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LEGISLATING “GOVERNMENT INTERFERENCE” IN SPORT: OVERVIEW OF THE NATIONAL SPORT AND RECREATION AMENDMENT ACT 18 OF 2007

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ABSTRACT

Sport is seen as a national asset and as such belongs to the people of South Africa. Sport has been successfully used as a vehicle to bring the different race groups together into a united South Africa. The first democratic elections were in 1994, but the process of the unification of the different sporting codes in South Africa began as early as 1991 with some codes actually achieving unification in that year. Sport is regarded as a national treasure and for many citizens it has become a way of life.

The gains made through sport in bringing the people of the country together from a divided past cannot be forgotten, and it is for this reason that governance of sport in our country must be protected.

This article examines the background and current understanding of the topic.

INTRODUCTION

In 2007, the National Sport and Recreation Amendment Act 18 of 2007 was released to the public without much fanfare or outcry. The intention of the National Sport and Recreation Amendment Bill, which preceded the Act, was to create mechanisms that would allow the Minister to intervene in disputes that at the time seemed to have plagued national sports federations with increasing speed. The Act is aimed at providing, among other things, the Minister of Sport with the power to “intervene” in sport administration in South Africa in order to ensure that sports federations entrusted with administering sport in this country do so in a reasonable, responsible and accountable manner.

Barely a year down the line and all the good intentions of the Act seemed to have disappeared, and questions have been raised about some of the interventions made on behalf of the Minister into the functioning of sports federations.

The purpose of this article is to provide an overview of the amendments to the National Sport and Recreation Amendment Act 18 of 2007 and their implications.

NATIONAL SPORT AND RECREATION AMENDMENT ACT 18 OF 2007

The National Sport and Recreation Amendment Act evolved from the amendments to the National Sport and Recreation Act 110, which is aimed at ensuring that the Minister of Sport was able to “intervene in certain sport disputes; to provide for the issuing of guidelines for the promotion of equity, representivity and redress in sport and recreation; and to provide for matters connected therewith” (National Sport and Recreation Amendment Act 18 of 2007).

On the one hand the arguments in favour of the amendments to the Act have been motivated by the fact that one of the shortcomings in the governance of sport in our country has been that the Minister of Sport and Recreation, while being bestowed through the National Sport and Recreation Act 110 of 1998 with the responsibility for sport and recreation in South Africa, did not have the necessary authority to perform this function adequately. The amendments to the Act were seen to have been aimed at rectifying this shortcoming. While many in the general public saw this new Act as a positive move, its detractors have cried foul, with hardened sportspeople and other members of the general public alleging that this move can be seen as nothing more than the government “meddling” in sport.

Supporting these arguments are various media reports that are positioned in a manner that portrays the amendments in a negative light. This paper explores this perception.

NATIONAL SPORT AND RECREATION AMENDMENT BILL 2006

The preamble to the National Sport and Recreation Amendment Bill 2006 sets out the intention of the amendment as follows:

Whereas government has a constitutional obligation to ensure good and responsible governance of sport and recreation in the Republic;

And whereas the administration of sport and recreation in the Republic has been entrusted to sport and recreation bodies;

And whereas sport and recreation belongs to the nation over which government with its elected representatives has an overall responsibility;

And whereas recorded malpractices and poor governance in sport has resulted in disputes over the past few years necessitate intervention by government;

And in order to redress the inequalities in sport and recreation by optimizing the participation, involvement and ownership of previously disadvantaged communities in the playing, administration, management and support of sport and recreation in the Republic (National Sport and Recreation Amendment Bill 2006)

NATIONAL ASSET

The International sports-controlling bodies, while vigorously rejecting any government interference in sport, welcome good governance from all their national affiliates. To this end, in entrusting the national federations with administering and running sport in this country, the Minister of Sport, through structures set up by parliament, must ensure that sport is administered with good governance and in a transparent and responsible manner. This responsibility of the Minister cannot be seen as a “nice to have” function but must be regarded as one that has full legislative powers afforded to him by an Act of parliament.

It can be argued that, up until the passing of the Amendment Act, the Minister had to rely heavily on the national federations and their structures in order to perform his functions, and on reflection of the current state of some of the federations in South Africa, the Minister has been let down. Therefore in order to perform his legislative responsibilities and also to ensure that the people of this country derive maximum benefit from what rightfully belongs to them, the Amendment Act is a vehicle that is now available to the Minister to ensure compliance by national federations.

PUBLIC AND MEDIA VIEWS

In June 2008, the national news reported that both the South African Soccer Association and the South African Rugby Union were summoned to parliament to appear before parliament’s Portfolio Committee on Sport to answer questions about the lack of screening of matches under their jurisdiction on the public broadcasting channel (SABC 3 News). From the answers provided by the president of the rugby union, it was found that the public broadcaster instead of the sports federation was at fault because it was felt by the public broadcaster that “soapies” could not be sacrificed for the broadcasting of rugby matches (Interview: President of the South African Rugby Union).

In February 2008 the general council of Cricket South Africa was requested to appear before parliament’s Portfolio Committee on Sport to answer questions about Cricket South Africa’s transformation policy, and the public spat between its president and its chief executive officer about the selection of the national team (Meeting: Portfolio Committee on Sport, February 2008). Not long after this visit to parliament, the *Independent on Saturday* reported that the president of Cricket South Africa was still trying to enforce the transformation policy that was endorsed by the

Portfolio Committee, “It is understood that the president of Cricket South Africa, Norman Arendse, ‘reluctantly’ rubber-stamped the squad that includes only six players of colour instead of the required seven. . . .” (*The Independent on Saturday* 2008). This ‘reluctance’ as reported by the media stems from the transformation policy which states that in touring squads of 14 or more there should be at least seven players of colour (Cricket South Africa, transformation policy).

Minister asked to intervene in rugby

Sport minister Makhenkesi Stofile should use his new statutory powers to intervene in Mpumalanga rugby union, after the Pumas’ controversial fielding of a convicted killer and because of allegations of racism, MPs urged yesterday. It is the first time the national Assembly’s sport committee has called on the minister to use his powers in terms of the Sport and Recreation Amendment Act, which allows him to intervene in “any dispute, alleged mismanagement or any other related matter which is likely to bring a sport into dispute” (*Mercury* 2008a).

The *Daily News* (2008a) “MPs growing tired of Safa’s excuses” was one of the many headlines that drew attention:

MPs are expected to take a tough stance against the truant SA Football Association (Safa) after repeated failures by the soccer bosses to appear before the committee. The national assembly’s sports portfolio committee wants Safa to explain the appointment of another Brazilian, Joel Santana to coach Bafana Bafana – despite the new Sports Act discouraging the appointment of foreigners to head local teams . . . The Committee will decide today on what course of action to take against Safa . . . Committee chairman, the fiery Butana Komphela, was quoted as saying they wanted Safa to satisfy them that there were no other South Africans suitable to coach Bafana Bafana . . .

Sunday Tribune Sport (2008) led with “Bully problem for hockey”:

The President of the SA Hockey Association (Saha), Dave Carr, has requested an urgent meeting with the South African Sports Confederation and Olympic Committee (Sascoc) to discuss the composition of the men’s hockey team to attend the Olympic Games in Beijing. This week Carr was summoned to Cape Town by Parliamentary Sports Committee chairman Butana Komphela, who wants Saha to revert to a 2007 agreement whereby the men’s team would field equal numbers of white and non-white players in the squad of 16 for the Beijing Olympics.

“Call growing to nationalize Bafana team”, screamed the headlines of the *Daily News* (2008b):

Outspoken ANC MP Butana Komphela has reiterated earlier calls by sports and recreation minister Makhenkesi Stofile that Bafana Bafana be nationalized to be able to perform better during the Fifa Soccer World Cup in 2010.

This call by Butana Komphela (chairman of the Sport Committee of the National Assembly) was made after the recent below par performances of the national soccer team.

NATIONAL SPORT AND RECREATION AMENDMENT ACT 118 OF 2007

As already mentioned earlier, the intention of the National Sport and Recreation Amendment Act, where applicable, is to enable the Minister to intervene in certain sports disputes and to provide for the issuing of guidelines for the promotion of equity, representivity and redress in sport and recreation. While the Act in general takes care of housekeeping among other changes, which include the deletion, insertion and amendment of various aspects of the Act, of interest to this paper and its discussion are the following amendments:

Section 3A

The Sports Confederation and national federations must in the prescribed manner, enter into a service level agreement with the Sport and Recreation South Africa in respect of any function assigned to them by this Act.

The inclusion of this section in the Act creates a legal arrangement between the parties concerned and as such is enforceable and binding.

Section 6

- (d)(3) national federations must –
- (a) before recruiting a foreign sport person to participate in sport in the Republic, satisfy themselves that there are no other persons in the Republic suitable to participate in such a sport,
 - (b) ensure that such a recruited sports person complies with all the relevant criteria pertaining to entry into the Republic as contemplated in the Immigration Act, 2002 (Act No. 13 of 2002); and
 - (c) advise the Minister in writing of the full names and countries of origin of all such persons recruited for such purposes and confirm that there are no other suitable persons in the republic as contemplated in paragraph (a),
 - (d) ensure that the recruitment conforms to the guidelines issued by the Minister in terms of section 13A,

The above insertion, while ensuring that citizens of South Africa are given fair employment opportunities, opens up the possibility for federations to be dictated to in the employment of its personnel. While on the one hand this insertion provides employment protection for the citizens of the country, on the other hand it asks the question: Who decides on the final capabilities of a foreigner against a citizen of this country and furthermore, what are the repercussions if the Minister does not accept the explanation of the national federation?

Section 10(2)(b)

National federations must annually indicate to Sport and Recreation South Africa in writing, the names of the specific clubs under its respective control and the promotion of funding that these clubs have received during the specific year for development purposes from funding provided to these clubs by –

- (i) the national federations out of the funds received from Sport and Recreation South Africa;
- (ii) the national federation out of its own funds; and
- (iii) the national federations out of the funds received from other persons or bodies.

Section 10(3)(a)

No funding will be provided and no recognition as prescribed will be given by Sport and Recreation South Africa to national or recreation federations where –

- (i) no development programmes exist;
- (ii) or where federations exclude persons from the disadvantaged groups, particularly women and people with disabilities, from participating at top level of sport; or
- (iii) national federations have misused the funding referred to in subsection (2)

The above amendments to Section 10, read in conjunction with the existing clause, provide for punitive action by the Minister against national federations but are problematic in their implementation because presently disadvantaged areas, in the main townships, lack the necessary sporting facilities and conditions conducive to provide meaningful sporting development. Against this background, national federations are expected to promote development.

While other parts of this Act allude to government help in providing the infrastructure and resources for development, government’s commitment, thus far, has been slow or non-existent. Therefore any punitive action or threat thereof would be difficult to implement.

Section 13(f)(5)(a)

Subject to paragraph (b), the Minister may, after consultation with the relevant MEC if applicable, intervene –

- (i) in any dispute, alleged mismanagement, or any other related matter in sport or recreation that is likely to bring a sport or recreational activity into dispute; or
- (ii) in any non compliance with guidelines or policies issued in terms of section 13A or any measures taken to protect or advance persons or categories of persons, disadvantaged by

unfair discrimination as contemplated in section 9(2) of the Constitution by referring the matter for mediation or issuing a directive, as the case may be.

Section 13 (f)(5)(b)

The Minister may not –

- (i) intervene if the dispute or mismanagement in question has been referred to the Sports Confederation for resolution, unless the Sports Confederation fails to resolve such dispute within a reasonable time; and
- (ii) interfere in matters relating to the selection of teams, administration of sport and appointment of, or termination of the service of, the executive members of the sport or recreation body.

Section 13(f)(5)(c)

If a national federation fails to adhere to a decision of the mediator or directive issued by the Minister as referred to paragraph (a), the Minister may –

- (i) direct Sport and Recreation South Africa to refrain from funding such federation;
- (ii) notify the national federation in writing that it will not be recognized by Sport and Recreation South Africa; and
- (iii) publish his or her decision as contemplated in subparagraph (i) and (ii) in the Gazette.

Section 13 in particular as referred to above has to a large extent been used as a premise for the recent spate of appearances by sports federations before parliament's Portfolio Committee on Sport. While the Act is very clear about the jurisdiction and possible actions that can be taken by the Minister, the views as expounded by the media reports have been to the contrary.

This section of the Act does not allow the Minister or any other parliamentary structure to intervene without sound reason, neither does it allow the Minister or any of his officials to become personally involved in any of the disputes faced by the national federations. It is for this reason that the Act specifies that the Minister's intervention results in his referring the matter to mediation. In addition, the Act is clear about the Minister's intervention: the Minister may not "interfere in matters relating to the selection of teams, administration of sport and appointment of, or termination of the service of, the executive members of the sports or recreation body" (National Sport and Recreation Amendment Act 18 of 2007).

Section 13A

"The Minister must issue guidelines or policies to promote equity, representivity and redress in sport and recreation."

This section of the Act allows the Minister to ensure that redress in the transformation of sport is taken seriously by national federations. This is an important piece of legislation in order to ensure that all people in our country are provided with equal opportunity to fully realise their potential. While this part of the Act is crucial for various reasons, it must be realised that the national federations cannot be expected to deliver in isolation of government's support and commitment. Expectation by parliament's Portfolio Committee on Sport for the national federations to answer for the lack of delivery while they themselves provide only lip service to support leads to some of the controversy that media have reported on.

CONCLUSION

The above discussion has shown that through the preamble to the Bill and the subsequent Act, parliament's Portfolio Committee on Sport has requested the various national sports federations to answer to them on the "goings on" in the sport under their jurisdiction.

The media have in general shown that sports administration on the whole has come under scrutiny by government but more specifically by the Portfolio Committee on Sport under the chairmanship of Butana Komphela. Various national sports federations, including rugby, cricket,

athletics and hockey, have already been summoned to appear before the Committee to explain certain events that have clouded these federations in the recent past. This has resulted in an outcry from hardened sportspeople and the public about government increased “meddling” in sport. Is this outcry justified?

On the International front we have not heard about any sanctions imposed against our national federations for the scrutiny they have been subjected to by the government. The only conclusion that can be drawn from this silence is that the international federations do not – as yet anyway – consider the government to be interfering in sport.

From the above, it would be reasonable to assume that, in terms of the National Sport and Recreation Amendment Act 18 of 2007, the scrutiny by the government of the national sport federations is legitimate. Of course, the public would think not! Is this justified?

To complicate matters, *The Mercury* (2008b: 2) led with the story that “Boycotters play with fire, says Komphela’s deputy”. It is reported that the South African Sports Confederation and Olympic Committee (Sascoc) resolved “at the weekend that sports federations would not return to parliament until Komphela has been removed as committee chairman”. The article further states that the president of Sascoc was quoted as saying that they would return only when “we have a leader of the Committee we can engage with in a constructive and positive manner”.

Whether the chairman of the Portfolio Committee on Sport has lost his way or not, does Sascoc have the liberty to boycott the request by the Committee for Sascoc to appear before them? The jury is split . . .

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