skills and situational motor capabilities in basketball	Physiological intervention
Jovović, V. (2006)	The influence of kinematics and structural elements while forming the shape of sprinter's curve of speed in the 100m dash	Physiological intervention
Doder, D. (2006)	Diagnostic karate tests	Physiological intervention
Janković, I. & Aleksandrović, M. (2006)	Quantitative changes of functional and speed abilities of water polo players in preparation and competition period	Physiological intervention
Drid, P. (2006)	Analysis of relations between judo techniques and specific motor abilities	Physiological intervention

Kapo, S. and Kajmović, H. (2006)	Comparisons of technical - tactical karate elements between participants of International karate tournament "Sarajevo Open" 2004	Technical/tactical improvement and Physiological intervention
Vujkov, S. (2007)	Plyometric training in karate	Physiological intervention
Milenković, S. (2007)	Psychological and tactical preparation of junior tennis players	Tactical improvement and Psychological intervention

Structural nature of SO – Sport organizations vs. Organization for conducting sporting activity;
Good governance principles/Sport policy/legal aspects

Author	Title	Contribution
Kasum, G. (2006)	Dilemmas and ideas connected with free-style wrestling in Serbia and Montenegro	Strategy for development of free-style wrestling.
Nikolić, I. (2007)	Structure of the management of the sport organization of the transitional form of ownership	Organizational effectiveness in transitional ownership.

Kasum, G. and Radović, M. (2008)	Contemporary tendencies in sport wrestling	Organizational adaptation of FILA on newly arriving discipline within wrestling.
Kastratović, E. (2008)	Entrepreneurship as the main postulate of development of sports in Serbia	Orientation to the more corporate nature of sport organizations implementing the concept of market economy.
Milosavljević, M. (2008)	Termination (liquidation) of sport association	Need for adoption of adequate procedure for termination of sport association (organization).
Bjelica, M. and Bjelica, B. (2009)	Decentralization of decision-making processes within sport	Importance of sports management in decision-making. (unclear) ⁴⁰²
Selhanović, D. (2011)	Promotion of Montenegro through sport	Introducing a state marketing management, as a form of direct intervention into the sport movement in order to promote

⁴⁰² It seems that the authors have omitted to distinguish individual activities (such as the position of sports management), from policy planning/implementation in a given framework.

		“Montenegrin State Identity.”
Radović, M. and Fijat, Lj. (2011)	Market economy as a precondition for the establishment of an ownership structure in sports organizations	Recapitalization and implementation of corporate governance in a market-oriented society.
Berisha, A., Krasniqi, M., Sylejmani, B. and Gjuraj, L. (2011)	Sport and law	Courts to act as a dispute resolution mechanism.
Krasniqi, M., Berisha, A., Nura, A. and Sylejmani, B. (2011)	Law implementation in sport	Corporate governance defined by how to develop strategies/directions, monitoring effectiveness and board acts in the best interest of its members.
Opavsky, P. (2013)	Executive management board in sport	Title is not related to the text. Moreover, while the introduction covers professional/coaching staff in sport, the rest of text is oriented towards physiological aspects of athletes.

Dispute resolution mechanisms

Author	Title	Contribution
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Dual career

Author	Title	Contribution
Lepeš, J. and Kabok, I. (2006)	First-class sport or continuation of education	Emphasize the role of relative independence from the family by making a decision between elite sport and continuation of education.

Discussion

There are 1089 articles in the SMJ database for the period of 2006-2017. According to the articles examined, the research methodology primarily emphasizes the natural, biological and medical approaches.⁴⁰³

1. There are total of 468 (43%) articles focusing on “scientization” of sport and its relation to the high-performance sport. Most of them are oriented toward physiological intervention

⁴⁰³ Gusic, M., Popović, S., Molnar, S., Mašanović, B. and Radaković, M. (2017). Sport-specific Morphology Profile: Differences in Anthropometric Characteristics among Elite Soccer and Handball Players. *Sport Mont*, 15(1): 3-6.

(over 70%). They show a similar (in many cases the same) methodological approach with an impact on the functionality of particular sports in Montenegro.

2. Articles focusing on the structural nature of sport organizations including good governance, sport policy and legal aspects number only 11 or 1%. In terms of decision-making processes, the authors refer to individual managerial competences.⁴⁰⁴ Only 1 article mentions governance (corporate) and its effectiveness in decision-making bodies. Although there is significant interest among international scholars regarding corporate governance in terms of orientation to agency, stewardship or stakeholder theory, in Montenegro, the focus is given to the leadership, managerial roles and responsibility of individuals.⁴⁰⁵
3. There are no articles dealing with dispute resolution mechanisms.
4. There is only 1 article (0.09% of all articles examined) focusing on a dual-career system and discussing the importance of family involvement as an entourage for staying in sport and achieving a sporting result.⁴⁰⁶
5. There are 609 articles (55.9%) focusing on marketing aspects, recreational sport and tourism, and most of all on school sport/PE. Even here, there are no articles that do not reflect any field of sport.⁴⁰⁷ This pattern goes all the way to 2015.

⁴⁰⁴ Bjelica, M. and Bjelica, B. (2009). Decentralization in decision-making processes within sport. *Sport Mont*, 6(18-20): 283-286.

⁴⁰⁵ Krasniqi, M., Berisha, A., Nura, A. and Sylejmani, B. (2011). Law implementation in Sport. *Sport Mont*, 9(31-33): 509-515.

⁴⁰⁶ Lepeš, J. and Kabok, I. (2006). First-class sport or continuation of education. *Sport Mont*, 4(10-11): 453-459.

⁴⁰⁷ Bjelica, S., Bjelica, B. and Bjelica, M. (2009). World Economy and Basic of Globalization. *Sport Mont*, 6(18-20): 462-467.

Conclusion

The main focus of this literature review was to show local academic approaches listed in the Sport Mont Journal – representing a major academic resource for sport in Montenegro. The goal was to look at the trends and topics in relation to the discussion on the structural nature of sport organizations regarding good governance perspectives and athletes' representation, i.e. factors that influences sport system on the meso-level: sport policy and politics with long term impacts.⁴⁰⁸ Overall results show that the majority of articles focus on “scientization” and school sport/PE. Only insignificant effort is dedicated to the main topic of this review, which could be understood as being detached from the sport system. Conversely, international scholars do find and point out correlations between contemporary sport systems and “applied scientific research.”⁴⁰⁹

⁴⁰⁸ de Bossecher, V., de Knop, P., van Bottenburg, M. and Shibli, S. (2006). A Conceptual Framework for Analysing Sports Policy Factors Leading to International Sporting Success. *European Sport Management Quarterly*, 6(2): 185-215.

⁴⁰⁹ Ibid., 194.

Chapter Ten: Conclusion

Introduction

The aim of this research was to determine the institutional position of athletes in Montenegro's Sport Movement. A particular challenge throughout was, as Healey suggests, the fact that there is no single model of governance for sport organizations.⁴¹⁰ Thus, although current methodological approaches were consulted, the research proceeded in combination of sociological and judicial approaches as a form of the synthetic method. The research confirmed that athletes are not only misrepresented, but in most cases, it is impossible for athletes to be institutionally directly represented or even to exercise basic rights. The results of the literature review showed rather heterogeneous treatments, challenges and solutions. This approach along with the results represent a supplement to the existing knowledge in terms of regional, historical, cultural and organizational specificities. For future research, based on common indicators, it is feasible to conduct comparative case studies (in this and other regions of Europe) of the Sport Movement in general or focusing on specific sports, from the perspective of institutional position of athletes' as its major constituent.

Implications

The research has showed that there is no activity aimed at involving athletes in policy planning or the decision-making process, even in a consultative manner. Therefore, this constellation is worrying due to the fact that athletes constitute the majority and core of each particular sport who have a positive impact on general population as role models. The tensions and contradictions, in purely sporting nature, will inevitably lead to the breakdown of the sport system, first through eroding structural coexistence of the stakeholders. Involving athletes in the decision-making processes, as Stoker notes, should not be for taking control over resources, but rather to make decisions in a collaborative or consultative manner.⁴¹¹ It further implies a process of vertical

⁴¹⁰ Healey, D. (2012). Governance in sport: outside the box? *The Economic and Labour Relations Review*, 23(3): 39-60.

⁴¹¹ Stoker, G. (1998). *Governance as a theory: five propositions*. UNESCO. Oxford: Blackwell Publishers.

disengagement in order to enable a horizontal or network governance model. It presupposes that every stakeholder is represented through a delegate system from its base, suited for bargaining and negotiating in policy planning and decision-making processes. Enabling the necessary equal representation in an area of public interest constitutes the foundation for permanent development of a particular sport and its stakeholders. Otherwise, absence of adequate representation produces institutional difference between stakeholders and constituted power.

Governance as an impediment

Given the presented complex overview of institutional position of athletes, it is hard to expect that the current bureaucratic nomenclature in Montenegro's Sport Movement has the power or willingness to initiate dialogue that would lead to necessary structural changes. Moreover, the Sport Movement has expressed only a willingness to carry on in the same manner, not allowing or suppressing any attempt that could lead to change. For the public, every action expected to challenge the existing constellation has led to mobilization of external (but related) forces in order to strengthen the decision-making environment. Athletes see themselves as powerless individuals; who, should they decide to struggle, will be labelled, along with their families, as "enemies" of the system for life. As a way of existence and survival, athletes and other natural entities are subjected to the will of decision-makers.

Exempt from external pressure, the NSFs operate in self-governance mode where the concept of autonomy reflects the current socio-political environment. In theory, they follow these parameters: (1) role of the public authorities; (2) level of coordination/engagement; (3) roles of the voluntary, public and private sectors; (4) adaptability of the system – the sport system is *bureaucratic*, governance orientation leans towards a federated *model*. However, research has showed the presence of political and familial networks, that is, clientelism and cronyism, positioned in vertical and autocratic decision-making processes. It supports particular individual or small group interests, and it is seen more as *partitocratic model* of governance, e.g. rule of political parties. Some authors have tried to explain the 'political influence of certain interest group' as neo-corporatism, while others refer to the concept of "Balkanization," since it is intertwined with conceptual problems of

the scope of the study.⁴¹² The accessed allocation of functions has showed similarities with organizational functionality of political parties, somewhere between institutional and managerial hegemony.⁴¹³ Based on the intrinsic influence reflected in maintenance but maybe more in coercive role from the decision-makers' perspective, the president with excessive statutory powers (mostly unilaterality), along with close associates, adopts all important decisions without wider consultations, i.e. without a controlled environment.⁴¹⁴ Therefore, the structure in organizations are outside of control, and are based on an identical bureaucratic system as the public administration: hierarchical decision-making processes, extension of power beyond current political and state institutional level, etc. In addition to vertical decision-making, NSFs largely depend on *functional autonomy*, which provides not only the ability to make its own decisions, but to act as a monopolistic actor in a particular sport. Further, due to the commercialization that relies on overall social transition from socialism to capitalism, sport as a public good, is more open for corruption.⁴¹⁵ Not only athletes but other natural entities should be involved in the delegate system and act as a control mechanism in holding decision-makers accountable for their actions. It means that their interest must not only be heard but be directly represented. Besides the issue of representation, the absence of checks and balance and appropriate supervisory/audit culture stands as a significant obstacle. In practical terms, dispute resolution and control mechanisms are not free from direct influence of governance bodies and political power. Moreover, active politicians or decision-makers from public administration are very much involved either directly or through their political associates in dispute resolution and control mechanisms. The fact that a code of conduct or provisions that safeguard ethical norms have not been adopted, indicates a lack of awareness not only of decision-makers, but of other stakeholders including athletes in a particular sport. Such a constellation represents a major concentration of power with the possibility for its abuse to become the norm in conduct. Lack of accountability is directly related to the fact that decision-makers do

⁴¹² Meier, E. H. and Fuch, A. (2014). From corporatism to open networks? Structural changes in German sport policy making. *International Journal of Sport Policy and Politics*, 6(3): 328.

⁴¹³ For more on both theories, see: Mace, M. L. (1971). *Directors: Myths and Reality*. Boston: Harvard University Press; Whisler, T. L. (1984). *The rules of the game: Inside the corporate board room*. Homewood, IL: Dow Jones-Irwin

⁴¹⁴ Tricker, R. I. (19943). Editorial: Corporate Governance – the focus of interest. *An International Review*, 1(1).

⁴¹⁵ For more: Begović, M. (2015). *Compliance of the National Sport Federations within the Legal System of Montenegro*. Master Thesis.

not represent all constituents and stakeholders of a particular sport. Therefore, plutocratic interdependence results in absence of action from competent state authorities, justified through the autonomous (more *sui generis*) concept of sport organizations.

In order to even start measuring the democratic capacity of a particular organization, representation is a major prerequisite, especially when it comes to an activity of public interest. Internal regulations and rules adopted in a globally welcomed, pyramidal structure, are favorable to merging politically exposed individuals with decision-making positions in sport organizations. In order to sustain such a position, they expand their influence in two ways: there is no limit on terms in office, which provides the opportunity to employ themselves as executors (administrators) of their decisions. Since they are formed and registered as legal entities by state authority, which is not in charge of either NGOs or private companies, sport organizations operate in a *sui generis* environment where transparent recruitment procedure is not part of organizational culture and policy. The latter creates a limited frame for other stakeholders, especially ones with no political or adequate legal background (in terms of entity). Those with given statutory power, propose and influence the composition of governing boards. Even though there are some good examples resulting in the founding of athletes' commissions, due to the rigid bureaucratic and complex organizational structure, it has limited impact on decision-making processes.

External sustains the internal

The leading political establishment is the reshaped former Communist party and has retained the socio-political monopoly. Kaufmann and others refer to “state capture” as effort to shape the very institutional environment in which they operate, e.g. policies, legislation and economy to serve to the purpose of particular individuals or interest group.⁴¹⁶ As underlined in the European Commission report on Montenegro, “corruption is prevalent in many areas and remains an issue of concern,” and significant improvement is needed to protect institutions from any “undue influence and incentivised to fully use their powers.”⁴¹⁷ However, as a supplement to understanding sources

⁴¹⁶ Kaufmann, D., Hellman, J. and Geraint, J. (2000). *Seize the State, Seize the Day: State Capture. Corruption, and Influence in Transition*. The World Bank.

⁴¹⁷ European Commission (2018). *Key finding of the 2018 Report on Montenegro*. Brussels: EC.

of resistance, it should be noted that the EU is constantly in “adequate” wording, stimulating what some authors would say stabilitocracy – a “façade democracy, enacting predatory laws” which prevents the existence of a system based on checks and balances and the rule of law.⁴¹⁸

A review of the legal framework in the field of sport, has shown the same deficiencies and bulwark to the protection of core constituents – athletes. However, the EU has acknowledged odd connections of the ruling party backed by state institutions in creating rather informal structures with convenient representatives from the media and business sector, all working together. In this way, state institutions are inactive and eroded in both an organizational and functional sense, and the general population is coerced, much as athletes within NSFs. As one of the athletes stressed “either we comply, or we can leave the sport.” It is a powerful message that signals reluctance of the current decision-makers in the Sport Movement and readiness to further complicate the relationship among stakeholders.

General directions

The result of institutionalizing a delegate system in the sport movement, in other than purely sporting terms, is the strengthening of socio-economic structure developed in a democratic environment. It would lead to a more open, free, accountable and humble society. Moreover, such a structure would in this way be based on reduced state intervention, or the role of the public administration would be consultative and supportive. In other words, instead of strengthening its state-owned or public administration bureaucratic nature, the sport movement would enhance a delegate system reflecting all constituents’ and the stakeholders’ views and specificities in a particular sport. In accordance with the sport character, the process itself would to a great extent influence other social processes, animating and dynamizing changes in the same manner. As we have seen, there is no unique approach to ensuring equal representation for all stakeholders. Due to the heterogeneity of the sport setting, the proposed approach that includes a delegate system with a horizontal structure (in policy planning and decision-making) is not necessarily preferred as a

⁴¹⁸ Stabilitocracy is a term coined by Srdja Pavlovic, explaining that it as “a rule, produces everything but stability and security.” For more: <http://blogs.lse.ac.uk/europpblog/2017/05/05/west-is-best-how-stabilitocracy-undermines-democracy-building-in-the-balkans/> (Accessed 21 September 2017).

solution in other countries/systems. Even though the proposed approach is specific or unique, it has both historical and socio-political roots in Montenegrin society.⁴¹⁹ There are 3 permanent or never-ending tasks that remain before all stakeholders:

- importance of *critical thinking* and consideration of the current structural nature in sport organizations and taking appropriate initiatives to harmonize structure with needs
- the need *to develop and consolidate a structure* based on appropriate delegate system and democratic practice, especially in policy planning and decision-making processes
- *to anticipate and to define* positions, its scope and ToR within structure

Athletes and other natural entities would be entitled in this way, to be directly included not only in processes that affect them but also in decisions on the total value, capital or strategic orientation of the organization. It also entails a greater and expanded responsibility *vis-à-vis* other constituents, forming an interrelated network of partial or individual interest of athletes, working for the common broader interest. Moreover, a relationship constructed like this would enable free and voluntary associations that correspond to their affiliations and interests without the state or any other mediation or intervention. In it, the structure and character of the organization depend on the social contract, reflecting all stakeholders' views and specificity of particular sport. Its relations would be subject to permanent reexamination, to enhance organizational culture and to prevent monopolistic or centrist decision-making process. Therefore, the delegate system is in fact, the backbone of the governance system serving as the wheel for further development of the activity of public interest. It provides for all constituents to be the source and holder of a particular sport, forming a cooperative governance body.

Although important to reflect all stakeholders, the functionality of the delegate system, mainly depends on an adequate power distribution, that is attempt to avoid Dahrendorf's "conflict as a structural effect," that is, arriving at Parsons' "voluntary compliance" is key to achieve effective cooperative governance bodies.⁴²⁰ The implication for the members is to lift their activity in a collective environment of policy planning and decision-making processes. This would result in

⁴¹⁹ Document no. 02-840 from December 1979. RSIZ fond. State archive of Montenegro

⁴²⁰ Parsons, T. (1966). The political aspect of the social structure and process. In: David Easton ed., *Varieties of Political Theory*, Englewood Sliffs, NJ: Prentice-Hall.

self-regulatory autonomy, legally framed by the competent state authority, free from political interference while proactively engaging public and private institutions for the implementation of wider interest.

Normative settings and governance

This research shows that the current normative setting (or legal framework) and organizational structure are incapable of tackling the challenges before the of major constituent of the sport – athletes. The environment of ambiguity installed culture of autocracy and lack of accountability is the product of normative loopholes. In order to address these deficiencies, structural changes are necessary for the sport movement to establish a proper organizational and functional culture, to ensure direct involvement of all stakeholders in policy planning and decision-making, while acting in the best interest of sport as activity of public good. Keeping in mind the specificities of each sport, the organizational structures should impose clear delineation of roles, responsibilities and powers of each stakeholder group in governance bodies.

Given the state-centric or interventionist approach in sport, enacted in both policy and political environment, it is important that effective mechanisms be placed in future amendments. Since athletes are already recognized as constituents of the sport movement, it is important to have the same treatment as legal entities, which would enable them to associate and to be directly represented. In terms of challenges with which the sport movement is faced in the process of decision-making, *depoliticization* is the prerequisite for enabling an equal and adequate representation and achieving *functional* and *organizational* autonomy. Therefore, clear provisions should be prescribed on prohibition of participation of politicians and decision-makers from the public administration in the governance bodies in sport organizations. The latter needs to be harmonized with the Law on Public Servants and Law on Prevention of Corruption. These are primary legislations, which at this stage have no restrictions on politically exposed persons.

The legal system presupposes instructions as a form of state regulations that prescribe the scope and operations of the associated legal entities in charge of implementation delegated or entrusted tasks. In the spirit of cooperation between the state and the sport movement, bearing in mind the

importance of reaching consensus or common point on the necessity of proper standards, it is important for the competent authority to provide a set of good governance principles for the sport movement. The latter should be based dominantly on principles of *equal representation*, adoption of *delegate system*, *balance* in governance and *accountability* with rotation, limits to terms in office and prohibition of conflict of interest:

- **Equal representation** – depends on sport specificity, NSF should recognize all stakeholders/constituents of the particular sport, e.g. athletes, coaches, referees/delegates/officials, managers, clubs, external partners (sponsors)
- **Delegate system** – enabling direct representation in policy planning and decision-making processes. ToR of a particular association is the autonomous right of each group of stakeholders. ToR of the delegates should be enacted within the organization's statute
- **Balance in governance** – governance bodies based on separation of powers (and composition) between *legislative* (General Assembly), *executive* (Executive Board), *judiciary* (Disciplinary Board and Arbitrage) and *audit/control* (Supervisory Board). Special emphasis is given to impartiality of the judiciary bodies and its members along with the principle of equality of arms.
- **Accountability** – introducing a *collegial* decision-making system that provides for rotation in the executive body of elected individuals throughout the mandate. Limiting terms in office to maximum one consecutive reappointment. Adoption of an appropriate code of conduct, binding to all constituents and stakeholders in a particular sport, addressing potential risks related to conflict of interest, corruption, abuse of office, match-fixing, doping and financial malpractice.

In addition to the discussion, the terms of financial and technical support from public authorities for the sport movement should be conditioned upon explicit criteria regarding compliance enacted in *Instruction on Good Governance*. In addition to the principles listed the above, provisions should reflect internationally binding norms to fight money-laundering and include protection for whistleblowers.

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APPENDICES

Appendix 1: Questionnaire

1. Transparency

	Yes	No	Availability on the official e-address Yes No	Remark ⁴²¹	Score ⁴²²

⁴²¹ Every question was followed by space for a remark or further explanation.

⁴²² The score ranges from 5 (for Yes) to 0 (for No).

1. The organization's Founding Act is published on its website					
2. The organization's Statute, internal regulations and sport rules are published on its website					
3. The structure of the organization (organizational chart) is published on its website ⁴²³					
4. The organization has adopted and published its strategy ⁴²⁴					
5. The organization has adopted and published its action plan ⁴²⁵					

⁴²³ Provided a copy.

⁴²⁴ Provided a copy.

⁴²⁵ Provided a copy.

6. The organization publishes its yearly general activity report ⁴²⁶					
7. The organization publishes a yearly financial report, in accordance with the competent national legislation					
8. The organization publishes a yearly audit report ⁴²⁷					
9. The organization publishes a yearly report of a chartered accountant					
10. The organization publishes the					

⁴²⁶ Provided a copy.

⁴²⁷ e.g. “International Financial Reporting Standards (IFRS)”

agenda and minutes of its general assembly on its website					
11. The organization publishes the decisions taken at its general assembly or executive body meetings on its website					
12. The organization gives the media access to its general assembly meetings					
13. Contact details of members of the general assembly, executive boards and other bodies of organization are published on the					

organization's website					
14. The organization publishes its yearly activity report of organization bodies on its website					
15. The organization publishes ToR and reports on remuneration, ad hoc payments and bonuses of members on its website					
16. Handbook on Internal Organization and Task Division exists and is published on the website ⁴²⁸					
17. The organization publishes					

⁴²⁸ Provide a copy of the public call

reports from major sport events on its website					
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2. Democracy

	Yes	No	Availability on the official e-address Yes/No	Remark	Score
1. There are elections of the president					
2. There are elections of the executive board and other bodies mandated by the Statute					
3. The elections are conducted through secret ballot ⁴²⁹					
4. The decision-making process is foreseen by the competent internal regulation of the organization ⁴³⁰					

⁴²⁹ Provided a decision/act/bylaw.

⁴³⁰ Provided the Rules of Procedure.

5. The election process provides opportunity for candidates to present their program					
6. The organization's elected officials have a term limit stipulated by the competent bylaw ⁴³¹					
7. The organization has a gender balance approach in place for the general assembly, executive board and other bodies ⁴³²					
8. ToR prescribe for the organization of sporting events					
9. The decisions to allocate sport events are made through a democratic and transparent process					

⁴³¹ Provided a decision/act/bylaw.

⁴³² Provided a decision/act/bylaw.

10. The meetings of the organization's bodies are defined by competent internal regulation ⁴³³					
11. The organization bodies meet regularly ⁴³⁴					
12. The Statute provides an opportunity for athletes to be represented in the organization					
13. The Statute provides an opportunity for coaches to be represented in the organization					
14. The Statute provides an opportunity for referees/delegates to be represented in the organization					

⁴³³ Provided a decision/act/bylaw.

⁴³⁴ The Statute/internal regulations are made for each body/committee

15. The organization has an Athlete Commission in place					
16. The composition of the Athlete Commission is decided upon by the athletes themselves					

3. Balance in governance

	Yes	No	Availability on the official e- address Yes/No	Remark	Score
1. The organization has an internal control mechanism (e.g. supervisory board) in place, fully					

independent from the rest of the organization					
2. The organization is externally audited according to national legislation and competent, internationally recognized standards ⁴³⁵					
3. The organization has adopted an integrated risk management and control system ⁴³⁶					
4. The organization has adopted a Code of Ethics for all participants					

⁴³⁵ e.g. “International Financial Reporting Standards (IFRS)”

⁴³⁶ e.g. “COSO” system.

5. The organization has adopted clear rules for conflict of interest ⁴³⁷					
6. The organization's decisions can be contested through clearly defined internal dispute resolution mechanisms					
7. The composition of the Disciplinary Board mandates individuals not affiliated with the work of other bodies in the organization					

⁴³⁷ Provided a decision/act/bylaw.

8. The organization has a structure in place to provide legal aid or <i>pro bono</i> counsel for natural entities					
9. The ToR of the Disciplinary Board give rights for public hearings					
10. The ToR of the Disciplinary Board sanctions appeal and two-instance proceedings					
11. The Statute of the organization sanctions arbitration proceedings as the final domestic sporting instance					

12. The Arbitration has means in place to provide legal aid or <i>pro bono</i> counsel for natural entities					
13. The arbitration proceedings provide the possibility for parties to choose arbitrators from a list of arbitrators					
14. The organization has adopted international binding norms and standards (e.g. Olympic Charter, IOC Code of Ethics, Olympic Movement Code on the Prevention of the Manipulation					

of Competitions, WADA Code, etc.)					
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4. Social credibility

	Yes	No	Availability on the official e-address Yes/No	Remark	Score
1. The organization allocates specific resources for the development of mass sport (along with grass-roots activities)					
2. The organization has a well- defined social responsibility					

strategy/ action plan in place ⁴³⁸					
3. The organization has a transparent redistribution policy and mechanisms to its internal stakeholders ⁴³⁹					
4. The organization has adopted an environmental management system for its activities ⁴⁴⁰					
5. The organization implements licensing procedures stipulated by the national legislation ⁴⁴¹					

⁴³⁸ e.g. ISO 26000.

⁴³⁹ Provided a decision/act/bylaw.

⁴⁴⁰ e.g. LNT principles; EMAS; ISO 14001.

⁴⁴¹ Provided a decision/act/bylaw.

6. Activities of the organization are accessible to all					
7. The organization has a dual career system in place ⁴⁴²					
8. The organization regularly conducts seminars for athletes regarding their life/career after sport ⁴⁴³					
9. The organization regularly conducts workshops for athletes' entourage with special					

⁴⁴² Provided a copy of Act/Decision/Strategy/Action plan.

⁴⁴³ Provided a copy of Act/Decision/Strategy/Action plan.

emphasis on parents					
10. The organization has health and safety measures in place for sport participants ⁴⁴⁴					
11. The organization has an adequate insurance policy for sport participants ⁴⁴⁵					

Appendix 2: Athlete Invitation and Consent Form

Thank you for agreeing to participate in the study examining the institutional position of athletes in Montenegro's Sport Movement. We would like to proceed with gathering basic information from you before we begin our discussion. Please fill out the questions to follow. Upon completion of the form, please return it to the focus group moderator.

⁴⁴⁴ Provided a decision/act/bylaw.

⁴⁴⁵ Provided a decision/act/bylaw.

I want to assure you that your privacy is fully respected. We will make sure that your personal information is kept private. Only fictional names will be used to represent you in the documents of the study. When the results are published in the dissertation, no real names will be used. You can discontinue participation at any time during the focus group without penalty. All the information shared today is considered private and should not be shared outside the context of this focus group discussion.

1. Name (last, first) _____

2. Age (years) _____

3. Sport/ Team _____

4. Number of years playing sport _____

4a. Number of years playing for current team _____

5. Age first began playing sports _____

6. Other sports _____

I understand my rights as a participant in this study. I agree to participate in the focus group discussion on the institutional position of athletes in Montenegro's Sport Movement.

Date/Name (Print)

Signature

Appendix 3: Focus group scripts

Semi-Structured Focus Group Guide

Pre-Interview Procedures Check List:

- Welcome participants as they arrive, thank them for taking part in study.
- As participants check in, distribute **Athlete Invitation and Consent Form** and have

participants fill it out. Reconfirm that participation is voluntary and participants may skip any question and terminate participation in the focus group at any time.

- Go over consent form with participants; answer any questions/concerns.
- Reconfirm confidentiality of the focus group.
- Obtain informed consent by participants' signatures.
- Go over ground rules for focus group (respecting others' views; civility, etc.)
- Point out location of restrooms.
- Confirm permission to record from each participant.
- Check audio recording functionality.
- Ask participants if they have any further questions/concerns before beginning interview.

INTRODUCTION SCRIPT (10-15 minutes):

How is everyone doing/feeling? I want to assure you that your privacy is respected. We will make sure that your personal information is kept private to the full extent of the law. Only unique participant identification numbers or fictitious names will be used to represent you in the study documents. When results are published, no real names will be used, and other potentially identifying information will be edited out completely. You can discontinue participation at any time during the focus group without penalty. All the information shared today should be respected as private information and should not be shared outside the context of this focus group discussion.

Today we will have a discussion on institutional position of athletes in Montenegro's Sport Movement. The results from the desk research and questionnaires by the NSFs show that athletes are misrepresented in governance bodies of the NSFs. Moreover, in consultative manner, there is no action or activity aimed at involving athletes in policy-planning and decision-making.

The overall goal is to create an adequate representation of athletes in the NSF governing bodies. In order to succeed in this attempt, it is important to hear your experiences and positions on this matter.

Everyone's input in this room is important. By the end of our discussion, we hope to better understand what you know about your position in the sport you represent. The knowledge that you have will serve to assist in constructing and offering help to develop programs and to create policies

to improve and advance women's sport. I thank you in advance for your willingness to participate and for your input. There are no right or wrong answers to what we discuss today.

General question:

- Participants to introduce themselves briefly with first names only and sport in which they participate.

1. (15 minutes) How each athlete got involved in the given sport

Additional question: How much were institutions/organizations such as their school or club, influential in encouraging/practicing a specific sport?

2. (20 minutes) How athletes are involved (or represent) in governing structures?

Additional question 1: Athletes were asked about their involvement in executive or supervisory boards.

Additional question 2: Athletes were asked about their involvement in the policy process.

3. (20 minutes) Athletes were first introduced to the administrative and organizational procedures/arrangements in the Sport Movement and asked about their experiences.

Additional question 1: Athletes were asked about health protection (including insurance) policies.

Additional question 2: Athletes were asked about economic (labor) rights.

Additional question 3: Athletes were asked about the fight against doping/match-fixing policies.

4. (20 minutes) Athletes were asked about the dispute resolution and control mechanisms

Additional question 1: Athletes were asked about procedures (and experiences) regarding disciplinary or arbitration proceedings.

Additional question 2: What could be done to eliminate obstacles?

5. (20 minutes) Athletes were asked to provide advice or recommendations how to improve the institutional position of athletes in NSFs.