

COMPARATIVE POLICY CONCERNING THE BALANCE BETWEEN SPORTS AUTONOMY AND THE RULE OF LAW WITHIN PEOPLE'S REPUBLIC OF CHINA AND WESTERN COUNTRIES

Lin BiBing¹

Bangkokthonburi University
Thailand¹

Email: kramonporn@hotmail.com¹

Received: January 31, 2023; **Revised:** April 5, 2023; **Accepted:** May 8, 2023

Abstract

This research is the study of comparative policy concerning the balance between sports autonomy and the rule of law within people's republic of China and western country. The objectives of this study were : 1) To explore the uniqueness of the rule of law in sports, and think about the relationship between it and the professionalism of sports autonomy; 2) To discuss the conflicts and contradictions between the sports autonomy system of sports organizations and external laws, as well as how to balance and coordinate them, and kind of relationships that exists between sports autonomy and state power; and 3) To find a way for the coordinated development of China's sports autonomy and the rule of law, and reconstruct the sports regulation model in China. This study is qualitative based research, using an interview as the research instrument for the data collection, by focusing on the United States' involvement in FIFA corruption as the topic, which discusses about the anti-corruption and regulation of monopolistic international sports organizations, especially how to strengthen the constraints of external forces (including judicial intervention) on international sports organizations. Therefore, to realize the compliance of sports organizations the discussion involved three major issues: 1. the legitimacy of the criminal investigation of corruption by FIFA officials in the United States; 2. self-management of monopolistic international sports organizations, by issuing the good governance; and 3. The external supervision mechanism of international sports organizations (including external legal mechanisms). The interview collected the opinions of well-known sports experts on the legitimacy of the United States' actions in the recent FIFA official corruption case, and their thoughts on the issues of autonomy and the rule of law in international sports

organizations. The data analysis of the good governance of sports organizations is a contemporary trend of self-management of sports organizations. However, the autonomy of sports organizations may sometimes fail, so this kind of autonomy should always be subject to external supervision. The most effective external supervision is legal supervision. The results of the research found that; sports autonomy is carried out within the legal framework, but it also excludes the national rule of law to a certain extent. The interaction between them is mainly manifested in conflict and collaboration. Disputes cannot be completely resolved by relying on the power of sports itself, and when a fair ruling is provided for the parties, the intervention of appropriate judicial procedures is required. Introduction of autonomy in China's competitive sports industry and establish a harmonious coexistence relationship with the state's public power. Clarify the autonomous system of competitive sports management, and establish a reasonable and coordinated internal structure of the autonomous body.

Keyword: Rule autonomy, Sports autonomy rights, People's republic of China

Introduction

On July 1, 2009, the International Skating Union (ISU) found German athlete Pechstein to use blood doping and banned her for two years. Since Pechstein refused to accept the punishment, she successively filed nearly 10 arbitration or litigation cases with the International Court of Arbitration for Sport (CAS), the Swiss Federal Supreme Court, the CAS Special Arbitration Institute for the Vancouver Winter Olympics, the German Court, and the European Court of Human Rights. Nearly 10 years. On November 25, 2009, the CAS arbitral tribunal made a decision upholding the ISU suspension. Pechstein continued his appeal to the Swiss Federal Supreme Court on 7 December 2009 to set aside the CAS arbitral award. On February 10, 2010, the Swiss Federal Supreme Court made a final decision, rejecting Pechstein's appeal. On February 15, 2010, with the German National Olympic Committee and the International Olympic Committee as the respondents, Pechstein filed an arbitration application with the CAS Special Arbitration Institution of the Vancouver Winter Olympics, seeking to participate in the 2010 Vancouver Winter Olympics.

On February 28, 2020, the International Court of Arbitration for Sport (CAS) announced the ruling on the “World Anti-Doping Agency (WADA) v. Chinese swimmer Sun Yang and the FINA case (FINA)”, announcing that Sun Yang had 8-year suspension for failing to fully cooperate with anti-doping inspections and failing to prove why the test sample container was breached. The cause of this incident was that on September 4, 2018, Sun Yang received an out-of-competition inspection by the International Doping Control Management Office at the hotel he was staying at, but he himself questioned the other party's inspection qualifications, so he There was a dispute between the two sides, which led to the failure to complete the doping test. Both sides insisted on their own opinions. Sun Yang insisted that the other party was not qualified for the inspection and blatantly insulted him, but the other party believed that Sun Yang was closely related to doping. On January 3, 2019, FINA made an arbitration decision. They ensured that Sun Yang had no doping violations due to insufficient evidence. However, the World Anti-Doping Agency did not recognize this result. The World Anti-Doping Agency Sun Yang and FINA were directly prosecuted, and a hearing was held in Montreux, Switzerland on November 15, 2019. The International Court of Arbitration for Sport (CAS) ruled on February 28, 2020 that Sun Yang was suspended for 8 years.

The above-mentioned Pechstein case, Sun Yang case and similar cases show that the influence of the strong position of sports organizations on the conclusion of the arbitration agreement of the International Court of Arbitration for Sport and the neutrality of arbitration has always been the cause of athletes' accusation of the arbitration system of the International Court of Arbitration for Sport and the arbitration system of various countries. The focus of judicial intervention in arbitration. It is also worth noting that if the courts of various countries allow their athletes to bring their cases to court and deny the implementation of the sports arbitration rules by invoking domestic laws, it might lead to improper judicial intervention and affect the global uniformity of sports rules and refereeing standards, sex, negatively impacting the development of international sports.

In the field of international sports, the main problem lies in the conflict between the autonomy of international sports organizations and the rule of law in a country. In China, the main problem lies in judicial intervention in sports disputes and the autonomy of sports organizations themselves. In China, the

types of sports disputes mainly include sports disputes between athletes and professional sports leagues, and sports disputes between clubs and professional sports leagues. Professional sports league organizations in China mainly appear in the form of sports associations. According to the “Sports Law of the People's Republic of China”, “disputes arising in competitive sports activities shall be mediated and arbitrated by a sports arbitration institution”, but China has not established a sports arbitration institution and a sports arbitration system, resulting in some sports disputes that cannot be sought Arbitration is resolved, but cannot be resolved through judicial means; while the internal documents of the Chinese Sports Professional League, such as the Chinese Football Association Articles of Association and the rules of the Chinese Football Association Arbitration Committee, stipulate that “disputes shall not be brought to court” and “the final decision” principle, and There is a conflict in the legal principles of the protection of the right to appeal, but the arbitration committee established by the sports association is not a sports arbitration institution stipulated in the Sports Law of the People's Republic of China, nor is it an arbitration institution stipulated in the Arbitration Law of the People's Republic of China. Therefore, judicial intervention in China Sports disputes is relatively weak, and there is a lack of professional sports arbitration institutions. A very prominent issue is how to provide relief when the rights and interests of athletes are damaged.

Today, with the promotion of sports by the modern Olympic movement, the spirit of peace embodied in the Olympic Agreement is still pursued by the international community. Catalyst for exchange and cooperation. With the vigorous development of sports, the characteristics of internationality and consistency of rules of sports have also promoted the evolution of the international sports governance model. An autonomous model of self-rule, self-management, and self-resolving disputes. Sports autonomy is in line with the characteristics and development laws of sports, and is conducive to embodying the professional, recreational and technical characteristics of sports, and is conducive to the realization of the spirit of sportsmanship in fair competition.

However, sports are not an independent kingdom isolated from the outside world, and its participants have an inevitable connection with the outside world. With the development of the commercialization and professionalization of sports, the parties' demands for basic rights have attracted more and more

attention in the sports field. At the same time, sports competitions have become an important stage for countries to show their strengths, and the results of sports competitions have been paid more and more attention. Under the double attack of the basic rights of athletes and national interests, whether the realization of pure sports justice can truly reflect the spirit of fair competition in sports has been questioned. The regulation of sports behavior by external laws is based on the legal perspective, examining the sports justice realized under the rules of autonomy, and judging whether the sports autonomy model satisfies legal justice, so as to force the sports autonomy to make necessary legal adjustments.

Facing the challenges faced by sports autonomy, through the legal adjustment of sports autonomy, the countermeasures to achieve the coordination of legal justice and sports justice. At the same time, in the process of adjusting the rules of sports autonomy according to the standards of legal justice, it is necessary to grasp the boundaries of sports autonomy and respect the uniqueness of sports justice. The autonomy of sports management. The legal adjustment of sports autonomy rules should still be carried out within the existing international sports management system, and gradually realize the mutual coordination between the legalization of sports and sports autonomy. The legalization of sports autonomy is not only a way to realize sports justice and legal justice, but also a path for the gradual formation and development of the international sports legal system.

Research Objectives

1. To explore the uniqueness of the rule of law in sports, and think about the relationship between it and the professionalism of sports autonomy.
2. To discuss the contradictions between the sports autonomy system of sports organizations and external laws, as well as how to balance and coordinate them, and the relationship existing between sports autonomy and state power.
3. To find a way for the coordinated development between China's sports autonomy and the rule of law, and reconstruction of the sports regulation model in China.

Literature Reviews

In China's political and economic situation, the connotation of talent was mutually confirmed and formed by the definition of the academic circles from the perspective of management and the “political” definition of talent standards in the national talent policy documents. The academic community had continuously expanded the definition of talent. From the perspective of talent characteristics, contribution and performance were the largest common divisor of talent. From the perspective of national talent policy documents, the connotation of talent had roughly experienced five stages: the first stage was before the founding of China, and talent was about equal to “cadres”; The second stage was from the founding of the people's Republic of China to the reform and opening up. Talents were gradually separated from the connotation of cadres. Talents were called “intellectuals”; In the third stage, from reform and opening up to 2003, talents referred to "people with technical secondary school education or above and professional and technical titles at or above the department level", emphasizing the education and technical ability of talents; The fourth stage was the decision of the CPC Central Committee and the State Council on further strengthening talent work in 2003, which stated that "as long as they had certain knowledge and skills, could carry out creative work, made positive contributions to promoting socialist material, political and spiritual civilization, and the great cause of building socialism with Chinese characteristics, they were all talents needed by the party and the state.

High level talents were those who held high-level positions and were engaged in important work in important departments and core positions. Some people in the academic circles had discussed the characteristics of high-level talents: professional characteristics, input characteristics, output characteristics, labor consumption characteristics, and individual reproduction characteristics of high-level talents. High level talents were rare talents that could have a significant impact on the economy, politics and culture of the country, region or industry and form creative achievements (Zhang Qian, 2010). High level talents referred to those who had deep attainments and high prestige in a certain discipline or professional field, work in important positions, could undertake important tasks and played a greater role in economic and social development and scientific and technological innovation. In addition to the important characteristics of high-level talents such as strong ability and high quality, it further proposes that high-end talents had potential, that was, although some talent groups had made corresponding technical achievements temporarily, they had great potential in

some fields, and these talents should also be included in the research scope of high-level talent teams (Ni Haidong, Yang Xiaobo, 2014). At present, there was no unified definition of high-level talents in the academic circles. However, compared with ordinary talents, high-level talents were high-end leading talents with strong business ability, scientific research level and strategic vision in certain fields and industries (Zheng Dailiang, 2012).

Research Methodology

This research is qualitative based research, and the research instruments used in this study is an in-depth interview as follows:

After defining the concept: After defining the concept, characteristics and significance of sports autonomy, starting from the autonomy of international sports organizations and the autonomy of international sports arbitration, conduct in-depth research on sports autonomy in the global field. 2. Population and sampling 3. The data collection 4. The data analysis 5. The data In-depth-analysis study to realize the balanced and coordinated development of sports autonomy and the rule of law in China, and find a sports governance road suitable for the development of China's national conditions, and reconstruct the sports regulation model in China.

Results

Objective 1: There is a conflict between sports autonomy and the country's rule of law. With the globalization of sports, most countries have recognized the particularity of sports, and are open to sports, which leads to the contradiction between the country's legal policy and the rules of sports autonomy. The conflict manifests itself very differently in China and in the West:

Western Countries: Sports autonomy excludes state judicial intervention. (1) Exclusivity clauses of sports organization regulations. Self-governing organizations have the exclusive power to resolve disputes over internal legal relations, that is, disputes over internal self-governing legal relations are generally resolved within the self-governing organization system

without resorting to the state judicial organs. Judging from the articles of association of sports organizations, many articles of association of sports organizations contain clauses that exclude judicial intervention. For example, the FIFA Statutes stipulate that an association shall ensure that the regulations are implemented within the association, imposing obligations on its members if necessary. The Association will impose sanctions on any party that fails to comply with its obligations and will ensure that any appeal against these sanctions is referred to arbitration, not a national court. Article 61 of the Olympic Charter states: "Any disputes arising out of or in connection with the Olympic Games must be submitted to CAS arbitration in accordance with the CAS Arbitration Regulations."

The exclusivity clauses of the regulations of these sports organizations directly exclude the intervention of the national judiciary, and a consensus is reached. Sports organizations have their own "quasi-judicial systems". As the ADR dispute resolution mechanism has been widely recognized in sports dispute resolution, various countries have also established national-level sports dispute resolution ADR mechanisms, which exclude the direct intervention of the national judiciary in sports disputes and accept the jurisdiction of CAS. Such as the Canadian Sports Dispute Resolution Center (SDRCC), the American Arbitration Association (AAA) Sports Arbitration Panel, the British Sports Dispute Resolution Commission (SDRP), the French Court of Arbitration for Sports (SDRCC) and so on. Through the continuous operation of this "quasi-judicial system", sports organizations have gradually strengthened the autonomy of the "sports kingdom".

There are differences in the adjustment of some sports behaviors between the Sports Autonomy Law and the national laws. The normative force of sports autonomy law is based on contracts and organizations, and its effectiveness comes from the recognition of members. The Sports Autonomy Law is a selective norm. The articles of association of sports associations or associations only apply to those who voluntarily accept the jurisdiction of the articles of association. Once members withdraw from the association or association, the articles of association do not apply to them. Sports autonomy law, especially global sports law at the supranational level, will inevitably conflict when faced with different legal systems and laws of different countries. According to the Sports Autonomy Law, doping violations are a matter of sports

discipline, while doping according to the laws of some countries is punishable by criminal law.

The application of national laws in sports activities has certain particularities. The particularity of sports often requires relevant laws to be cautious about the involvement of sports. The application of national laws in sports activities has formed certain particularities. In judicial practice, the particularity of sports promotes the formation of new legal principles and jurisprudence. For example, sports activities often have a high risk of injury, and this high risk has gradually formed the principle of "risk taking" and legal principles through judicial practice.

Challenges to sports autonomy by national courts

The attitude of the German judiciary towards sports associations is a typical example. Although most sports associations in Germany stipulate that after the final ruling, they shall not reopen the lawsuit to other dispute resolution institutions, and some even explicitly stipulate that no lawsuit shall be brought to the court; however, the German court believes that the internal ruling of the association is difficult to reach the neutral standard. It clearly states: "The articles of association of sports associations cannot exclude the jurisdiction of the court, and the provisions prohibiting the parties from suing the court are invalid.

In China: Competitive sports government power is obviously offside or absent. China's "Constitution" stipulates that the State Council leads and manages sports work; China's "Sports Law" stipulates that the national sports work is in charge of the State Council's sports administrative department; specifically, the national individual sports competition work related to the national sports is responsible for the management of the corresponding sports. The matters originally under the jurisdiction of the government are directly handed over to the society through legal authorization or other legal methods. However, the state administrative power has always been lingering around competitive sports, and there have been conflicts to varying degrees with the development laws of competitive sports and legal regulations:

- 1) The government intervenes too much in sports autonomous organizations, resulting in the lack of relative independence of some sports

autonomous organizations. 2) The government authorizes and delegates power to sports autonomous organizations, but the power and responsibilities are not clear, resulting in a serious lack of government power: For disputes or disputes, in reality, there is often no means of appealing within the corresponding sports social organization system. Set up more specific and clear channels for sports arbitration or legal proceedings that reflect external justice. This has created a powerful excuse that can be shied away from each other, especially for the issue of responsibility sharing between the sports administrative department and the sports autonomous organization in the case of cross-over of power. This lack of responsibility for public power is a manifestation of incomplete laws and is not conducive to the formation of a fair sports competition environment.

The social autonomy authority of competitive sports is unclear.

1) The property rights of market-oriented for-profit autonomous organizations are not clear. 2) The phenomenon of having autonomy but not having autonomy is serious.

The profit-making nature and scope of activities of competitive sports social organizations are not clear.

Objective 2 and 3: There is a cooperative relationship between sports autonomy and the national rule of law. National constitutional basis for sports autonomy: The national constitution provides the basis for sports autonomy. Article 124 of the German Weimar Constitution of 1919 stipulates that the German people have: "The right to organized associations and corporations, and this right shall not be restricted by preventive means." Article 9 of the Basic Law of the Federal Republic of Germany Provisions: "All Germans have the right to form associations and associations." Article 18 of the Constitution of the Italian Republic stipulates that all citizens have the right to freely associate without permission. Article 16 of the Spanish Constitution states: "The Spanish people are free to assemble and associate in accordance with the lawful purposes and in accordance with the provisions of the law." Brazil's Federal Constitution states: "The organization and operation of sports associations and sports entities are autonomous and subject to The Constitution guarantees that the government is not allowed to interfere in sports." The "Constitution of the People's Republic of China" also clearly stipulates citizens' right to free association. The association rights and association rights in these constitutions are the fundamental basis for the legitimacy of sports autonomy.

The civil and commercial laws of various countries provide the legal basis for sports autonomy. The German Civil Law Enforcement Act stipulates: “The “laws” referred to in the “Civil Law” and this Enforcement Law refer to all legal norms. According to general theory and practice, their formation channels include laws, administrative regulations, autonomous regulations and other statutes, as well as customary laws and judges. The continuation of the law.” The principle of sports autonomy is enshrined in Article 9 of the German Basic Law, which clearly stipulates that national justice should respect the right to autonomy in the field of sports. The Italian Civil Code stipulates: “The legal sources of civil law include laws, regulations, industrial rules and practices, and industrial rules refer to industrial regulations, collective economic agreements, collective labor contracts and judgments made by labor courts concerning collective disputes, but shall not be related to collective disputes. Legally mandatory norms and regulations conflict. Within the scope of adjustment of laws and regulations, customary practices take effect when the laws and regulations are cited, and the effect of industry rules takes precedence over customary practices.” The “Japanese Civil Code” stipulates that there are Customs in laws and regulations that are not related to public order, if it can be determined that the party involved in the act intends to follow the custom, the custom shall be followed. Habits that do not violate public order and good customs are limited to those recognized by law or those not stipulated by relevant laws and regulations, and have the same effect as law. The Swiss Civil Code stipulates: “Any law shall be interpreted in terms of the text, and the law shall have corresponding provisions to apply the law; if there is no corresponding provision in the law, the judge shall follow the custom; when there is no custom, the judge shall judge according to the rules proposed by himself as the legislator. Here In such cases, judges shall rely on theories and practices established through practice.” Article 48 of China's “Sports Law” stipulates: “Anyone who engages in falsification in competitive sports and other acts that violate discipline and sports rules shall be granted by sports social groups in accordance with the regulations. Punishment”; in Article 49, it is stipulated: “Where prohibited drugs and methods are used in sports, the sports social organization shall impose penalties in accordance with the regulations.”

Recognition of sports autonomy by international public powers. The 69th General Assembly of the United Nations in New York in 2014 adopted a

resolution that stated: “The Assembly supports the independence and autonomy of sport and the IOC's mission to lead the Olympic Movement.” IOC President Thomas Bach pointed out: “Sport is the only field in which human beings can truly realize universal law, and to apply this universal law around the world, sports have to assume the responsibility of self-government, and politics must respect this kind of sports. Autonomy.” The European Commission White Paper on Sport, adopted in Brussels in 2007, recognized the particularity of sport. The white paper believes that the particularity of European sports mainly includes two aspects:

1. The specificity of sports activities and sports rules. For example, separate games for men and women, restrictions on the number of participants, ensuring uncertainty about the outcome of the game and maintaining a balance of strength between participating clubs.

2. The particularity of the organizational structure. Including respect for sports autonomy and the diversity of sports institutions, pyramid competition structure from grassroots sports to elite sports, organizational solidarity mechanism between different operators at different levels, the establishment of sports institutions on the basis of the state, and only one sports federation for each project the rules.

New Knowledge from the Research

The Knowledge obtained from the study are as follows:

1. Sports autonomy is carried out within the legal framework, but it also excludes the national rule of law to a certain extent. The interaction between them is mainly manifested in conflict and collaboration.

2. Disputes cannot be completely resolved by relying on the power of sports itself, and when a fair ruling is provided for the parties, the intervention of appropriate judicial procedures is required.

3. The principle of judicial finality shall be established in the settlement of sports disputes.

4. Judicial intervention in sports disputes requires certain conditions: 1) Legally arguable. 2) The principle of exception to technical matters 3) Exhausted internal remedies 4) Legally valid arbitration clause excludes jurisdiction 5) Possess territorial jurisdiction, personal jurisdiction and real jurisdiction etc.

Discussions

The Discussion on the Research Objective 1

The question worthy of further discussion is, how is the monopoly of sports organizations not conducive to the settlement of sports disputes? Is the current international arbitration system unable to provide sufficient relief for the defects of the arbitration procedure, so that the cartel law, which is a domestic compulsory law that must be bypassed? arbitration law, acting as an umbrella for athletes.

From another perspective, multiple interventions in sports arbitration awards tend to lead to different judgments on the same issue by different judicial organs, which is also a waste of judicial resources. This will not only hamper the development of international sports arbitration, but also cause international institutional concerns about sports arbitration. In order to eliminate such problems as much as possible, when countries intervene in the arbitration of the International Court of Arbitration for Sports, it is not appropriate to apply domestic laws directly to international sports disputes, and an effective international sports arbitration award should not be subject to the law of the country where one party is located. State of Judicial Review. In the application of substantive laws, it is necessary to focus on the rules of sports organizations and use them as the legal application standards for judicial review. International sports rules will replace the laws of various countries and become the main legal basis for judicial review of international sports arbitration. In procedural law, the remedies that can be provided by the arbitration law should be given priority, especially the remedies for procedural defects.

The Discussion on the Objective 2 and 3

Where is the boundary of judicial power in sports disputes? The clarification of the boundary of judicial power in sports disputes is not only related to the relationship between the principle of the rule of law and the principle of sports autonomy in the field of sports, but also to the fair, orderly and timely resolution of disputes in the field of sports, as well as the protection of the power of sports organizations and the protection of the rights of sports people. To Relief the crack of this major theoretical and practical problem, several issues need to be addressed:

1) The concept of sports disputes must be refined to distinguish sports legal disputes from sports non-legal disputes, and determine the scope of sports autonomy and judicial power according to sports disputes of different natures.

2) Special analysis should be made on the relationship between the principle of sports autonomy and the principle of judicial finality, so as to make a theoretical explanation of the boundaries of judicial power in sports disputes.

3) The general conditions for judicial intervention in sports disputes should be studied and put forward, so as to provide a specific path for solving this major theoretical and practical problem. The clarification of the boundary of judicial power in sports disputes should start from the re-understanding of the concept of sports disputes.

Conclusions

With the increasing complexity of the global sports field, the types of sports disputes have also expanded to involve civil law, commercial law, criminal law and other fields, and the complexity of many disputes has exceeded the scope of sports. An effective solution to the problem of “ball” requires an organic combination of public roles (police, judiciary, education system, etc.) and private roles (athletes, clubs, families, social networks, bookmakers, etc.). Therefore, in on the basis of respecting sports autonomy, proper introduction of justice can make some special sports disputes (sports illegal acts) better resolved.

The relationship between the principle of the rule of law and the principle of sports autonomy is not a simple one, and they each have their own scope of application. The key to correctly grasp the judicial intervention in sports disputes is to distinguish legal disputes from non-legal disputes. For sports legal disputes, the principle of the rule of law should be followed, and judicial finality should be implemented. However, the judiciary should still respect sports autonomy and intervene only after exhausting the exhaustion of local remedies. In the face of sports non-legal disputes, sports autonomy should be implemented, and the judiciary should stop.

References

- Adam Lewis, and Jonathan Taylor (2003), **Sport: Law and Practice**. Butterworths, Press.
- Ni Haidong, Yang Xiaobo (2014), **The court of arbitration for sport: Law-making and the question of independence**. Stmpfli Verlag Press.
- Borja G. (2013), **Keeping private governance private: Is FIFA blackmailing national governments** 13th EUSA Biennial Conference. Maryland: Balti Press.
- Zhang Qian, (2010). **Environmental change and human activities during the 20th century reconstructed from the sediment of Xingyun Lake, Yunnan Province, China**. Quaternary International, 212(1), 14-20.
- Dailiang, Zheng, & Shuhua, Z. (2012). **Status quo, problems, and countermeasures of Chinese high-level talents policy**. Science Research Management, 33 (9), 130.