

ANALYSIS OF SOME ESSENTIAL CONCEPTS OF SPORTS IN MACEDONIAN LEGISLATION CONTEXT

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Abstract

An analysis on the current regulation of sport activities and the definitions of sports in comparative legal theory is conducted, including an assessment of the sources of primary legislation in the Macedonian legal system. The provisions of the Macedonian Constitution, the Law on Sports, the international conventions, and agreements ratified by the country, as well as the other relevant legal text are elaborated. The specificity of the model of sports law in North Macedonia is also outlined. Furthermore, a re-evaluation of certain theoretical concepts is provided, such as the concept of Lex Sportiva. The synthesized conclusions refer to the significance of sports law in the societal context.

Keywords: regulation of sport activities, legal theory, lex sportiva

INTRODUCTION

The issue of regulation of sport and sport activities in contemporary society is more important than ever. The reasons for these tendencies lie in several spheres. The presence of negative situations at the sport fields as well as the actualization of dilemmas concerning athletes and sports organizations are the core of this issue.

Each legal system regulates the care for sports in principle in the constitution of the country, while specific laws on sport are being enacted for the purpose of detailed regulation of its practice. Also, the process of European integration requires certain activities of countries aspiring for membership in the Union in harmonization of the legislation that treats sport as an activity. In this constellation, sports law according to its merits obtains the place in the legal system and in the legal practice (Naumovski, 2004).

METHODS

The normative method was utilized during collection of data concerning the regulation of sport activities in contemporary society. Primary and secondary legal sources were particularly examined. This assessment included legal acts and documents referring to sports law. Internal and external critics and evaluation of the data in the sources have been conducted.

Besides the normative method, the study of the research subject was realized by application of the descriptive method, i.e., its minor methods: analytical, synthetic, comparative, and normative.

The obtained data were treated with inductive and deductive method of interpretation of facts relevant to regulations of sports in history and their corresponding forms in contemporary law.

The interpretation of the empirical data collected was realized by exploratory and logical approach of the essence of legal solutions concerning sports law.

RESULTS AND DISCUSSION

Review of etymological and theoretical definitions of sport in social context

In a broader philosophical sense, sport is considered as one of the phenomena related to "homo ludens" (man, the player), concept developed by Huizinga, in which sport has expressively significant compensatory phenomenon of great significance to modern society, that has penetrated numerous areas. Furthermore, competition in skills, strength and endurance has an important place in each culture (Huizinga, 2016).

In order to be able to talk about the roles and significance of sport in the legal context, the question of the origin and meaning of the term sport itself necessarily arises as a preliminary issue.

The term sport as a generic term, has a wide modern practical use and is generally accepted in modern speech, and has its origin in Latin (*disportō, āre* (Du Cange (1887).), or *deportō, āre* (Forcellini, 1756), which could be translated as "to carry away"), with an emphasis on leisure, play. The medieval Latin term *disportare* was used in archaic Italian as 'to have fun', 'to entertain'. The Old French *deporter, -ourter; desporter (amuser, réjouir)* (Godefroy, 1883)), as well as the Middle

English term *sporten* (to divert),” (Gardiner, 2012) are also considered as etymological pillars of the contemporary term “sport. The term “sport” is being accepted and is in regular worldwide use to this day.

Sport is a multidisciplinary activity for the study of which numerous scientific disciplines are interested (medicine, biology, psychology, sociology, law, as well as many other natural and social-humanistic sciences and scientific disciplines), and due to its importance for society, the state itself. Although attempts to provide a definition of sport are challenging, one of the most comprehensive definition is given by Coakley, who describe sport as “competitive activities that involve vigorous physical exertion or the use of relatively complex physical skills by individuals whose participation is motivated by a combination of intrinsic and extrinsic factors” (Coakley, 1994).

Further definitions of sport, label it as ‘free physical human activity oriented towards development of psychophysical abilities’ (Nešić, 2020). In this manner, sport can be viewed as: (1) top sport (sport with the aim of realizing top competitive results); (2) school sport (characterized in a class of physical education in schools, aiming at the development of children and youth); and (3) sport for everyone (recreation, which is defined as ‘an area that comprises engaging in sports activities for relaxation and recreation, refining health or improving personal outcomes in all segments of the population’) (Nešić, 2020). Awareness of the significance of sport for human health subsidizes to the global acceptance and application of health advancement policies that accentuate sport and its vital role in protecting human health (Jorgic, 2020).

Since antiquity, people have contested in numerous sports, and the victors have acquired the position of heroes. In the Middle Ages, beneath the severe impact of religion and the realization that earthly life is temporary, and that actual life begins afterwards the physical death sport was frequently considered a course, ruthless and harsh physical activity. In contemporary culture, the traditional concept that sport signifies educational societal phenomenon merged with game, whose objective is the physical and spiritual enhancement of character, augments with including new dimensions. Hence, contemporary sport is a flexible notion that elaborates more on the athlete, than about the sport itself. Consequently, from the aspect of sportspeople, sport is a rigid competition for conquest or for a record and from the point of view of a coach, it is a way of living. Sport events public label sport as the uncertainty of the outcome of the contest between opponents, whereas sociologists and social psychologists understand sport as a means of meeting the needs during the sport battle, Contemporary sport also faces challenges such as: use of illicit substances, match-fixing, athletes status abuse for personal enrichment etc. Therefore, the chore of contemporary society is to prevent and defeat harmful doings as much as possible, and to return all constructive features to sports, as a planned activity. A significant tool for accomplishing this objective are the standards of sports law.

At the same time, the name *Lex Sportiva* can often be heard for these rules. There is a threat in the case of identifying the term *lex sportiva* with the term sports law, insisting on its autonomous and supranational character. In this way, attention is diverted from the norms of national legislation and the norms of international public law, which in recent years have become increasingly important in regulating social relations in sports (Galantic, 2015).

Sports Law as a Branch of Law and Academic Field of Legal Science

Having in mind the above features, legal regulation of sports has imposed the requirement to develop a special branch of law-sports law, which is more and more becoming attractive to the academic community in general, and legal theory, especially for the purpose to determine the place of sports law in the legal system and legal practice.

In contemporary science there is a dilemma whether the term, Sports law, or "Law in sports", is more appropriate. The first term is generally used by legal science, while the second is present in sports sciences.

In this context sports law is in specific relations with the following legal disciplines: civil law (property issues of sports in general and the property of sports fields as well), commercial law and company law (management of sport clubs), intellectual property law (both industrial property law and copyright and related rights, especially in terms of broadcasting rights); labor law (transfer and movement of athletes); criminal law (particularly regarding acts committed at sports events and doping)); public international law, private international law etc.

The basic dispute among legal academics that emerges from the above circumstances is whether sports law is a branch of public or private law, i.e., whether given the broad social influence and public function of sport, sports law is a branch of public law or it pertains to the private law area, due to the importance of sports law rules that derive from the individual interest. According to a third opinion, sports law is a legal discipline *sui generis* (in itself, independent), which aims to emphasize its multidisciplinary approach, which has a goal to indicate the equal influence of public and private law in the development of sports law as a separate branch of law. This concept affirms sports law as an exclusive field of law, equally targeting both public and private law, a concept that is also reflected in legal science.

Modern legal theory summarizes these approaches in a two-fold definition that reiterates the legitimacy of sports law as a separate branch, i.e., collection of rules that 1) regulates sport activities; and 2) establish their organization (Buy, 2015).

One of the basic assumptions for the aspiration of sports law to become a well-established field of legal science is the fostering of application of wide spectrum of specific methods and techniques for scientific research, for the purpose of acquiring new scientific knowledge and verification of various hypotheses related to the subject of sports law research. Similarly, to sport

management, sports law research, besides the historical and normative method, should include application of quantitative statistical methods, particularly including empirical jurisprudence, which would lead to novel impartial findings.

The Notion of Lex Sportiva

There are several conceptions of lex sportiva in contemporary sports law science. As noted by some authors certain views consider lex sportiva as legal order created by international organizations on a contractual basis, i.e. a legitimacy emerging from the subordination of national federations, being in that way a global sports law with characteristic of a private system which is confirmed by the existence of a global forum-the Court of Sport Arbitration (Djudrjevic, 2014). Also, there are conceptions that outline that lex sportiva consist of several pillars: 1) the rules of the international federations as transnational supplementary system; 2) the decisions of the CAS and the World Antidoping Agency that provide harmonization of the standards in different sports including the procedural equity, the right of precise information, the protection from misuse and unjust decision of sport federation etc. (Djudrjevic, 2014).

Panagiotopoulos provides a wider definition, outlining lex sportiva as “legal order that incorporates state-adopted law and the law adopted by the national and international bodies representing organized sport”, being in this way “non-national law which claims for oneself direct and preferential application with national sports legal orders and the par excellence law in sports life” (Panagiotopoulos, 2017).

Due to the significance of international arbitration, lex sportiva is by certain scholars considered as ultimate vehicle for independent and worldwide sports law that encompasses federations regulations, customs and general principles. Similarly, to the benefit of applying the lex mercatoria concept and its advantages in the foundation of other new legal branches, lex sportiva is a vital determinant of contemporary sports law (Buy, 2015).

The Approach of Sports Law in the Macedonian Legislation

The Macedonian legislation has adopted an interventionist approach to regulating the rules of conduct in sport, considering the importance of sport for the development of society and its individuals. Such a codified approach has certain technical advantages because it is easier to find and interpret not only legal norms but also political ones because, in this way, it sends a clear message that the state shows appropriate attention to the position of sport in its legal system. These segments of sports law have a significant place in the regulation of sports and the analysis of their role in regulating social relations in sports is essential for a proper understanding of sports law in the Republic of Macedonia. The basic sources of Macedonian sports law are: The Constitution, the Law on Sports (LS) and ratified international conventions and agreements (Constitution, 1991) (Law on Sports, 2002).

The Constitution, as an act of the highest legal force that regulates the basic and most important relations in the state, indirectly regulates relations in the field of sports. As noted above, the Constitution contains several provisions of importance for sports and recreation, such as article 47 in which it is promulgated that the Republic of Macedonia stimulates and assists technical education and sport (Constitution, 1991).

The most important legal source that contains legal norms that regulate national sport, and its basic elements is the LS. The need to regulate by law a part of the matter of sports law ascends from the circumstance that the Macedonian constitution is a general framework, while the LS regulates the issues specifically. LS regulates the major quantity of rules of comportment in sports, but at the same time formally confirms the traditional practice of state recognition of sports autonomy. The law recognizes the implementation of sports rules by national federations and the Macedonian Olympic Committee (MOC). It includes the possibility of resolving disputes in the field of sport and entrusting them to sports arbitrations.

Other primary legislation sources that target important segments of the regulation of sport activities include: Criminal Code; Law on Copyright and Related Rights; Law on Games of Chance and Entertainment Games; Law on Ski Resorts; Law on Obligations; Law on Industrial Property; Law on Misdemeanor; Law on Audio and Audiovisual Media Services; Law on Labor Relations; Law on Free Access to Information of Public Character; Law on Prevention and Protection from Discrimination; Law on Associations and Foundations; Law on Employment and Insurance in the Case of Unemployment Insurance; Law on Health Insurance; Code of Criminal Procedure.

All the above and other sources include provisions that outline the approach of public regulation of sports in the Republic of Macedonia, i.e., normative solutions that are important for engaging in sports activities such as: freedom of association, prohibition of discrimination, permits, public safety, tax treatment, dispute resolution in sports, etc. The secondary legislation framework includes the subordinated (delegated) legislation of the state administration, as well as the legal acts of all entities targeted by sport activities (federations, associations, organizations).

CONCLUSION

The essentials of regulations of sports and sports activities today is progressively imposed as a pillar of contemporary law. This feature is provoked by the occurrence of a great amount of ‘negative phenomena’ in sports (including corruption in sports) and synergies to diminish them. Sports law is one of the newer branches of contemporary legal systems which due to its complexity is characterized by mixed legal features. It includes basic principles and specific normative solutions that belong to different legal areas (spheres of constitutional, civil, criminal, administrative and other classical branches of law) combining different legal segments into a

single entity within sports law is motivated by practical needs.

Sport has become a highly profitable business activity societies of modern times. In this regard, interdisciplinary research of legal and sport science can adequately respond to the numerous questions that affect sport as activity of public interest (including new types of contractual and commercial agreements, specific regulation of criminal and material responsibility). This would also include implementation of research results into the improvement of primary and secondary sports law legislation.

REFERENCES

- Buy, F., Marmayou, J., Poracchia, D., & Rizzo, F. (2105). *Droit du Sport*, LGDJ, Lextenso Edition.
- Coakley, J. (1994). *Sport in Society: Issues and Controversies*. Mosbey.
- Code of Criminal Procedure, Official Journal No. 150/2010;100/12,198/18.
- Constitution of the Republic of Macedonia, Official Gazette, No. 1/92,31/98,91/01,84/03,107/05,3/09,49/11, 6/19,36/19.
- Criminal Code, Official Journal of the Republic of Macedonia 37/96, 80/99, 48/01, 4/02, 16/02, 43/03,19/04, 40/2004, 81/05,50/06, 60/06, 373/06, 87/07, 7/08, 139/08, 114/09, 51/11-3, 51/11-79,135/11, 185/11,142/12, 143/12 166/12, 55/13,82/13, .14/14, 27/14, 28/14, 41/14,.115/14, 132/14,160/14, 199/14, 3 бр.196/15, 226/15, 7/17,170/17,248/18.
- Djordjevic, N., Micovic, M., Vukovic, Z. (2014), *Ugovori u Sportu [Contracts in Sports. In Serbian]*. Kragujevac : Pravni fakultet Univerziteta u Kragujevcu.
- Du Cange (1887). *Glossarium mediae et infimae latinitatis*, éd. Augm., t. 3, col. 141a. Niort : L. Favre.
- Forcellini, E. (1756). *Totius Latinitatis Lexicon, Tomus Secundus. Patvii :Typis Seminarri*.
- Galantic, M. (2015). *Lex sportiva – Origin and Meaning of the Term, Themes, Journal for Social Sciences*, 39 (2), 559–577.
- Gardiner, S., O’Leary, J., Welch, R. Boyers, S., Naidoo, U. (2012). *Sports Law*, Routledge, p. 13.
- Godefroy, F. (1883). *Dictionnaire de l'ancienne langue française et de tous ses dialectes du IXe au XVe siècle, Tome deuxième, Casteillon-Dyvys , F. Vieweg ,Paris., 1883, p.517, 634,*
- Huizinga, J. (2016) , *Homo Ludens: A Study of the Play-Element in Culture*. Kettering, OH: Angelico Press.
- Jorgić, B., M. Aleksandrović, M., Mirić,F., Čolović, H., & Dimitrijević, L. (2020). *Holistički pristup adaptiranoj fitičkoj aktivnostim*, Niš: Fakultet sporta i fizičkog vaspitanja Univerziteta u Nišu.
- Law on Associations and Foundations, Official Journal of the Republic of Macedonia No. 52/2010, 135/2011, 55/2016.
- Law on Audio and Audiovisual Media Services, Official Journal, No. 184/13, 13/14, 44/14, 101/14, 132/14, 142/16, 132/17, 168/18, 248/18, 27/19, 42/20, 77/21.
- Law on Employment and Insurance in the Case of Unemployment Insurance, Official Journal of the Republic of Macedonia No. 37/1997; 25/2000; 101/2000; 50/2001; 25/2003; 37/2004; 4/2005; 50/2006; 29/2007; 102/2008; 161/2008; 50/2010; 88/2010; 51/2011; 11/2012; 80/2012; 114/2012; 39/2014; 44/2014; 113/2014; 56/2015; 129/2015; 147/2015; 154/2015; 27/2016 и 119/2016, 14/1999, 7/2002; 88/2007; 162/2008; 171/2010 ,142/2008.
- Law on Free Access to Information of Public Character, Official Journal no. 13/06, 86/08, 6/10, 42/14, 148/15, 55/16,64/18, 98/19
- Law on Games of Chance and Entertainment Games, Official Journal of the Republic of Macedonia no.24/2011, 51/2011, 148/2011, 74/2012, 171/2012, 27/2014,139/2014, 61/2015, 154/2015, 23/2016 и 178/2016ч 132/2011;90/2017.
- Law on Copyright and Related Rights, Official Journal of the Republic of Macedonia no. 115/2010, 140/2010, 51/2011, 147/2013, 154/2015 and 27/2016.
- Law on Health Insurance, 25/00), 34/00, 96/00,50/01, 11/02, 31/03, 84/05, 37/06, 18/07, 82/08, 98/08, 6/09, 67/09, 50/10, 156/10, 53/11, 26/12, 145/12, 16/13, 91/13, 187/13), , 44/14, 97/14), 112/14, 113/14), 188/14, 20/15, 61/15,8/15, 129/15, 150/15, 154/15, 192/15, 217/15, 27/16,37/16,120/16,142/16, Decisions of the Constitutional Court: Official journals No. 104/00, 30/01, 48/01, 109/06, 88/07, 88/07, 106/07, 45/09, 14/10, 166/11.
- Law on Industrial Property, Official Journal of No. 21/09, 24/11, 12/14, 41/14, 152/15, 53/16, 83/18, 31/20.
- Law on Labor Relations, ¹Official Journal no. 62/05, 106/08, 161/08, 114/09,130/09, 50/10, 52/10, 124/10, 47/11, 11/12, 39/12, 13/13, 25/13, 170/13, 187/13, 113/14, 20/15, 33/15, 72/15, 129/15 , 27/16.
- Law on Misdemeanor, Official Journal No. 96/2019.
- Law on Obligations, Official Journal No. 8/01, 78/01, 04/02, 59/02, 05/03, 84/08, 81/09, 161/09, 23/13, 123/13, 215/21.
- Law on Prevention and Protection from Discrimination, Official Journal no. 258/20.
- Law on Ski Resorts, Official Journal of the Republic of Macedonia, no. 37/2016.
- Law on Sports, Official Gazette, 29/02, 66/04, 196/2004, 83/05, 81/08, 18/11, 51/11, 18/11, 174/11, 64/12, 148/13, 187/13, 42/14, 138/14, 177/14, 72/15, 153/15, 06/16, 55/16, 61/16, 106/16 , 190/16,52/19, 98/19, 244/19.

- Naumovski, G (2004). The Importance of Certain Roman Law Solutions for Contemporary Sports Law, 2nd FIEP Congress, Proceedings, Vrnjacka Banja, 2004, (pp. 481-486). Niš: Faculty of Physical Education, Niš.
- Nešić, B. (2020). *Sportsko parvo [Sports Law. In Serbian]*. Beograd: Sportska akademija, Beograd.
- Panagiotopoulos, D. (2017). Sports Law, Lex Sportiva & Lex Olympica. Athens: Biblioedit.

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