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Normative Pluralism and Sporting Integrity

Cem Abanazir 

Manchester Law School, Manchester Metropolitan University, Manchester, UK

ABSTRACT

Official documents, such as the World Anti-Doping Code (WADC), argue that sport can be deemed a homogenous and unitary concept. Even where different sports have varying characteristics, the homogenous view of a given sport ('a sport' or 'the sport') persists. The WADC, international and national sport associations aim to protect the spirit of (the) sport. In this picture, the intersection of sporting integrity and legal processes occupies a vital place. The article will posit that, from a legal perspective sport is heterogeneous due to its governance, regulation, adjudication, and enforcement structures. International and national associations, such as sport federations and leagues, have separate normative orders. These normative orders lead to differences in ensuring sporting integrity. A plural normative environment is inherent in sport; thus, we need to deal with it. The article will conclude that although harmonising norms and interpretations related to sporting integrity through national and global institutions may be acceptable, these must be achieved by promoting good governance and human rights.

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Introduction

At first sight, the term sporting integrity seems obvious. Ensuring fair play, having a level playing field, and generally, doing the right thing are its sinews. Yet Gardiner, Parry, and Robinson (2017) have shown that the term can have inter-connected connotations, such as inherent integrity of sport, organisational integrity, personal integrity and procedural integrity. Moreover, sporting integrity has both moral and legal dimensions. It is based on the right/wrong binary and the judging of conduct in view of values and norms (Kihl 2020, 397). In that regard, sport parallels law (in its broader sense), where natural and legal persons must consider the do/don't binary. As in the Fundamental Principles of Olympism in the Olympic Charter (2023 Edition), values and moral outlooks can be codified, leading to philosophical analysis (Reid 2020). Accordingly, the governance and ethical failures in and through sport are more visible and easier to evince, and thus, in line with the 'juridification' of sport (Foster 2019, 1; Parrish 2003, 6 and 8), legal tools have become more pronounced in addressing them.

CONTACT Cem Abanazir  C.Abanazir@mmu.ac.uk  Manchester Law School, Manchester Metropolitan University, Sandra Burslem Building, Lower Ormond Street, Manchester M15 6BH, UK

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As seen in the global network of individuals and institutions in the so-called ‘Bochum case’ concerning match-fixing in football, the dangers to sporting integrity are globalised. Accordingly, the universalistic terms ‘the sport’, ‘a sport’, or ‘the spirit of sport’ or ‘the spirit of the sport’ provide a defence against these dangers. Similarly, the World Anti-Doping Code (WADC), a global document, claims that ‘Anti-doping programs are founded on the intrinsic value of sport. This intrinsic value is often called “the spirit of sport”’. The spirit of sport, through its emphasis on ‘ethics, fair play and honesty’, among others, entails ‘the integrity of a sport’ (WADC 2021, 13). FIBA, the international federation recognised by the International Olympic Committee (IOC), has reproduced this argument in its Anti-Doping rules. The documents pinpoint the respect for ‘rules, other competitors, fair competition, a level playing field, and the value of clean sport’ (FIBA Internal Regulations—Book 4 Anti-Doping, 3–4). Mirroring the WADC, the IOC (n.d.) reads, ‘The use of doping substances or methods to enhance performance is fundamentally wrong and is detrimental to the spirit of sport’.

It must be emphasised that the universalistic conception of sport and its spirit is not limited to doping. Decision-making bodies of sport associations, along with the Court of Arbitration for Sport (CAS), have also justified non-doping decisions through a monolithic understanding of sport and its spirit.¹ For instance, skier Vanessa Vanakorn (aka Vanessa Mae) was banned for four years by the *Fédération Internationale de Ski* (FIS) due to allegations of participating in the Winter Olympic Games via sham qualification competitions and times. The international sport federation’s decisions emphasised that ‘[taking] steps to violate the spirit of the sport and the FIS rules solely for her own personal benefit with total and complete disregard for the integrity of the sport’ is sanctionable (CAS 2014/A/3832 & 3833, para 26). A basketball team’s not playing to the best of its abilities was considered a ‘gross offense to the spirit of sport’ and resulted in sanctions for the athletes and team staff (CAS 2019/A/6636, para 147). The spirit of sport argument can also flow through justifications of qualification-related CAS awards. One such award also shows the relationship between sporting integrity and law. Evincing the above-mentioned parallel between the do/don’t and right/wrong binaries, the CAS panel asserted that the participation of an athlete who did not have the right to do so would ‘have been both legally wrong and contrary to the spirit of sport’ (CAS 2012/A/2845, para 29).

As Reid (2020), and Loland and McNamee (2019) have summarised, there is an ongoing debate on the spirit of sport, and not every commentator agrees with the term, its scope, or its justifications. Without directly addressing the issues in the philosophical debate but contributing to it with a legal viewpoint, this article argues that sporting integrity should be rethought by considering the multi-tiered and pluralistic structures of sport governance and regulation. From a legal perspective, sporting integrity cannot be monolithic. Different sport associations enjoying rule- and decision-making powers within the same sport, competition, and subject may have different views on what sport is and how sporting integrity can be ensured. One might argue that the universalistic conception of a sport and the sport, as well as the spirit of sport are moral ideals, while juridical studies inform this article. As pointed out above, these moral ideals are codified. They undergird the official documents, along with the decisions and awards of legal bodies. In cases where the conduct is on the don’t side of the binary, sport associations (and sometimes states) sanction persons through the erroneous justification of a monolithic sport. Therefore, changing our view of the current situation in sporting integrity and the

heterogeneous nature of sport is imperative. This article will argue that we must consider the different structures and the resulting views of sporting integrity. The heterogeneity in sport governance structures, norms, and decision-making bodies can and do result in differing views of sport and sporting integrity. A monolithic view of sport ignores the legal and ethical differences that can and do occur within the same organisational structure. Appraising the status quo is the first step to rectifying the possible harms. The next step consists of finding ways to address the issues. Without aiming to present the silver bullet (so to speak), this article will explore the possible paths to overcome problems stemming from normative pluralism. In the process, it will only give a critical preliminary account of the possible scenarios.

That view aligns with Gardiner, Parry, and Robinson's (2017) theorisation of the organisational integrity of sport where 'any organisation, qua organisation, is situated in local, regional or global contexts where it has significant relationships, with related narratives' (18–19). Kihl (2023) also defends a pluralistic view of sporting integrity due to the complexity of the structures (29–30). Although Kihl's scope is national, as the next section will show, the complexity of global governance and regulatory structures requires adopting a pluralistic view. Furthermore, a pluralistic view coincides with that of McFee (2015, 2011), whose 'institutional theory of sport' and 'particularism' allow a more flexible approach to sport. Here, what counts as sport differs from context to context. The institutions are normative, allowing and restricting conduct within the confines of *that* sport.² The authoritative bodies codify the contours of sport and sanction those who violate them. Therefore, whenever a national, continental, and global sport association (an authoritative body) views certain practices or conduct as unacceptable for sporting integrity, it will sanction the perpetrators. The crux is that sport associations introduce and enforce their conceptions of sport and sporting integrity, which differ from similar associations.

Another work that indirectly supports the 'legal turn' (so to speak) is Archer's (2016) Coherence Account of Sporting Integrity, which appeared in the pages of this journal. While this article will not engage with the account or its justifications, two crucial points render it a valuable stepping stone. Archer introduces three examples from several sports with different sport competitions, organisers, and rule-makers. They show that badminton, cycling, and football are organised in a polycentric legal and governance landscape.³ This article will use badminton to support its argument for the heterogeneity of sporting integrity. Second, except in one instance, Archer's examples consist of the off-field decisions of the bodies that (co-)govern and monitor competitions.⁴ Contrary to the literature's focus on on-field decisions, rule interpretation goes beyond the umpires or judges or the 'hard cases' they must decide on (McFee 2011; Russell 1999, 2011, 2015). These examples are essential for rethinking sporting integrity because they demonstrate that sport associations can set the game rules and everything linked to them. They also prove that sport associations can decide on contentious issues per sporting norms. Moving the discussion off the field for sporting integrity purposes is relevant for another reason. Off-field decisions about sporting integrity can affect on-field play. Doping offences can lead to the loss of medals for individuals and forfeiture of matches for teams (WADC 2021, arts 9, 10 and 11). Points deduction and relegation to a lower division redesignate the outcomes of a whole season. Essentially, Archer (2016) goes beyond an account of sporting integrity that solely deals with the use of skill on the field of play,

expanding the discussion to an account including the off-field governance of sport (Kihl 2020, 398). This is why juridification and the resulting importance of legal viewpoints are the key issues.

The article will consist of four sections. The following section will evaluate the ‘the sport’ and ‘a sport’ aspects of sporting integrity. It will assert that the prevalence of multiple governing bodies should dissuade one from having a homogenous view of sport. The second section will discuss doping in the National Basketball Association (NBA) and international basketball competitions. The third section will discuss two cases and test them against a background of pluralism. Finally, the article will emphasise that even though, in some instances, the views of different associations might align, since sport is not legally homogenous, there is no overarching understanding of ‘the sport’ and ‘a sport’.

Global, Continental, and National Sport

According to the sociological view of law, ‘legal pluralism’ ‘refers to the fact that the law of the state is only one of the forms of binding regulation in society, that behaviour is often subject to regulation by more than one source of rules’ (Griffiths 2006, 60). States have the power to pass laws, statutes, regulations, and decrees. They also come together to create transnational orders such as the European Union, international courts based on international conventions, and special regimes for the administration of international institutions. Moreover, ‘global administrative law’ helps govern the global administrative space—a space that does not sharply delineate the domestic and the international—through official and unofficial coming together of the states, as well as public-private partnerships and private regulators. A ‘public entity, other than a state’, governs through public law (Kingsbury 2009, 25 and 34–41). The World Anti-Doping Agency (WADA) is an example of a public-private partnership (Casini 2009, 437–440).

Nonetheless, this is only a part of the picture. The debate on what should be designated as ‘law’ and ‘legal’ notwithstanding,⁵ ‘normative heterogeneity’ (Griffiths 2006, 61–62) allows the multi-dimensional and multi-sourced regulation of conduct. Simply put, states are not the only actors with the power to regulate, adjudicate and enforce (Smits 2014). Globalisation challenges the idea that law is anchored in what Twining (2010) has called the ‘Westphalian duo’, municipal state law and public international law (507). Global, regional, and national institutions maintain social control, regulate conflicts, reaffirm expectations, regulate social relationships, coordinate behaviour, and discipline persons (natural and legal). Due to the fracturing effects of globalisation, (transnational) private normative orders, which are based on ‘self-juridification’, are at the forefront (Fischer-Lescano and Teubner 2004, 1009–1012; Teubner 1997, 11–15). In essence, non-state institutions like corporations, associations, confederations, and federations adopt norms binding on their adherents. These institutions may have different sources and bodies.

One must recognise that these orders ‘live together’, which means they could be ‘side-by-side’ or ‘on top of another’. The hierarchy or equivalence of the orders is not a given. While living together, normative orders contest, clash, or adapt to the situation (Berman 2007, 1158–1159). They also create symbiosis, subsume, avoid, or imitate each other, converge, partially integrate as well as subordinate, repress and destroy one another

(Twining 2010, 489). To summarise, normative orders may be in harmony or disharmony (Wai 2014, 36). Such harmony and disharmony can be on a regulatory, adjudicatory or enforcement level. The differentiation will guide the following two sections and their separation.

Sport is an extension of this normative landscape. Various normative orders *within* sports may have different understandings of what sport is and how sporting integrity should be ensured.⁶ To explain why this is the case and why there is more than one conception of sport we need a fuller picture.

The idea of 'association' is crucial for understanding a heterogeneous (even balkanised) sport because associations make up the better part of the sporting landscape (Van Kleef 2014, 25–29). Legal persons, such as corporations and associations, as well as natural persons, like athletes, coaches, and other persons, directly or indirectly, become members of an association or, at the very least, enter associational activities (Van Kleef 2014, 35–37). These persons' main goals are to organise and participate in events. Within their activity areas, associations organise, maintain, and monitor competitions. The relevant norms appear in the associations' constitutive documents and regulations and, as in Turkey, the municipal law (Law no. 5894; Van Kleef 2014, 29–31).

This is where the multi-tiered structure of sport, evincing normative heterogeneity, comes into the picture. International sport federations preside over monopoly-like structures where a single global federation usually dominates its members.⁷ While bound by the objectives of the relevant international sport federations, their continental counterparts organise and monitor the continent-wide organisations and draw up regulations. One step down in the hierarchy is the national associations. They have their rules and regulations, but they are members of global, and if any, continental federations. Therefore, national associations are bound by both international and, if any, continental sport federations' objectives and regulations. Affiliated/regional/county associations below the national ones conduct similar activities as delegated by national associations (The FA, Rules of the Association, Rule A4.1.1, Rule B5 and B6). The state and the national sport associations may cooperate through national umbrella organisations (Siekman and Soek 2010, 94–95 and 102). Finally, clubs have always been the sinews of national and regional associations (Szymanski and Ross 2007, 618–621), yet golf and tennis present examples of the power that athletes can wield when they join forces against the powers that be (Bramley 2006, 369; Forster 2006, 74; Szymanski and Ross 2007, 622).

To make things more complicated, clubs also come together to have more income (Millward 2017, 33). The national association-sanctioned leagues such as the English Premier League and continent-wide leagues like the EuroLeague Basketball are the leading examples of the creation of club-centred organisations. The various ladder and side steps in the form of club-created leagues still do not fully demonstrate the sporting landscape. Boxing has four international federations. The IOC used to recognise the International Boxing Association. Lastly, the presence of the US sport association rejects an all-encompassing approach to sport. The NBA and Major League Baseball (MLB) are entities established by the coming together of the teams. The leagues control their respective championships and introduce rules according to their best interests. They do not embrace the concepts of relegation and promotion (Ross and Szymanski 2002, 626–627; Szymanski and Ross 2007, 617). Breaking the mould of even the US sport associations, Major League Soccer (MLS) is a 'single entity' controlling all clubs and player contracts

within the league (Zimbalist 2006, 445). While a member of the US Soccer Federation (US Soccer Website n.d.), it is a separate and *sui generis* entity.

Sport associations enjoy regulatory, adjudicatory and enforcement powers. Backed by their quasi-monopolistic position where they can exclude teams, athletes, associations, and other persons, they affect the conduct of its direct and indirect members (Abanazir 2023, Chapter 2; Duval 2020, 277; Van Kleef 2014, 35–37). However, reflecting the many associations in sport, when they can be individuated (Twining 2010, 482–484), each sport association enjoys its separate norms and decision-making bodies, especially international federations (Duval 2013, 825–829). Accordingly, FIFA, UEFA, the FA, the English Premier League, the NBA, *Fédération Internationale de Basketball* (FIBA), EuroLeague Basketball, national basketball federations and leagues all have their separate normative orders.

The specific characteristic of sport is that, as in the cases of FIFA, UEFA and the FA, the interactions may occur within the sport associations due to their associational nature. The pluralisation of association is on purpose because, as a national association, the FA is a member of FIFA and UEFA. In its turn, UEFA is a member of FIFA. On the one hand, this supports the monolithic view of sporting activities. After all, the ‘primacy’ of international federations forces the associations at the lower tiers of the structure to align their rules and the interpretations thereof with the ones above (Foster 2012, 138–140). On the other hand, although there is the desire to harmonise sport, sport governance and the various normative orders in sport may result in disharmony and confusion. The pluralisation of the term association leads to normative pluralism, complete with disharmonies.

Disharmony in the Fight Against Doping: The Case of Basketball

Recall that the US structuring of sport differs from the hierarchical governance structures in Europe. Since the normative orders of the US sport associations are separate, their anti-doping norms and interpretations differ from those of international federations. Accordingly, the NBA and other basketball organisations have differing views of the spirit of basketball. That is of utmost importance because, in the WADC, one of the criteria for the inclusion of substances to the Prohibited List is the spirit of sport (Loland and McNamee 2019). The consequences of the differences in approach will be explained through cannabinoids. Furthermore, not only the banned substances and practices but also the sanctions foreseen in the relevant regulations for violating these norms differ.

Above, the Introduction underlined that the WADC emphasises the spirit of sport and its relationship to integrity. FIBA—the international sport federation organising Olympic basketball and, among others, the FIBA Basketball World Cup—and the IOC acknowledge that view. While these competitions are important, some of the most popular basketball events happen under the normative order of the NBA, which is indirectly associated with FIBA through USA Basketball (USA Basketball Website n.d.). It has been cooperating with FIBA through bilateral agreements since 1990, leading to the participation of the Dream Team at the Olympic Games (FIBA Website 2010). Furthermore, FIBA allocates a place for the NBA within the FIBA Central Board (FIBA’s top-level executive branch) (FIBA General Statutes, art 15.1.4 [c] [aa]). Nevertheless, the links and bonds between the NBA and other institutions do not betoken a convergence in the NBA and FIBA’s views of doping. Despite WADA’s claim to a spirit of sport and its replication by FIBA (‘the spirit of basketball’), the

NBA is not a part of WADA's global administrative space *per se* as it is not a signatory of the WADC (WADA Website [n.d.](#)).⁸ Whereas FIBA follows the WADC, the legal foundations of the fundamentals of the anti-doping system in the NBA lie in the NBA Collective Bargaining Agreement (CBA) signed in 2023 between the NBA and the National Basketball Players Association (NBPA). As a result, there are divergences in anti-doping policies and practices stemming from basketball's governance and legal structures.

The CBA creates an in-house structure of committees and persons selected by or from its signatories (NBA CBA, art XXXIII, § 2). It also designates the prohibited substances and processes (NBA CBA, art XXXIII, § 2 [e] and 16, Exhibit I-2 and Exhibit I-5). The screening and testing processes are exclusively within the system created in the CBA (NBA CBA, art XXXIII, § 14). The CBA makes the legal situation clear, and as the NBA is not a signatory of WADC, the FIBA Anti-Doping rules do not cover it. These rules are relevant for NBA players only when they take part in IOC- and FIBA-sanctioned competitions, such as the Olympic Games and FIBA Basketball World Cup (FIBA Internal Regulations—Book 4 Anti-Doping, 4–5 and Appendix 1 – Definitions, 69 ['International Event']).

Without going into detail as to which substances are prohibited or considered 'mild' in either anti-doping regime, the emphasis should be on the NBA's stance. Foreshadowing later developments, in a 2014 interview, NBA Commissioner Adam Silver indicated that 'we're much more concerned about [human growth hormone] testing and designer performance-enhancing drugs. Among our many priorities going forward, marijuana is not at the top of our list' (Klosterman 2014). During the COVID-19 pandemic, the NBA suspended its random tests for cannabis. The NBA created a 'bubble' in Orlando for finishing the 2020/2021 Season and suspended its random tests on players. Later, it extended the suspension to the 2021/2022 Season (Reynolds 2021). However, in the meantime, due to the application of stricter anti-doping measures at the Olympic Games, the NBA resumed testing NBA players who were to represent Team USA at the 2020 Tokyo Olympic Games (Vardan and and The Atlantic Staff 2021). In the 2023 NBA CBA, marijuana is no longer in the Prohibited Substances List, and synthetic cannabinoids are not under the heading Drugs of Abuse. The latter have their own heading (NBA CBA Exhibit I-2). Although being under the influence of marijuana during the NBA and its teams' activities is still sanctionable, NBA players can invest in companies that sell or produce cannabis-related supplements and other products, such as oils, creams, drinks, pills, powders, and roll-ons (NBA CBA art VI § 20; XXXIII, § 7 and 8). Only non-compliance with the 'Marijuana and Alcohol Treatment Program' could result in sanctions (NBA CBA art XXXIII, § 11 [b]). Synthetic cannabinoid-related offences—except for non-compliance with the treatment programme result in very mild sanctions where match bans (starting with five) are available from the third violation on (NBA CBA art XXXIII, § 6[b][iii], 8 and 10; Exhibit I-2). Finally, underlining Adam Silver's point, the CBA deems human growth hormones important enough to restrict them and explicitly refers to the WADA Decision Limits (NBA CBA art XXXIII, § 14). Thus, there can be harmony between WADA and the NBA.

For other anti-doping violations, if the player tests positive or 'considered positive' for various reasons (NBA CBA, art XXXIII, § 4 [d] and [h], §6 [b], [c] and [d]), the NBA suspends first-year players for one year and other players for at least one year for 'Drugs of Abuse', such as cocaine, LSD and methamphetamine (NBA CBA, Exhibit I-2).⁹ On the other hand, performance-enhancing drugs result in a 25-match ban for the first violation, a 55-match

ban for the second violation and dismissal from the league for at least one year for the third one (NBA CBA, art XXXIII, § 9). An NBA regular season usually lasts 82 matches for each team, and thus, the NBA regime sharply contrasts with the harsh sanctions laid down in the WADC.

Contrary to the NBA's view of cannabinoids, until the 2021 edition of the WADC, WADA did not officially differentiate between the term 'Substance of Abuse' and other prohibited substances (WADC 2021, art 4.2.3).¹⁰ Likewise, until 2021, treatment regimens for a 'Substance of Abuse' were not a part of the WADC (WADC 2021, art 10.2.4.1). It had a separate regime for the presence of substances like cannabinoids in an athlete's body. If such presence was unrelated to a sporting event, it could fall under the term 'No Significant Fault or Negligence' with sanctions between a reprimand and a two-year ban (WADC 2015 [2018], art 10.5 and Appendix 1, 142). Now, cannabinoids are prohibited in competition, and tetrahydrocannabinol (THC) is considered a substance of abuse (WADC – International Standard Prohibited List 2023, 17).

Concerning other anti-doping violations, the WADC (2021) presents a very different picture compared to the NBA CBA (art 2). Depending on the severity of the case, national, continental, and international sport associations continue their fight against doping as per the WADC and national laws, if any. Their disciplinary and adjudicatory bodies and the CAS have reviewed many doping cases. The complexity of jurisdictional issues is compounded by the complicated (and, in some cases, varying)¹¹ nature of the determination of anti-doping sanctions. To keep things simple, a general overview of the situation in the WADC-led disciplinary and adjudicatory processes would suffice. In the first violation, in addition to disqualification of results, persons are banned for differing periods. The length of the ban depends on the doping rule violation, the intentions of the violator, the type of substance or method used, the facts of the case and the presence of fault or negligence (WADC 2021, arts 9 and 10).¹² Likewise, unlike the 55-match ban in the NBA, per the WADC (2021), the second violation of an anti-doping rule is greater than six months in any case, while the third violation would result in a lifetime ban if there are no mitigating facts or exceptions (art 10.9).

Finally, the interpretation phase of anti-doping is fragmented. As Duval (2020) points out, this phase is complex due to the presence of different sport associations, which, as witnessed in the state-sponsored doping programme in Russia, may have different opinions of sport and its integrity. As in the cases to be analysed in the following section, 'national fault lines' create discrepancies in the fight against doping (284–286). These lines do not necessarily appear to favour national athletes. For instance, a CAS award concerns the implementation of a ban from being selected for the Olympic Games by the British Olympic Association. The sanction did not appear in the WADC in force (CAS 2011/A/2658). The WADC (2021) is aware of a need for harmonisation even within its scope of application. In its comment on Article 10 titled 'Sanctions on Individuals', the WADC notes that:

Harmonization of sanctions has been one of the most discussed and debated areas of anti-doping. Harmonization means that the same rules and criteria are applied to assess the unique facts of each case. [...] The lack of harmonization of sanctions has also frequently been the source of conflicts between International Federations and National Anti-Doping Organizations. (WADC 2021, 63–64)

Consequently, despite the WADC's claim to the spirit of sport and FIBA's the spirit of basketball, there is no monolithic understanding of one of sport's biggest problems. The NBA has separate means of regulating and adjudicating doping and does not agree with the WADC's views on certain substances. The divergence also results in different sanctions for similar or the same anti-doping violations. Since the association that presides over the most important events in basketball does not agree with the WADC and FIBA, one cannot consider basketball to have a single, overarching spirit. Although NBA players have to accede to the WADA system when registering for international competitions, from a legal viewpoint, the spirit of sport is association-specific.

Harmony and Disharmony within the Federation

The badminton debacle at the 2012 London Olympic Games concerns a Chinese, an Indonesian and two South Korean doubles pairs who deliberately tried to lose their final games in the qualification group to avoid drawing against stronger teams on their way to the Final. The doubles teams were disqualified from that edition of the Olympic Games. Here, of Gardiner, Parry, and Robinson's (2017) four dimensions of integrity, personal integrity and organisational integrity provide insight into sporting integrity. Personal integrity is crucial because, in this way, the individual (in whatever capacity within the sport) reflects their identities, skills, and values as they are. There is no room for deception.¹³ 'Organisational integrity' is a sport association's ability to reflect its values accurately and reliably. A solid commitment to excellence and core values can create a sustainable environment protected from negative influences like money and power. Again, deception is frowned upon (17–19).

In the first instance, the case underlines power delegation during the Olympic Games. The IOC is the leader of the Olympic Movement, but it delegates some of its power to international federations for the Olympic Games (Olympic Charter, Rules 1[1], 26[1.5 and 1.6]; 59[2.4]; Bye-law to Rule 59[1]). The Badminton World Federation (BWF) used the delegated powers. The Disciplinary Committee and later the Appeals Committee of the BWF decided according to the federation's rules, processes, and views regarding sporting integrity. Of the eight players found to have breached conduct, the Chinese pair did not appeal the decision, while the Indonesian pair withdrew their appeals (BWF Olympics Website 2012). The IOC's view of sporting integrity was in harmony with the BWF's.

Nonetheless, per the balkanised nature of sport governance, regulation, and adjudication, that was not the only dimension of the case. The BWF only disqualified the South Korean pairs from the 2012 London Olympic Games. Thus, the South Korean pairs' domestic sporting activities were not affected at first (BWF Disciplinary Committee Summary Report 2012a, 2012b). The Badminton Korea Association, the body supervising badminton in South Korea, decided on the pairs' sporting activities in South Korea. First, the association's disciplinary committee banned the pairs for two years. Following an appeal, the bans were reduced to six months. Finally, the Badminton Korea Association lifted the ban altogether (Reuters 2012). Thus, compared to the IOC and BWF, the national associations that presided over national sport had a different view of sporting integrity. The associations' views were so different that the pairs' conduct had utterly disharmonious consequences.

Around the same time, football in Turkey underwent a period of turmoil due to a match-fixing case relating to the 2010/2011 Season of its highest professional football league and its national cup. The Turkish Football Federation (TFF) charged the presidents, executive committee members, coaches, and players of various clubs with match-fixing due to their conduct in the league's final stretch and the national cup final (TFF Website 2011). The personal integrity of individuals was at stake as match-fixing denotes not showing the best skills. Receiving third-party incentives to improve performance led to the same problem (Pérez Triviño, Lopez Frias, and McNamee 2022). One of the clubs implicated was the champions Fenerbahçe. The club was to participate in the UEFA Champions League in the 2011/2012 Season. Yet UEFA requested from the TFF not to register Fenerbahçe as a candidate for the UEFA Champions League. The request was based on a provision in the UEFA Champions League Regulations that set out UEFA's view of sporting integrity. In that, the provisions could result in banning clubs that took part or were suspected of participating in match-fixing activities from UEFA competitions. The TFF complied with the request, and Fenerbahçe did not participate in UEFA competitions that season (CAS 2013/A/3256, para 217).

In the first half of 2012, TFF banned some individuals, including Ekşioğlu and Mosturoğlu, two Fenerbahçe executive committee members, as well as various persons linked to other clubs implicated in match-fixing (TFF Website 2012). In addition to Fenerbahçe, which did not participate in UEFA competitions for two seasons due to a further ban (CAS 2013/A/3256), UEFA suspended Eskişehirspor, Sivasspor and Beşiktaş from its competitions in the first seasons they qualified for UEFA competitions (CAS 2013/A/3258; CAS 2014/A/3625; CAS 2014/A/3628). TFF charged them with match-fixing (among other clubs), but the Professional Football Disciplinary Committee acquitted them of all charges (TFF Website 2012).

Essentially, the Badminton Korea Association and TFF had different views of sporting integrity from the international federations they are members of. From an organisational integrity perspective, allegedly, the TFF believed that legal and natural persons should be 'separated'. This was the view voiced in March 2012 by the then-Prime Minister Recep Tayyip Erdoğan at the UEFA Congress in Istanbul. Erdoğan made his speech in the presence of Sepp Blatter, Michel Platini, and Gianni Infantino (Beinsport Turkey Website 2012). Erdoğan's views were unmentioned in the official publication of UEFA, UEFA Direct (2012, 6–7). Another interesting aspect of the TFF case is that the views of FIFA and TFF aligned in the Bochum case, where criminal organisations influenced the courses and results of matches, the 'six lifetime bans; four bans of three years; two bans of two-and-a-half years; six bans of two years; and six further bans of one year' by the TFF bodies were extended by FIFA to have a worldwide effect (Nationalturk Website n.d.). Concordantly, although there are normative effects of the associational and tier-based structuring of most sports, the fact that TFF could have different views of sporting integrity refutes an all-encompassing approach to a single sport or sport in general.

To Accept or Not to Accept Normative Pluralism?

The previous sections point to a parallel between a nuanced understanding of law where associations may have differing notions of sporting integrity. The rules and decisions of sport associations regulating the same sport were not harmonious. The badminton and

football cases evince that the decision-making bodies of an association may not agree with the international normative order they are a part of. Normative pluralism is real in sport. Then the question becomes, should sport associations accept the legal status quo and allow for nation-specific approaches, or should there be a standardisation of 'monitoring, preventing and tackling integrity violations and minimising integrity risks' (Kihl 2020, 400)?

The first solution would be the creation of national integrity mechanisms. Considering the calls for good governance and transparency in sport, Kihl (2023) argues for a national integrity system with the participation of internal (the sport industry) and external actors (community, commercial partners, media, legal actors, government actors, industry partners). Kihl (2023) underlines the possible challenges to a national integrity system based on monitoring and sanctioning of conduct by formal organisational structures per previously conveyed policies and values. Yet there is optimism about overcoming these obstacles (42–43). Unfortunately, the national views of sporting integrity were the roots of the problem in the cases of South Korea and Turkey. As in Russia, practices that infringe upon sporting integrity can become a state policy. Worse, sanctioning certain conduct may also be a part of opportunistic policy rather than a consistent view of sporting integrity. The Turkish Athletics Federation suspended 31 athletes to increase Istanbul's chances of winning the right to host the 2020 Olympic and Paralympic games. The week before the sanctions 'IAAF President Lamine Diack had told *insidethegames* that Turkey needed to "clean their house" if its doping problem was not to affect Istanbul's bid to host the 2020 Olympics and Paralympics' (Mackay 2013).

Another way out of the conundrum would be to apply pressure from the top (Abanazir 2023, 9 and 14–15). International sport federations can use their hierarchical structures to impose standardisation of norms and interpretation. They can also reserve their right to intervene in their member associations' processes through the same mechanism. For instance, in the wake of the differences in approach to match-fixing between itself and the TFF, UEFA introduced a provision in its Disciplinary Regulations, allowing UEFA to intervene in cases where its statutory objectives are threatened but not properly tackled (UEFA Disciplinary Regulations 2013 Edition, art 2[4]). This resembled a provision in the FIFA Disciplinary Code (2011 Edition), paving the way for an intervention by FIFA (art 70[2]). This path can also include clarifying norms by those with authority, leading to harmonisation (Geeraert 2019, 526–527).

Nevertheless, hierarchical pressure will not address indirect relationships between actors regulating the same sport, such as between the NBA and WADA. There can be no pressure if the sport association is not a part of the hierarchical structure or does not accede to the system through an agreement/contract/protocol. Moreover, even if there is a hierarchy between sport associations, those with authority may fail to act. For instance, even though the IOC is the leader of the Olympic Movement, it claimed it had no *de facto* authority over Olympic international federations for implementing its 'Basic Universal Principles of Good Governance'. The IOC did not establish an effective monitoring and sanctioning mechanism (Geeraert 2019, 522–523 and 528–529). The good news is that times change. While referring to the Olympic Charter rather than the document on good governance, the IOC withdrew recognition of the International Boxing Association due to serious and continued governance and integrity issues within the body (IOC 2023a, 2023b).

The third way would be creating an international body for all integrity-related activities. It would monitor sporting integrity and coordinate efforts to fight against unethical and illegal practices in sport (Chappelet 2018, 727–728). The body would set universal standards and frameworks that assist states and sport associations, as in The Global Sports Integrity Alliance (Kihl 2020, 396). There are at least two problems with this. First, again, there would be the question of the US sport associations. Would NBA and MLS accede to this system? After all, the collective bargaining agreement system imposes specific responsibilities for the NBA, athletes, and teams. Moreover, from a legal viewpoint, the athletes' investment in marijuana-related products would be in jeopardy. Second, setting the framework and coordinating efforts is one thing; it is quite another to adjudicate. The international organisation would require both regulatory and adjudicatory powers, whether established by an international convention or not (Chappelet 2018, 727–728 and 731–732). As seen in WADA, the inconsistent application of the WADC raises questions as to the efficacy of a 'global' document.

Next, there is the possibility of greater involvement from non-sport actors, such as states and international institutions created by states. Kihl (2020) argues for 'external guardians' because of the sport associations' inability to stop unethical and illegal conduct in sport. They may have too much autonomy from the state, community, and media (404). This proposal would result in delegating power to independent international regulatory and adjudicatory bodies, and it differs from establishing a private body, such as the CAS, or a public-private partnership like WADA. This characteristic would bring about vehement opposition from sport associations, for autonomy undergirds the ethical and legal landscape in sport (Abanazir 2023, Chapters 1 and 2). Sport associations are already fighting on several fronts. They criticise interventions by state and international courts like the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR). The Bosman ruling and the ECtHR cases mentioned below show that sport is not immune to outside forces. It is supervised as certain regulatory and adjudicatory failures may result in intervention (García 2007, 217–218). That does not mean that sport associations are happy with the interventions. They may gladly open doors for cooperation following intervention or sport scandals; however, altogether different dynamics would appear when sporting integrity issues (e.g. tanking, financial fair play) that do not necessarily call for help from state and international authorities. Hence, one could ask, should we mobilise the Federal Bureau of Investigation (FBI) or Interpol when NBA teams 'tank' to have a better shot at securing the next generation of basketball talent at the annual NBA Draft or play with weaker teams to deal with a congested fixture consisting an 82-match regular season and an in-season tournament that must be played within less than 180 days? Consequently, although sport is not equipped to deal with deficiencies in transparency, democracy and accountability, and legal autonomy is the primary reason for this (Geeraert 2019, 520–521), legal autonomy and the characteristics of sport competitions would impede the creation of an all-powerful body. Acknowledging legal autonomy and self-regulation in international documents such as the Council of Europe Convention on Manipulation of Sports Competitions (2014) would compound it (Preamble and art 1[1]).

Finally, there is the problem of forced dispute resolution for all paths. In sport, this term denotes a situation where those who want to participate must accede to the dispute resolution system as foreseen by sport associations. The monopoly-like powers of sport

associations allow the unilateral imposition of jurisdiction on participants (Freeburn 2020, 288–289). The jurisdiction includes disciplinary and ethics processes, which trigger sporting integrity-related cases. The IOC and most international sport federations have specific norms that authorise the CAS as the appeals body for their events. Similarly, the prospective global sporting integrity body must bring in the participants and other persons within the jurisdiction of the system. Otherwise, there cannot be sanctions, which (can) act as deterrents against unethical and illegal conduct.

The nature of sport arbitration (a type of alternative dispute resolution) was raised before the ECtHR in the *Mutu and Pechstein* case, which dealt with two separate doping-related cases. In the Pechstein leg of the case, which dealt with the right to a fair trial of a speed skater accused of doping, the ECtHR indicated that to earn a living through sport, Pechstein had to accept the arbitration as forced by the International Skating Union (paras. 97–115). Such a cause-and-effect relationship between one's profession and the system that threatens it rendered the dispute resolution economic. The conclusion will be in cards if a global forced sporting integrity system is established. The ECtHR reiterated forced arbitration's impact on the right to a fair trial in a case against Turkey's national sport dispute resolution system. In *Ali Rıza and others*, the ECtHR reminded its stance in *Mutu and Pechstein* (paras. 169–181) and judged that forced arbitration on a national level also infringes the right to a fair trial.

Consequently, forced arbitration would be detrimental to the human rights of those forced to accept the standardised system. This conclusion applies to both national and international sport dispute resolution systems. The defenders of a standardised system would have to decide if maintaining sporting integrity and creating harmony between normative orders are more important than the right to a fair trial. They would also have to ensure that participants and other persons have more say in establishing and maintaining the system. The accountability and democracy aspects of good governance require an inclusive dispute resolution system.

These are very general proposals and challenges regarding the mitigation of the effects of normative pluralism on sporting integrity. This section has raised only some preliminary issues. There may be more legal and political challenges to harmonising and standardising sporting integrity policies and their implementation. For space constraints, these should be left to another article.

Conclusion

This article argued that sport cannot be considered a homogenous activity. The presence of different sport associations at various levels challenges this notion. The associations have different normative orders consisting of complex regulations. They also have different means of resolving disputes within their respective jurisdictions. Their normative orders interact with each other. However, not only the normative orders may reach different conclusions within the sport, but they may also be in tension. The differing views on sporting integrity evince these tensions. As explained in the sections regarding basketball, badminton and football, sport associations could reach different conclusions regarding player conduct even within the same sport. Finally, the comparison between the anti-doping mechanisms and regulations of the NBA and WADA evinces that an institution's immediate interests could pave the way for association-specific views of

sporting integrity, as well as its regulation and prevention. Despite FIBA's claim of a 'spirit of sport', the NBA and FIBA have diverging opinions regarding its substance and protection.

Normative pluralism is here to stay, and its impact on sporting integrity must be considered. As the article exemplifies, there is no agreed-upon and universal idea of 'a sport', 'the sport, and 'the spirit of sport'. Accordingly, sport associations and states must deal with the consequences of diverging interpretations and practices. There may not be a silver bullet to solve the outstanding problems. Moreover, the deficiencies in accountability, transparency and democracy in sport institutions exacerbate heterogeneity's impact. Nonetheless, awareness of the situation is an essential first step towards addressing the issues in sport. This article strived to increase our awareness.

Notes

1. The catch-all term 'sport association' may not be legally correct because it includes associations, federations, confederations, companies, and joint ventures. Otherwise, one must explain the legal designation of each sport institution, which would create unnecessary detours.
2. Nevertheless, there will be a divergence from this account which argues that the players have power over a sport's characteristics. On the contrary, except in leagues like the NBA (National Basketball Association), Major League Baseball (MLB) and National Football League (NFL), as well as sports like golf and tennis, the quasi-monopolistic powers of national, continental, and international sport associations, to a certain extent, prevent intervention.
3. In a recent book chapter, Di Giandomenico (2023) also signals the polycentricity of doping; however, that project falls short of declaring polycentricity within sport. It is more concerned with the differences between state regulation and private regulation.
4. It must be noted that the badminton case includes a 'black card' signalling disqualification by the referee in the match between the South Korean and Indonesian pairs. The match resumed after its rescinding (BBC 2012[a]).
5. 'Legal' and 'law' are for practical purposes only. The essence of law, its scope, and the role of non-state institutions in laying down laws is a matter of debate. The terms 'norm', 'normative order' and 'normative pluralism' will be used wherever possible (Griffiths 2006, 63–64; Twining 2010, 475–485).
6. The emphasis on the word within denotes that their institutions and transnational authorities like the European Union and the European Court of Human Rights have a say in sport through their norms or decisions. This article will not discuss the possible harmony and disharmony between them and sport associations.
7. This principle could also lead to disputes concerning authority over a discipline between international sport federations. For instance, the International Surfing Association and the International Canoe Federation disputed over 'stand-up paddleboard' (CAS 2018/O/5830).
8. This point parallels Loland and McNamee's (2019) argument that equating the spirit of sport and Olympism works against the former because Olympic sports are selected and limited (332). The case of the NBA supports this contention but goes beyond that by emphasising a divergence with a given sport.
9. The 'Voluntary Entry' of a player in the Drugs of Abuse Program would result in no sanctions whatsoever for the player, provided that the player fully complies with the instructions and the program (NBA CBA, art XXXIII, § 7).
10. However, in 2016, a CAS Panel considered the legislative history of the WADC and concluded that cocaine could be considered a 'substance of abuse' (CAS 2016/A/4416, paras 70–76).

11. The term ‘Aggravating Circumstances’ was present in the 2009 Edition of the WADC but was removed in its 2015 Edition. The term and its consequences came back in the 2021 Edition (WADC 2009 art 10.6; WADC 2021 art 10.4).
12. For certain violations, provided that they can prove no significant fault or negligence, protected persons and recreational athletes can be imposed a reprimand and no period of ineligibility, and at a maximum, two (2) years ineligibility (WADC 2021, 174 and art 10.6.1.3).
13. Also see Zakhem and Mascio’s (2019) emphasis on ‘being true’, ‘in the sense of genuinely holding certain values and making commitments and honestly presenting one’s self to others, even and perhaps especially during times of conflict’ (233).

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ORCID

Cem Abanazir  <http://orcid.org/0000-0002-0473-842X>

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