



organizations which are not registered as non-profit legal persons for the public benefit under the Non-Profit Legal Persons Act.”

The legal regulation of the mentioned provision of art. 63 of PESA lead to the conclusion that the only criteria for determining the sports organizations which have the right to be subsidized and helped from the state budget is the received license. Another determining criterion this article does not contain.

The additional criteria are included in par 3 from the article and it provides that the sports organization should be instituted as a legal entity for non - profit purposes. As I mentioned above, the sports federations are voluntary associations of sports clubs of one or another kind of sports and should be registered as legal entities for non - profit purposes (art. 14, par. 1 and 4 of PESA). The national sports organizations are voluntary associations of sport clubs and/or sports federations and they are also registered as legal entities for non - profit purposes (art.15, par. 1 and 3 from PESA). Only the sports federations and the national sports organizations should be licensed and the logical conclusion of all is that the sports clubs are sports organizations which should not be licensed. That circumstance leads to the conclusion that art. 63, par 1 from PESA excludes the possibility of sports clubs to be supported by the state and the municipalities even if they are registered as legal entities for non - profit purposes for pursuing activities for public benefits. Only because they do not cover the requirement stipulated in that legal rule - to be licensed sports organizations.⁹

Also, it should be marked that the provision of Art. 63 should be rendered to the amounts for sport which come from the state budget.

In contrast to the abovementioned, the regulation of Art. 59b from PESA provides that the licensed sports organizations as well as the sports clubs which are members of the licensed sports organizations should use the amounts which are spread by BTS and the State

money - object Lottery /SMOL/. The provision of Art. 59 b from PESA does not place a requirement about the sports organization for registering them in the form of legal entities for non - profit purposes for pursuing activities for public benefits in order to receive the amounts by BTS and SMOL for supporting their activity in a view to which the only condition for a national sports organization or sports federation is the same to be licensed and for the respective sports clubs to be a member of a licensed sports organization.

The stated regards the finance of the sport with funds from the state or municipality budget, as mentioned, and from the state organized and controlled lottery games carried out from the Bulgarian sport totalizer. Apart from this funding the sport organizations receive financial support from private persons in the form of sponsorship about which there are no legal restrictions or requirements.

Instead of conclusion:

The exposition tries to outline the most important questions related to sport matters stipulated in the Physical education and sport Act. It was not an easy task writing it since in the Republic of Bulgaria no sports law theory or jurisprudence exists. The court decisions mentioned in the writing are most of the court decisions in the sports related field. In fact “sports law” is not legally distinguished term and it is not used in the legal doctrine or in legislation at all. I think that the Bulgarian Act on physical education and sport, on the other hand, gives a relatively comprehensive regulation of the sport issues, regardless of the controversies described, so it stays for the scholars, to interpret and for the practitioners to apply its regulations.

⁹ In that sense Decision 5484/03.06.2003, 5 member jury of SAC.

Sports Governance in Ireland

by Laura Donnellan*

Introduction

In Ireland, the regulation of sport falls under the auspices of the Department of Tourism, Culture and Sport.¹ The Department, which is headed by Minister Mary Hanafin, has a number of important functions in relation to sport. Its primary function is the formulation, development and evaluation of sport policy (the implementation of which in the main is a matter for the Irish Sports Council) and overseeing major sports projects, including the National Aquatic Centre at Abbotstown; developing proposals for the provision of a national stadium; the administration of the Sports Capital and the Local Authority Swimming Pool Programmes.

There is a heavy state involvement in the regulation of sport in Ireland. The state's involvement can be characterised as both direct and indirect control. The Department of Tourism, Sport and Recreation exercises direct governmental regulation, while the Irish Sports Council, a body created by statute, exercises quasi-governmental regulation. The individual national governing bodies, while recipients of funding from the Department and the Irish Sports Council, are cate-

gorised as autonomous and private associations. Recent litigation has questioned the involvement of the Irish Sports Council and its interference in the internal affairs of the national governing bodies. The former chief executive of Athletics Ireland was recently dismissed after pressure was placed on the organisation by the Irish Sports Council. Although the matter was settled out of court, the matter highlighted the need for the Irish Sports Council to reassess its role in the promotion and development of sport in Ireland. Allegations of poor governance within the Irish Amateur Boxing Association have once again brought the tenuous relationship between the Irish Sports Council and national governing bodies to the fore.

This chapter will discuss the involvement of the Department of Tourism, Culture and Sport, the Irish Sports Council and the role of the national governing bodies in the regulating of sport in Ireland. The issue of funding will also be examined. The recent litigation was prompted by the Irish Sports Council's withholding of annual core funding to a governing body. The lack of transparency, independence and general lack of governance in Irish sport will also be discussed.

Status of sports governing bodies

The status of domestic sports bodies differs among sports organisations in Ireland. Some are created by way of legislation, these are called statutory bodies. The Irish Greyhound Board or Bord na gCon is one such statutory body which was established by the Greyhound Industry Act 1958.² Other governing bodies are established as private limited companies regulated by the Companies Acts 1963-2009. Some sports bodies have charitable status which gives them certain exemptions when it comes to income tax and corporation tax.³

* Lecturer in Law, School of Law, University of Limerick, Republic of Ireland.

¹ Previously called the Department of Tourism, Sport and Recreation and also the Department of Arts, Sport and Tourism.

² The Board has wide powers ranging from issuing licences to use certain

tracks, issuing of permits to officials, bookmaker and trainers. It controls 9 of the 17 licensed tracks in the Republic of Ireland. See <http://www.igb.ie/top/About-Us/>.

³ The Charities Act 2009 has excluded some sports bodies. The section 2 of the Bill excluded “bodies established for and existing for the sole purpose of promoting athletic or amateur games or sports”.



Governmental regulation of sport

Sports Unit 1 and 2

There are two Sport units with the Department of Tourism, Culture and Sport. Sport Unit 1-Sport Policy and Capital Programmes Division is responsible for the development of sport and recreational policies. It liaises with the Irish Sports Council (ISC), Horse Racing Ireland (HRI) and Bord na gCon. It administers the Sports Council Programme, a programme funded by the National lottery.⁴ It also administers the Local Authority Swimming Pool Programme, using funds from the Exchequer.⁵ The Unit has an international role as it liaises with the European Union, the Council of Europe, the World Anti-Doping Agency (WADA) on matters pertaining to sports issues and policies. All applications from certified sports bodies seeking approval of sports capital projects are processed by the Unit as well as applications from certified bodies claiming tax relief.⁶

Sport Unit 2 is responsible for major sports capital projects, including the redevelopment of Lansdowne Road Stadium⁷ and the current development of the National Campus of Sports Facilities at Abbotstown.⁸ The Unit carries out audits of local sports facilities and presents awards to volunteers in sport. More recently, the Unit has been involved in devising a strategy to ensure that Ireland benefits from the proximity of the London 2012 Olympic and Paralympic Games.

Quasi-government regulation-agencies

The Department of Tourism, Culture and Sport is assisted by a number of agencies: the Irish Sports Council; the Campus and Stadium Ireland Development; Horse Racing Ireland and Bord na gCon. These agencies have all been created by way of statute and hold semi-state body status.

Irish Sports Council Act 1999 and the Establishment of the Irish Sports Council

The Irish Sports Council Act 1999 is the first piece of legislation pertaining to sport in Ireland.⁹ The Act is important for a number of reasons. It not only reflected the state's commitment to the promotion and development of sport and sporting facilities, it also heralded the state's involvement in anti-doping procedures. The Act established the Irish Sports Council, a body which implements sports policy in Ireland. The ISC, a body corporate, has the following functions:

- To encourage the promotion, development and co-ordination of competitive sport and the achievement of excellence in competitive sport,
- To develop strategies for increasing participation in recreational sport and to co-ordinate their implementation by all bodies (including public bodies and privately funded bodies) involved in promoting recreational sport and providing recreational facilities,
- To facilitate, through the promulgation of guidelines and codes of practice, standards of good conduct and fair play in both competitive and recreational sport,
- To take such action as it considers appropriate, including testing,

to combat doping in sport and to engage in research and the dissemination of information concerning either or both competitive and recreational sport,

- To perform any additional functions assigned by the Minister to the Council.¹⁰

Pursuant to its functions under the Act, the ISC established and implemented the National Sports Anti-Doping Programme.

The ISC consists of a Chairperson and ten ordinary members. The Minister appoints persons s/he judges to be have experience in a field of expertise relevant to the workings of the Council.¹¹ Section 16 of the Act provides for the appointment of a Chief Executive who is appointed by the Council with the Minister's approval. The Chief Executive is responsible for the carrying on, managing and control generally the administration and finances of the Council.¹²

The main aim of the ISC is to encourage participation in sport from all ages and abilities, from recreational to high performance level. The ISC recognises the importance of sport and its contribution to enhancing the quality of Irish life.¹³ The ISC comprises of eight major divisions:

1. Anti-Doping
2. Corporate Services
3. Finance
4. High Performance
5. Local Sports Partnerships
6. National Governing Bodies
7. National Trails Office, and the
8. Irish Institute of Sport.¹⁴

The ISC sets out its objectives for a three year period in its strategic documents. The first document *A New Era for Sport* (2000-2002), was replaced by *Sport for Life* in 2003. In 2006, the ISC launched *Building Sport for Life*, followed by the current document for the period of 2009-2011, *Building Sport for Life: The Next Phase*.¹⁵

The ISC carries out drug testing in all Irish Sport, both recreational and competitive. All national governing bodies are bound by the Irish Sport Council's Anti-Doping rules. In Ireland, the WADA Code is enforced by the ISC. Since 2008, Ireland is also a party to the UNESCO Anti-Doping Convention. The then Minister for Arts, Sport and Tourism, Martin Cullen, ratified the Convention. All National Governing Bodies in receipt of public funding in Ireland are bound by the WADA Rules and the Council of Europe Anti Doping Convention. As many governments cannot be legally bound by a non-governmental document, the Code was implemented by way of international treaty which the United Nations Education, Scientific and Cultural Organisation (UNESCO) drafted. At the UNESCO International Convention against Doping in Sport in October 2005, the first global international treaty against doping in sport was adopted.¹⁶ In 2007, the UNESCO Convention came into effect.¹⁷

In order to qualify for tax exemptions, the sports body must show the Revenue Commissioner that the income which has been or will be applied for the sole purpose of promoting that athletic or amateur game or sport. The body must be a not for profit, member controlled and owned organisation. See www.revenue.ie/en/tax/it/leaflets/gst1.pdf.

4 Applications for funding are advertised annually. The programme allocates funding to projects that are directly related to the provision of sports facilities and are of a capital nature. This would include the purchase of premises and other assets; improvements to assets and the purchases of non-personal equipment which will be used for a least five years. Those that may apply for funding include voluntary and community organisations (including sports clubs); national governing bodies

and third level institutions where it can be shown that the proposed facility will contribute to the regional and/or national sporting infrastructure and in some circumstances primary and post-primary schools and local authorities.

5 This programme grants funding to local authorities to build new pools or refurbish existing ones. See http://www.arts-sport-tourism.gov.ie/grants_funding/Swimming_Pool.htm.

6 See <http://www.arts-sport-tourism.gov.ie/sport/organisation/unit1.html>.

7 In 2004, the Government agreed to provide funding of €191 million to the joint Irish Rugby Football Union (IRFU)/Football Association of Ireland (FAI) project for the redevelopment of the stadium as a 50,000-capacity all-seater facility. Works began in 2007 fol-

lowing the granting of planning permission and the revamped stadium will open later on in the year.

8 The development of the campus was approved in 2005. Detailed works began and have recently been completed. The campus has been built on a phase by phase basis. Phase 1 provided for the following: a National Field Sports Training Centre (catering for rugby, soccer, Gaelic games and hockey); a National Indoor Training Centre to provide world class training facilities for over thirty Governing Bodies of Sport; accommodation for sports men and women, sports science and medical facilities; all-weather synthetic pitches for community use; renovation of existing buildings to cater for needs identified by sports bodies. NOTE: GAA consists of a number of sports: Football, Hurling, Ladies Football,

Camogie, Handball and Rounders. For details on GAA sports see www.gaa.ie/about-the-gaa/our-games/.

9 It has two parts and 28 sections. Part I details the Preliminary and General provisions while Part II provides for the establishment of the Council. This part further elaborates in the functions, powers, membership, the role of the Minister, remuneration etc.

10 Section 6 of the Act.

11 It is a five year term, see section 12 of the Act.

12 Section 17 of the Act.

13 See the website of the Irish Sports Council: <http://www.irishsportsCouncil.ie>

14 The institute works with elite athletes and high performance coaches, see <http://www.instituteofsport.ie>.

15 See http://www.irishsportsCouncil.ie/About_Us/Strategy/



Irish Sport Anti-Doping Disciplinary Panel

The Irish Sport Anti-Doping Disciplinary Panel was established by the ISC in 2004. The Panel is empowered to hear and determine the consequences of any Anti-Doping Rule violation that falls under the Irish Anti-Doping rules. A panel hearing consists of three experts from each of a legal, medical and sports (administration/ former athlete) background. The chair or one of the vice chairs will chair the Panel. In total, there is a chair and four vice-chairs, all of whom must be a registered solicitor or barrister of not less than years qualified or a retired High Court or Supreme Court judge. There are five medical practitioners of not less than ten years qualified and five sports administrators or athletes. It is a four year term which is renewable. The role of the Panel is hear cases fairly and impartially. When an athlete is alleged to have committed a doping infraction, the ISC refer the matter to the Panel to determine whether a violation has occurred. None of members of the Panel can have had any prior involvement in the case, except in the situation when the chair has been involved in an appeal on a decision to impose a provision suspension. Hearings are held in private and are confidential unless the Panel otherwise decides.

The national governing body, with the consent of the ISC, may use its own disciplinary panel to determine the case.¹⁸ However, the national governing body is bound by the rules of the Panel. If the ISC is of the opinion that the national governing body's disciplinary panel is not adhering to the rules and regulations, the agreement is rescinded and the matter is referred to the Panel.¹⁹

Irish Sports Council and Governing Bodies

The ISC provides core funding to the national governing bodies. The national governing bodies, along with their member clubs and affiliates, organise and administer most of organised sport in Ireland. The ISC provides funding for competitive sports organisations and also local and recreational sports bodies. There are three main recipients of ISC funding: the Football Association of Ireland (FAI), the Gaelic Athletic Association (GAA) and the Irish Rugby Football Union (IRFU).²⁰ These sports have benefited from redevelopment of Lansdowne Road Stadium and the creation of the sporting campus at Abbotstown (see below).

In February 2010, the ISC allocated its 2010 grants. €11.85 million was invested in the core activities of 59 governing bodies. These core activities included: administration, participation programmes, coach development, hosting events, implementing strategic plans and the employment of professional staff.²¹ Under the 2010 Women in Sport Programme, 27 sports were given €1.375 million in grants.²² Horse Sport Ireland's funding was cut by €100,000,²³ while Special Olympics Ireland received €250,000 less than it received in 2009.²⁴

Campus and Stadium Ireland Development

In November 2005, the Government approved the commencement of

Phase 1 of the development of a campus of sports facilities at Abbotstown, Dublin. Phase 1 provided for the creation of modern sporting facilities for the three major sports: football, rugby and Gaelic sports. Developments are ongoing with further development planned.²⁵

The National Sports Campus Development Authority (NSCDA), a statutory body, was created under the National Sports Campus Development Authority Act 2006 (came into effect on the 1st of January 2007). The Authority, a body corporate, has the role of overseeing the planning and development of the campus and its future expansion. The Authority is authorised (with the consent of the Minister) to purchase land and dispose of assets. The Authority is empowered to furnish and equip the sports campus with appropriate plant and machinery and to manage, operate and maintain the sports campus. The role of the Authority is to encourage and promote the use of the sports campus by persons participating in both professional and amateur sport and by members of the general public. The Authority consists of a Chairperson and 12 ordinary members. The chairperson has five year term of office. Four members have a three year term, four members have a four year term and four have a five year term. The Minister determines the terms for the relevant ordinary members.

Horse Racing Ireland

Horse Racing in Ireland is regulated by Horse Racing Ireland.²⁶ The Horse and Greyhound Racing Industry Act 2001 Act established Horse Racing Ireland (HRI), which replaced the Irish Horseracing Authority.²⁷ The Horseracing Authority was established under the Irish Horse Racing Industry Act 1994. There are a number of legislative provisions that regulate the Horse Racing Industry in Ireland. There are three Acts that govern the industry: Horse and Greyhound Racing (Betting Charges and Levies) Act, 1999, Horse and Greyhound Racing Act, 2001 and the Horse Racing Ireland (Membership) Act, 2001.²⁸ While the Acts are general in nature, more specific legislation has been introduced by way of statutory instrument.²⁹

The mission statement of HRI states that its aim is to develop and promote Ireland as a world centre of excellence for horse breeding and racing. Its main functions include: the overall administration of Irish horseracing; the development and promotion of the Irish horseracing industry, including the development of authorised racecourses, the guaranteeing of prize money at race fixtures and the costs of integrity services; the control of the operation of authorised bookmakers; the allocation of race fixtures and the setting of race programmes; the operation of racecourses which are owned by the Authority; the operation of a totalisator at race meetings; the promotion of the Irish thoroughbred horse; the making of grants, loans or other disbursements to authorised racecourses and to any subsidiary of the Authority;³⁰ the representation of horse racing internationally and the operation of the Registry Office.³¹

16 http://www.wada-ama.org/docs/web/editorials/sanctions_howman.pdf

17 The IOC will only consider applications to hold the Olympic Games from countries who have ratified the UNESCO.

18 Article 8.8 of the Irish Anti-Doping Rules 2009.

19 At Congress in 2005, the GAA adopted an Arbitration Rule and a Disputes Resolution Code. A Disputes Resolution Authority (DRA) was established to implement the Code. The DRA is independent of the GAA and bound only by provisions of the Code. The DRA has a panel of arbitrators, consisting of solicitors, barristers, arbitrators and persons "who, by virtue of their experience and expertise in the affairs of the Association, are properly qualified to resolve disputes relating to the Rules of the Association". The panels comprise of three members. In order to bring a claim, the claimant fills out the necessary forms and lodges €1,000 with the DRA. In event of the

claimant being successful, the applicant will be reimbursed. The respondents are required to reply and a hearing then follows. The parties may avail of mediation and negotiation at any time during the dispute resolution proceedings. The main types of cases the DRA hears are cases involving fair procedures, player eligibility and failure to abide by its own rules, interpretation or misapplication of the rules or an irrational decision or sanction. The arbitrators are all independent and impartial and decisions are usually given within 1 to 2 weeks. Recourse to the DRA is limited to GAA sports.

20 See http://www.irishsportsCouncil.ie/Governing_Bodies/Our_work_with_the_FAI_GAA_IRFU/. The funding is used to support both competitive and recreational sport. It is used to encourage young people from disadvantaged areas to play sport. It also funds local clubs and provides money for developing greater resources for coaches. For exam-

ple, in GAA funding is used to develop Fun Do coaching resource packs for coaches and volunteers in both hurling and football.

21 "Sport Council allocate 2010 grants", Tuesday, 9th February, 2010, *RTE Sport*, <http://www.rte.ie/sport/other/2010/0209/grants.html>.

22 This initiative began in 2005 and was introduced to encourage women to participate in sport. Sports including GAA, volleyball and hockey were allocated funding under this initiative. The funding was down on last years. In 2009 Women in Sport were allocated €1,374,900 in 2010.

23 It received €989, 217 in 2009 and €890,295 in 2010.

24 It received €2,564,269 in 2009 and €2,307,842 in 2010.

25 See *supra* n.8 for details.

26 In 2002, responsibility for horse and greyhound racing was transferred from

the Department of Agriculture to then Department of Arts, Tourism and Sport.

27 Prior to the 1994 Act, the Racing Board, founded in 1945 under the Racing Board and Racecourse Act, was the regulating body in Ireland.

28 The 1994 Act repealed two earlier acts, the Racing Board and Racecourses Act 1945 and the Racing Board and Racecourses (Amendment) Act 1975.

29 Statutory instruments (or delegated legislation) allow the relevant Minister to introduce legislation.

30 Racecourse Division (operates and runs a number of race courses in Ireland, including Leopardstown and Fairyhouse), Tote Ireland (operates a totalisator at all Irish racecourses including a credit betting service and a betting web site and returns profits made to HRI) and Irish Thoroughbred Marketing (a non-profit making organisation) are subsidiaries of HRI.

31 See www.goracing.ie/Content/HRI/hriinfo.aspx.



Bord na gCon

The Irish Greyhound Board (or Bord na gCon) regulates the greyhound racing industry Ireland. The Board is a semi-state body that was established under the Greyhound Act 1958. Under the Act, the Board has wide ranging powers including the licensing of tracks, the issuing of permits to officials, bookmakers and trainers. The Board ensures that the rules pertaining to the industry are enforced. There are 17 licensed tracks in the Republic, nine of which are owned by the Board. The remainder are run by private enterprises.

The primary piece of legislation is the Greyhound Industry Act 1958. This was amended by the Greyhound Industry (amendment) Act 1993. The 1993 Act amended Article 9 on membership of the Board and Article 36 of the Principle Act. Article 36 as amended provides that the Minister may make regulations on the following: the muzzling of greyhounds, the prohibition of a greyhound at an event who is not muzzled or muzzled in accordance with the regulations, the supervision by a veterinary surgeon of hares prior to and after the event, the marking of a hare, before the hares release into the wild after an authorised event and the prohibition of the use of a hare that has been used in a previous authorised event.

There are over 100 pieces of legislation pertaining to the Greyhound Industry in Ireland. The vast majority are statutory instruments. For example there are statutory instruments on admission charges, race card charges, greyhound trainers, artificial insemination of greyhounds, betting charges and levies, totalisation (jackpots) and various commencement order regulations.

There are four Acts: 1958 Act, the 1993 amendment Act, the Horses and Greyhound (Betting, Charges and Levies Act) 1999 and the Horse and Greyhound Racing Act 2001.

National Olympic Council

In Ireland, the Olympic Council of Ireland (OCI) promotes the Olympics in accordance with the Olympic Charter. The OCI has been in existence since 1922 and its main objectives are:

- To provide Team Ireland with the most effective athlete centred, performance driven operational planning and management at each Olympiad.
- To maximise commercial value of the Olympic brand and provide long term financial security for the OCI.
- To develop and protect the Olympic Movement in Ireland.
- To provide Strategic Leadership and representation of Olympic Sport within Government, EOC³² and IOC.³³

The Irish Constitution and sport

There is no specific article on sport in the Irish Constitution. Article 42 refers to education and acknowledges that the parents are the primary and natural educators of the child. The State guarantees to respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children. The reference to physical education is the only reference to sport under the Constitution. The

Constitution was accepted by referendum in 1937 and while it has been amended 28 times,³⁴ the development of sport has never been placed on a constitutional footing. However, as all laws must be in conformity with the Constitution, the various Acts relating to sport are in keeping with the ethos of the Constitution.

Recent problems: interference of a governmental body into the affairs of a non-governmental body

Irish Sports Council and Athletics Ireland

The Irish Sports Council has recently been embroiled in litigation over its involvement in the dismissal of the Chief Executive Officer (CEO) of Athletics Ireland (AAI). Mary Coghlan was appointed as CEO in April 2008 and took up office in May 2008 but was subsequently dismissed. In July 2009, Ms. Coghlan initiated legal proceedings in the High Court challenging the validity of her dismissal.³⁵ Ms. Coghlan sought a declaration from the High Court that her dismissal was invalid at the ISC had gone beyond the remit of its statutory powers by putting pressure on the AAI to dismiss its CEO.³⁶ Additionally, she sought a declaration from the High Court that she could not be dismissed unless an investigation had been carried out in accordance with the principles of constitutional justice.³⁷ Both the ISC and AAI denied any wrong doing with AAI holding that it had made an executive decision to dismiss Coghlan.

Ms. Coghlan's claim centred on two members of the ISC, namely the chairman, Ossie Kilkenny and the CEO, John Treacy. Coghlan submitted that both men had pressurised the AAI into firing her. She also claimed that the AAI President, Liam Hennessy, had defamed her in comments he made before an Oireachtas Committee.³⁸ It was alleged that Liam Hennessy had referred to Ms. Coghlan as a "cancer" that needed to be removed from AAI, and failure to remove her, he indicated, would affect the funding of AAI.³⁹ It was claimed by Coghlan, in reference to John Treacy, that there had been hostility towards the day she took up her position. In defending the remarks, Liam Hennessy claimed that he was not referring directly to Coghlan when he said "cancer", but rather related to issues being discussed between the AAI and the ISC. Counsel for Coghlan, Brian Moore Senior Counsel, submitted that the dispute arose out of the ISC's, or more specifically, John Treacy's, need to control the AAI's high-performance unit and to oversee the appointment of the organisation's director of athletics.⁴⁰ Ms. Coghlan was not in favour of such involvement from the ISC and in response, the chairman of the high performance unit sent an email referring to Ms. Coghlan as "a silly bitch".⁴¹ Ms. Coghlan complained to the board of AAI, however, before an inquiry was conducted, she was dismissed with the board of AAI dismissing her under a six month probationary clause.⁴² A few days later, a meeting between the ISC and AAI was convened. AAI had not been granted its annual funding but have been allocated funding on a monthly basis. However, once Ms. Coghlan was dismissed, it was reported that John Treacy had stated that now that the core issue had been resolved, funding would be restored to normal.⁴³

After four days of evidence, the case was settled out of court. In

32 European Olympic Committee, see <http://www.eurolympic.org/jahia/Jahia?language=eng>.

33 See <http://www.olympicsport.ie/Content.aspx?pageid=59>.

34 The most recent amendment concerned the amendment of Article 29 to facilitate the incorporation of the Treaty of Lisbon.

35 Ms. Coghlan was alleging misfeasance in public office against the ISC, a distributor of government funds.

36 Ms. Coghlan initiated legal proceedings against both the ISC and AAI.

37 Under the Irish Constitution every individual has the right to fair procedures. Implicit in the concept of natural justice is the right to fair procedures and due process of law. Every individual possesses inalienable rights which are derived from

their mere existence. There is a rule against bias, the person making the decision should not be biased or appear to be biased. The individual must be given the opportunity to present the case. The applicant must be informed of the matter and given opportunity to comment on material furnished by the other side. See the case of *Quirke v Bord Luthchleasa na hÉireann* (1988) IR 83; (1989) ILRM 129 where a discuss thrower was banned for 18 months by his governing body. The High Court overturned the decision on the grounds of lack of fair procedures.

38 Oireachtas is the Irish for Parliament. The Oireachtas Consists of the following: Dáil (Lower house), Seanad (Upper House) and the President of Ireland. Both the Dáil and the Seanad have their

own committees. The Dáil and Seanad may have joint committees that include members from both houses. Counsel for Ms. Coghlan claimed that at a joint Oireachtas Committee meeting on Arts, Sport, Tourism, Community, Rural and Gaeltacht Affairs, Hennessy referred to Ms Coghlan as "a problem", Healy, T., "Powerful duo were 'hostile' to sacked athletics chief, court told", *Irish Independent*, 5th of March 2010, available at: <http://www.independent.ie/national-news/courts/powerful-duo-were-hostile-to-sacked-athletics-chief-court-told-2089554.html>.

39 It was also argued that AAI Mr. Kilkenny had directed AAI to publish a series of press articles that held Ms. Coghlan responsible for the crisis in Irish athletics,

see "Former athletics chief starts action over dismissal", *Irish Times*, 14th July 2009, available at: www.irishtimes.com/newspaper/ireland/2009/07/14/1224250637797.html.

40 "Legal action over dismissal settled", *Irish Times*, 11th March 2010, available at: <http://www.irishtimes.com/newspaper/ireland/2010/03/11/1224266045845.html>.

41 These comments were made by Patsy McGonagle, a board member of AAI and a former member of the ISC.

42 Ms. Coghlan claimed that Ossie Kilkenny ordered the AAI to dismiss her under the six month probationary clause.

43 Healy, *supra* note 37.

44 The legal bill means that AAI overspent by almost € 400,000 in 2009, see Foley,



summing up, Ms. Coghlan's barrister asked the court: "Can the Irish Sports Council, a statutory body responsible for funding of sport in the State, effectively bludgeon and compel a non-governmental body to dismiss its chief executive?" Although the declaration sought by Ms. Coghlan was not given as the case was settled out of court, the cost of the case and damages paid to the former CEO amounted to €800,000. The amount paid shows that Ms. Coghlan had a case and the ISC and AAI, fearing further vilification, decided that it was best to settle.

The financial implications of the case have not only been damaging to Irish sport, the reputation of both bodies has been tarnished.⁴⁴ The ISC, a state body, showed a flagrant misuse of power, a lack of transparency, poor governance and a lack of adherence to its own rules and regulations. For example, John Treacy's five year contract was renewed in 2009 without the position being publicly advertised.⁴⁵

The then Minister, Martin Cullen, asked the ISC to prepare an urgent report on the matter. An independent inquiry would have been expected. The State's involvement in the affairs of a statutory body only serves to highlight the lack of independence of the ISC. The new Minister, Mary Hanafin, has not dismissed Kilkenny and Treacy. Although, she has called for the introduction of guidelines in relation to the appointment of senior personnel and on mediation and arbitration for governing bodies that are in dispute over issues, particularly those who are in receipt of funding. Minister Hanafin has insisted that she does not want to get involved in the day to day affairs of the ISC.⁴⁶

Both the ISC and the Olympic Council of Ireland have been criticised for their lack of efforts in promoting Ireland, due its close proximity to London, as a training venue for athletes due to participate in 2012 Olympics.⁴⁷ In light of the recent legal wrangling, it may find it increasingly difficult to attract athletes to come to Ireland to train.

The Irish Sports Council and the Irish Amateur Boxing Association

Minister Hanafin's call for the introduction of guidelines suggests a more hard-line government approach to the regulation of sport. The ISC have refused to fund the positions of chief executive officer and high performance director within the Irish Amateur Boxing Association (IABA) after it alleged that in the selection process best practice may not have been followed. The ISC is not alleging any impropriety on the part of IABA. The current head coach, Billy Walsh, had unofficially carried out the job of the high performance director since the departure of Gary Keegan after the Beijing Olympics. After a final round of interviews, three candidates were in contention for post of high performance director: Dominic O'Rourke, Billy Walsh and another coach. The IABA selected O'Rourke, a highly respected coach but with little experience of running a high performance unit.⁴⁸ The appointment came as a surprise to many as it was thought that Walsh would be chosen. Walsh had been part of the coaching team that produced three medals at the Beijing Olympics. Don Stewart was selected for the post of CEO. The ISC has refused to pay €700,000 needed to pay the salaries of both men. As O'Rourke had been the IABA's president, his appointment as the high performance director suggests a conflict of interest.⁴⁹

Boxing has been the one sport that Ireland has excelled in. Given the success of Irish boxers, it has been argued that the IABA is entitled to recruit on its terms.⁵⁰ It is feared that Irish boxing will be damaged irreparably. Boxing has been the template that other sports have used in Ireland in their attempts to emulate the success of our boxers. While there are merits to the argument, it could be argued that the ISC is actually following its own rules and regulations, in contrast to

the situation with Coghlan. Minister Hanafin, in the wake of the Coghlan litigation, spoke of the need to introduce guidelines when it came to the recruitment of senior officials. The ISC, irrespective of its motive, has questioned the selection of the IABA's president as high performance director. This is a very valid argument. Had the ISC granted the funding then it would have been open itself to public scrutiny for allowing the appointment of O'Rourke. Perhaps in the aftermath of the Coghlan case, the ISC is treading warily and in doing so is highlighting the lack of transparency and poor governance within boxing. Discussions between the ISC and IABA are ongoing and it is hoped that a resolution will soon be found. Ireland's success at the European Senior Championships in Moscow in June 2010 highlights the importance of funding in sport and the need to invest in coaching and training especially at the high performance level.⁵¹ It equally shows how Walsh, in his capacity as coach and unofficial role as high performance unit, can easily do the job of two. Perhaps the salary of the high performance director could be put to better use within the organisation.

Conclusion

The state is heavily involved in the regulation of sport in Ireland. Whether involved directly or indirectly, the state exercises immense control over the administration of both competitive and recreational sport. While the state leaves the internal rules and procedures to the national governing body, when it comes to funding, the influence of the state is more palpable. The ISC, a state body, has an important role in Irish sport. Great strides have been made in the last number of years. Capital has been invested in redevelopment and developed of sporting facilities. However, there is a need to delineate the powers of a statutory body and those of sports organisations. While guidelines and codes of best practice are welcomed, there needs to be a more concrete setting out of competences. Perhaps a future amendment to the Sports Council Act 1999 might be the forum to introduce such changes.

The International Sports
LAW Journal

C., "Athletics: Sparks to fly at AAI Congress as huge legal costs revealed", *Irish Independent*, 23rd April 2010, available at: <http://www.independent.ie/sport/other-sports/athletics-sparks-to-fly-at-aa-congress-as-huge-legal-costs-revealed-2149456.html>.

45 "Top Brass must go in wake of AI mess", *Sunday Independent*, 14th March 2010, available at: <http://www.independent.ie/sport/other-sports/top-brass-must-go-in-wake-of-ai-mess-2098941>

46 "Minister warns ISC over recent disputes", *The Daily Mail*, 25th of May 2010, available at: http://findarticles.com/p/news-articles/daily-mail-london-england-the/mi_8002/is_2010_May_25/minister-warns-isc-disputes-sports/ai_n53762241/.

47 Ruddock, A., "Athletics: This a chance for a new beginning", *Sunday Independent*, 21st of March 2010, available at: www.independent.ie/sport/other-sports/athletics-this-is-the-chance-for-a-new-beginning-2106309.html

48 Watterson, J., "Sports Council refuses to fund IABA post", *Irish Times*, 17th April 2010, available at: www.irishtimes.com/newspaper/sport/2010/0417/1224268542093.html

49 Hogan, V., "IABA fall-out threatening to crush Olympic dreams", *Irish Independent*, 26th April 2010, available at: <http://www.independent.ie/opinion/columnists/vincent-hogan/vincent-hogan-iaba-fallout-threatening-to-crush-olympic-dreams-2152381.html>.

50 O'Connor, R., "Boxing: Carruth wades into row", *Irish Independent*, 19th of May 2010, available at: <http://www.independent.ie/sport/other-sports/boxing-carruth-wades-into-row-2184795.html>.

51 Five Irish boxers proceeded to the semi-finals with Billy Walsh at the helm, Second only to Russia and on par with the Ukraine. See O'Brien, J., "Boxing: You never know what you've got 'til it's gone", *Sunday Independent*, 13th of June 2010, available at: www.independent.ie/sport/other-sports/boxing-you-never-know-what-youve-got-til-its-gone-2219047.html.