

SPORTS LAW TODAY

Ćendić Lazar

Alfa Univerzitet, Beograd, Fakultet za obrazovanje diplomiranih pravnika I diplomiranih ekonomista za rukovodeće kadrove, Novi Sad, SRBIJA, pravnofakultet2010@gmail.com

Abstract: *Sports law is one of the new branches of the legal system, created by the commercialization and professionalization of sports, which is based on the given systematization and as such, has mixed characteristics. The UN Charter of Human Rights (1948), in which the combating discrimination is pronounced, gives personal rights in the sport. In response to requests concerning legal issues related to the sport, a new, separate branch of sports rights is a key discipline in the field of labor and social rights of professional athletes in the 21 century - Sports labor law. For easy understanding of the principles associated with the conclusion of the sports contracts, it is necessary to determine how the law and the legislature define the term of the contract, its elements and specific provisions contained in any contract. Unfortunate situations in sports are frequent in which injuries of the participants in sporting events are inevitable, which opens a new legal issue – compensation.*

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INTRODUCTION TO SPORTS LAW

In legal theory regarding the concept of *lex sportiva* three observations that contradict each other usually are highlighted. **First**, the notion of *lex sportiva*, according to its characteristics in content, is a narrower term than sports law, which states is a special branch of law that covers standards of sports system and sporting activities¹. **Second**, this term implies imprecise term that encompasses several different concepts². **Third**, it is a non-national law, i.e. the transnational legal order.³

Lex Sportiva is a dependent legal system. The main reason for this conclusion is that there is no state behind it, as sovereign, with its legislative powers. From this statement, it follows that the *lex sportiva* is a set of rules that have a private-legal character, whose legitimacy is based on the autonomy of the will of those who are associated with each other in sports organizations. Sports law, i.e. its regulations is a new kind of law, which is based on the regulation of relations in the field of sports, as well as a variety of demands created for sporting activities.

Sports law is one of the new branches of the legal system, established in the early 20th century by commercialization and professionalization of sports, which is based on the given systematization and as such, has mixed characteristics. It nonetheless contains fundamental principles and normative solutions that belonged to the sphere of constitutional, civil, criminal, administrative, and other traditional branches of law. Merging of these segments into a separate whole system was primarily motivated by practical needs. As a newly formed branch of modern law, sports law raises many issues that are intertwined with the domain of constitutional law,

¹Dejan Šuput, *Značaj normiranja prava*, Pravo i društvo, br. 1/10, p. 160

² A logical question arises, if this term is not precisely defined, how it can be argued that its concept is narrower than the concept of sports law.

³ If represents a non-national or transnational legal order, whether it can be said that the *lex sportiva* is narrower concept than concept of the sports law.

where there is a need for the emergence of new types of contractual and commercial contracts, for specific regulation of criminal compensations and similar institutions.

According to the narrower view, sports law and regulation that characterizes this branch of law covers the field of sports activities, relationships within the sports events as well as sports events. It seeks to regulate the legal problems arising in the sport, which led to the legal framework determines the sporting world in a specific and scientifically proven way. Using this law, the sport is equal with other social activities, and as such plays a very important role in the field of contemporary society.

Legislation and sports are highly correlated, because the most important element of the sport is its regulation. In addition, sports activities often happens outside the state, with prominent, which emphasize its international legal dimension. All these effects have led to a rapid development of legislation, both at the national and international level, from which a specific form of legal practice was generated. Despite the rapid development of this branch of the law, the legal regulation currently lags behind the needs of the practice.

PERSONAL RIGHTS IN SPORTS

The UN Charter of Human Rights (1948), in which the combating discrimination is pronounced (women, race, religion, etc.), gives personal rights in the sport. According to this Charter, and the most of the positive laws, any direct or indirect discrimination of athletes performing sports activities is prohibited, due to some personal characteristics, gender, status, affiliation or belief, including discrimination of professional athletes and athletes who want to become that in terms of employment, wages and working conditions, except where the distinction, i.e. giving disadvantage to athletes compared to other athletes in the same or a similar situation based on the nature or the real and decisive conditions on certain sporting activities, while the final goals are justified.

The modern positive law guarantees that the rights, obligations and responsibilities of professional athletes are governed by law, sports rules of relevant, national sectoral sports association, collective agreement, work rules (if a collective agreement with the employer is not concluded) and the contract between athletes and sports organizations.

SPORTS LABOR LAW

The very development of modern law, in response to requests concerning legal issues related to the sport, a new separate branch of sports law appear, as a key discipline in the field of labor and social rights of professional athletes in the 21 century - Sports labor law. According to this law, the work of a professional athlete is constituted by signing a contract in writing, with the threat of nothingness between a professional athlete and a society. In this constellation, athletes are weaker party and as such enjoy special protection in terms of labor legislation. In this respect, collective agreements play an important role, under which the rights and obligations covered by this contract shall be in accordance with the law, and individual contracts (as a separate type) must provide at least one of the rights contained in the collective agreement. Institute of collective agreements, in addition to general, contains special provisions, under which stipulates that the "null and void are agreements that restrict the freedom of professional athletes, and the options or benefits to society are prohibited."

A collective labor law can be defined as a set of institutions and legal norms governing the collective relations of the work between the collective subjects of the rights, while a collective

entity is always on the side of the employees, while on the employers' side can occur only one subject, and such relations became part of the collective labor law.⁴ As such, it contains the body of rules governing the relations between workers' associations on the one hand and an employer who belongs to the employer's group⁵.

According to experts in the field of employment, social and sports law, the conclusion is that collective bargaining can be defined in broad and narrow sense.

a) Collective bargaining **in the broad sense** is a process that aims to meet the interests, including any kind of bipartite or tripartite discussion in the form of labor-legal problems related to a group of people (in this case specifically, the professional athletes), with the tendency for parties to reach a compromise.

b) **In the narrow** but precise term, a collective bargaining is closely linked to the bipartite discussion leading to conclusion of the agreement.

CONTRACT LAW IN SPORTS

Sport as a highly profitable business activity, raised many issues that fall within the scope of constitutional rights. Due to the development of new and more complex branch of law, there was a need for the formation of new species as obligatory and commercial contracts, with specific emphasis on the regulation of criminal and damage compensations.

For ease of understanding of the principles associated with the conclusion of the contract of sports, it is necessary to determine how the law and the legislature define the term of the contract, its elements and specific provisions contained in any contract.

The contract constitutes the basis of the legal system, and as such is represented in all aspects and at all levels of sport, from employment through contract up to closing the deal.

As such, the agreement is a legally binding agreement between two or more parties, containing promises that each party undertakes to carry out its part of the promise by the law and by the rules that are specified in the contract.

As to the form in which the agreement is made, there are oral and written contract. A written contract is a safer form, which can more easily determine the subject of the contract, contractual obligations, as well as entities that conclude a contract.

For the validity of the contract, it is necessary to define the content of the contract and include all the necessary elements, terms and conditions, which have to be clearly defined. As far as the rights and obligations of stakeholders, depending on the complexity and importance, they are governed by the specific provision in the contract or contracts through the annex.

In order to be carried out, a contract must contain two essential elements: **an offer** and **acceptance**. In case that one of these two elements is absent, the contract cannot be signed.

The offer is a conditional promise of the bidder that is given to the other side to consider it. In addition to the general requirements, it should include the special conditions (quantity, price, date of admission, etc.). The contract becomes legally binding only when one party submits a bid, and the other party accept the terms of the promises that are contractually defined. In cases where there is a valid offer and acceptance of agreement on the terms cited in the contract, in

⁴ Boris Buklijaš, *Kolektivno radno pravo*, Split, 2006

⁵ Blanplain Roger, *The Legal Status of Sportsmen and Sportswomen under International, European and Belgian National and Regional Law*, Kluwer Law International, 2002

order that the contract became valid the law must allow it, otherwise the court will reject the contract and will not accept it as valid.

The primary role of the contract in sports is to legally bind the parties to fulfill their obligations and duties under the rules prescribed by law.

Contracts in the sport can be found in many different forms, but for each of these contracts there are certain standard provisions.

- Contracting parties,
- Terms of contracts,
- Duties and responsibilities of the parties,
- Termination of the contract (and the circumstances regarding the commission)

As with all other types of agreements, contracts in sports the parties must be clearly defined and emphasized, usually using the full name of the individual or organization involved in the contract.

In addition to the parties, each sports contract must contain a term of contract that specifies the time when the contract is legally binding.

The provision of the obligations and responsibilities of the parties regulated by the contract are an essential part of every sports contract. This provision is at the heart of every sport contract because it contains all the specific responsibilities of the parties individually, and the time by which these obligations must be performed under the contract if necessary.

Sport contract should cover all situations and circumstances under which each of the parties has the right to terminate the contract and receive appropriate compensation. Through this provision, it is necessary to define the rights of the parties in situations where there is a termination of the contract, or if one of the parties fails to comply with the rules agreed upon in the contract.

The most common types of sports contracts are **bilateral** and **unilateral** contracts.

The bilateral contract is a mutual obligation that includes promises that define the contract by both parties. This type of contract usually contains two promises; the first promise makes the offer that is guaranteed, while the second promise is a promise to accept the offer. In case when both parties accept the offer and sign it, it is considered that a bilateral contract is made.

Unilateral contract is a contract that obligates one party to fulfill its obligations under the contract. The obligation of the counterparty is to respect the rules defined by sports contract.

SPORTS TORT LAW

Unfortunate situations in sports are frequent in which injuries of the participants in sporting events are inevitable, which opens a new legal issue – compensation. With better performance of athletes, as well as larger "role" at sporting events, there are major risks to which athletes and other persons are exposed to.

Violation of legal goods that are included at sporting events occur as a result of denying personal rights of participants and other persons, and in rare cases as a result of the breach of one's belongings. Legal theoreticians associate such injuries for the term of sporting accident. This term include those cases where the injuries of athletes are associated with temporal and actual correlation with the sports activities.

Damage caused during or on some sports events lead to the question of whether damaged should independently to bear it or may require from the organizers of the sports event to compensate or mitigate adverse effects. If to the injured party is recognized the right to compensation from the person in charge, it is necessary to establish the status quo ante.

In practice, there are two different possible basis of liability for property damage incurred during sporting events: the risk created and the fault.

The fault of an athlete is the basis and precondition of its responsibility⁶. If damage occurs as a result of the actions for which the athlete cannot be blamed, the injured party is not entitled to compensation. Wrongful act resulting behavior of athletes that should have been avoided, if it was possible. This behavior implies the mental attitude of the athlete toward unlawful action.

Athletes will rarely be responsible based on the premeditation. Intentional harming an opponent exists only when athletes had too much time to think about its action. The reason for this opinion is the fact that, due to the rapid course of the game at a sports competition, athletes often reflexively react, leading to severe distinction of the conscious and voluntary movements.

Athletes will rarely be responsible for damages arising out of negligence causing other athletes during the exercise, even in cases where the injury occurred during a violation of the rules of sports games.

According to the German solicitors, the responsibility for the damage suffered by an athlete caused by another athlete during sports competition is based on guilt.

For damage caused by activities that causes an increased risk of damages, the perpetrator will be responsible, this means that the person who caused damage is responsible on the bases of objective fact that the damage is caused.

Athletes at sporting events use various sports equipment. Some of them have "the hazardous properties". According to the Law of Obligations, for harm caused by a dangerous thing, the responsibility is not based on guilt, but creates the risk. In order to demand compensation, an athlete must prove that he/she had suffered damage and that there is a causal relationship.⁷

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⁷ Nenad Đurđević, *Osnov odgovornosti za štetu koju pretrpi sportista na sportskom takmičenju*, Zbornik radova Pravnog fakulteta u Splitu, god. 49, 4/2012., p. 766.