
Some Peculiarities and Legal Nature of Corporate (Local) Acts in the Sphere of Professional Sport and Sports of Highest Achievements

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Abstract

This study is dedicated to the study of the issues of legal regulations of the arena of professional sport, identifying the features of such regulation at the level of the norms of "soft law" - corporate (local) acts. The legal nature of corporate (local) regulations regulating relations in professional sports, which form the basis of the horizontal system of private legal regulations of professional sports, is analyzed. This study emphasizes that corporate (local) acts adopted and implemented in the field of sports should not contradict the current legislation, as well as acts of global treaties and law. "Soft law", as well as contractual regulation (self-regulation) of sport relations, at the current phase of sports growth in modern Russia, occupy the prime position in the system of regulating relations in the field of sport. Considering that the relations under study are mostly regulated at the level of soft law norms, the resolution of conflicts in the domain of sports with the involvement of coaches and athletes should be carried out by specialized arbitration bodies.

Keywords: sports, professional sports, high performance sports, Lex Sportiva, corporate acts, local acts, soft law, and professional sports relations.

Introduction

Research on the regulation of relations in professional sports in Russian civil science is a little more than two decades old. In recent years, legal scholars have begun to pay more attention to sports topics, which, in our opinion, is connected, firstly, with the state policy aimed at developing and popularizing mass sports, professional sports, supporting high-performance sports, national and other sports. Secondly, high-profile scandals in professional and high-performance sports related to the use of doping by athletes, transfers, "fixed" matches, etc. played an important role. A scientific approach, a deep examination of the issues of legal regulations of relationships in the field of sport have become very popular at the existing phase of growth and expansion of the sports industry.

Before we move on to the corporate (local) acts regulating professional sports relations, I would like to take a very general look at the regulatory legal (state) regulation of these relations. It should be noted that there are still disagreements among researchers regarding the question of which branch of law should regulate professional sports relations. Professional sports relations should be understood as relationships among the leading subjects of coaches, professional sports-athletes, on the one hand, and professional sports clubs, leagues and federations, on the other. Initially, the diversity of opinions appeared due to the existence of conflicts between certain provisions of Federal Law Number 80-FZ of Apr. 29th, 1999 "On Physical Culture and Sports in Russia" (hereinafter - the Law on Sport of 1999) [1], in particular, its articles 2 and 24. These provisions of the 1999 Law on Sports allowed some scientists to conclude that the activities of professional sportsmen can be managed by labor and civil law [2], while others, on the contrary, believe that such activities are regulated exclusively by labor law [3]. Our point of view on this issue is broader, even though the legal regulations of the relations under study has undergone significant changes at the legislative level. In particular, the examination of the contemporary legislations on sport, such as professional sports and the its application's practice, permitted to guarantee that the relationships developing among the prime subjects of professional sport actions can be regulated by civil law, mixed, or labor contracts [4].

It should be noted right away that by relations in the arena of professional sport, we mean relations with the athletes' participation that arise in connection with their participation in professional sports activities. It does not affect relationships that are closely related to the professional sports activities of athletes (for instance, relationships about their participation in sponsorship relationships, ad companies, agency relationships, etc.), as well as other relationships in the field under study. And the legal definition of the category "professional athlete" was fixed in Article 2 of the Law

on Sports of 1999 – this is an athlete for whom sport are the prime activity and who obtains, according to the contract, salary and other financial benefits for getting ready for and taking part in sport contests. The current legislation on professional sports does not contain such a legal definition as a professional athlete.

The presented point of view on the possibility of using mixed contracts for the purposes of registration of relations with the participation of athletes is distinguished by both legal practice [5] and civil doctrine [6].

The legal regulations of the studied relations at the current stage has undergone significant changes in the legislative framework. Particularly, on Mar. 30th, 2008, the Federal Law "On Physical Culture and Sports in Russia " [7] (hereinafter referred to as the Law on Sports) came into force. With adopting the Law on Sports, the legal regulations of professional sports relationships has changed significantly. Thus, Article 2 (11) (1) of the Law on Sports stipulates that professional sports are a part of sports aimed at organizing and conducting professional sports competitions. In the earlier version of the Law on Sports, professional sports were defined as a part of sport intended to organize and conduct sport contests, for participations in which and readiness for which, as their prime activity, athletes obtain remuneration from the organizers of such contests and (or) wages.

Methods

The primary approaches utilized in the course of writing this paper are the complex analysis method, the comparative legal, intersectoral approach, the method of interpretation, the legal-sociological method and the method of system analysis.

Results and Discussion

As is known, in addition to the adoption of the Law on Sport, the Labor Code of Russia [8] was substantially amended. Particularly, the Labor Code of Russia includes a brand-new chapter 54.1 "Peculiarities of regulating the work of coaches and athletes " [9]. At initial glance, everything seems utterly logical – finally, relationships with the athletes' participation are regulated at the legislative level. At the same time, even with the most cursory acquaintance with these special provisions of the law, the question arises: how are they regulated, how complete and sufficient is this regulation? The response to this inquiry is found in the this chapter's contents. Thus, Article 348.2 of the Labor Code of Russia stipulates that in employment contracts with athletes, in addition to further circumstances that don't worsen the condition of an employee compared to set labor legislations and other regulatory legal acts comprising collective settlements, local regulations, labor law norms, contracts, extra circumstances may be provided for on the process for the athletes to make financial payments favoring the employer on the employment contract termination in cases supplied for in Article 348-12 of the Labor Code, and on the particular payment. Such financial payments are defined by the contract of employment (Part 3 of Article 348.12 of the Labor Code of Russia).

Let's turn to "*soft law*" - corporate (local) acts specified in the Law on Sports and the Labor Code of Russia regulating relations in the arena of professional sports. In our opinion, both in the Labor Code of Russia and in the Law on Sports, the legislator included blanketing norms quite reasonably and justifiably. Several articles of the Law on Sports and the head of the Labor Code of Russia, of course, are not able to fully and sufficiently regulate such a complex set of relations. Consequently, the sphere of professional sports, as well as high-performance sports, remains extremely poorly regulated at the legislative level today. If this is the case, then relations in the area under study are regulated in more detail by corporate (local) acts. Moreover, as we can see, the domestic legislator himself prefers *soft law*, i.e., a horizontal system for regulating relations in this area. How effectively such regulation is implemented and whether corporate (local) acts or their provisions do not contradict the current legislation, we will be able to understand in the course of this study.

We will analyze only some corporate (local) acts, in particular, we will start with the "Constitution" of hockey – the Legal Regulation of the Kontinental Hockey League (seasons 2017/2018, 2018/2019, 2019/2020, 2020/2021) [10] (further - KHL Regulations). So, Chapter four of the KHL Regulation is named "Contracts". Based on Article 32 of Chapter four of the KHL Regulation, in case of early ending of contracts at a hockey player initiative (at his own request), the player must make a monetary payment favoring the club with which the contract was terminated in the next amount and order:

- first*, if the hockey player has not reached 29 by the time of termination of the contract, he pays the club 2/3 of the amount of salary (remuneration) unpaid for the time remaining before the contract expiration;
- secondly*, if a hockey athlete has reached 29 by the time of termination of the contract, he pays the club 1/3 of the amount of salary (remuneration) unpaid for the time remaining before the contract expiration;
- Third*, only by settlement among the hockey player and club, the contract could also be ended with no compensation from the athlete.

The foundation for making a cash payment is the Labor Code of Russia (Article 348.12), the Contract Termination Settlement, the KHL Regulations and the contract. Thus, the athlete is obliged to make a financial payment favoring the club with which the contract has been ended, not only by the provisions of *soft law*, but also by the provisions of the current domestic legislation. This clearly shows the principle of differentiation and unity of the legal regulation of professional sports relationships in sports [11]. This principle has a special refraction in the field of sports. Especially, the above provisions of the KHL Regulations were subsequently confirmed, reflected and consolidated in Chapter 54.1 of the Labor Code of Russia, and not vice versa. Thus, disagreements and contradictions between the standards of

legislation and the norms of *soft law* were overcome particularly, the Labor Code of Russia and the KHL Regulations (corporate act). In other words, we see in action the principle of unity and differentiation of norms soft law ("Soft law") and hard law ("In other words, we see in action the principle of unity and differentiation of norms soft law ("Soft law") and hard law ("Hard law") the legal regulation of professional sports relations.") the legal regulation of professional sports relations.

This is how the principle of unity and differentiation of norms of corporate (local) acts and regulatory legal acts (soft law and hard law) is manifested regulation of professional sports relations, both in the statics of law (fixed in these acts) and in the dynamics of law (applied in practice), as evidenced by the above provisions of the Resolutions of the Plenum of the Supreme Court of Russia Number two dated Mar. 17th, 2004 and a Revise of the courts practice taking into account cases on disputes resulting from the employment relationships of athletes and coaches.

Analyzing further the provisions of the KHL Regulations, we see that disputes, disagreements or claims resulting from the contractual relations between the hockey player and the club are subjected to revise and examine by the KHL Disciplinary Committee according to the KHL Disciplinary Laws. The Disciplinary Committee's decisions might be appealed to the Arbitration Court for Sports under the Autonomous Non — Profit Organization "Chamber of Arbitration for Sport" (CAS) [12]. At the same time, the club and hockey athlete admit the decision of the Disciplinary Committee, ICAC or CAC banning a player from performing for other hockey clubs, such as foreign ones, are totally valid in the Russian Federation and in other countries, and the player concurs not to appeal against the decision of the Disciplinary Committee, ICAC or CAC banning a player from performing for other hockey clubs, such as foreign ones (clause 3 of Article 37 of the KHL Regulations).

Domestic judicial practice shows us that the provisions of the KHL Regulations and the "standard" contract of a hockey player under study are legitimate. Thus, judicial instances indicate that by virtue of Article 348.2 of the Labor Code of Russia, an employment contract with an athlete may provide for additional conditions on the athlete's obligation to comply with the provisions (regulations) on sports competitions. In addition, according to paragraphs 3 and 4 of Part 2 of Article 24 of the Federal Law "On Physical Culture and Sports in the Russian Federation", the duties of athletes include the obligations to comply with ethical standards in the field of sports, as well as to comply with the provisions (regulations) on physical culture events and sports competitions in which they participate, and the requirements of the organizers of such events and competitions [13].

In so far as we have discussed jurisdiction in resolving disputes arising out of or in connection with athletes' contracts, we argue it seems vital to focus on such a legal phenomenon as *Lex Sportiva*. According to E. A.

Vostrikova, *Lex Sportiva* is a single international system of legal norms that includes elements that are different in nature and legal force (soft law and hard law), united by one goal—the regulation of international private sports relations [14]. There is no doubt that the issues of preserving the interests and rights of athletes at the national and international levels in resolving various disputes arising from contracts, doping scandals, etc., are becoming more and more relevant. In the field of high-performance sports, as well as in professional sports, conflicts and disputes are resolved in a specialized arbitration body - the Court of Arbitration for Sport in Lausanne (CAS). The development of international sports relations requires an appropriate system for regulating them and resolving emerging disputes. Such a system is *Lex Sportiva* [15]. The scope of this article does not allow the authors to explore *Lex Sportiva* in more detail. Let's just note that this system works and fits seamlessly into the system of legal regulation of private relations in sports, stands in the way of protecting and protecting the rights and legitimate interests of sports subjects.

Summary

It can be concluded that the legal definition of professional sports, as set out in the present legislations, arouses various questions: (1) is professional sports a business activity? (2) which of the subjects of professional sport relationships is entitled to conduct such activities? It seems to us that professional sports are certainly an entrepreneurial activities. Particularly, the conduct and organization of sport contests in the arena of professional sport is conducted aiming at generating profit. In addition, for preparing for such sport contests and participating in them as their main activity, athletes receive both wages and other remuneration from the organizers of sports competitions. Consequently, it can be concluded that business activities in the arena of professional sport could be performed by the organizers of sport contests and their participants—athletes, professional sport clubs, coaches, and so forth.

It also seems reasonable to conclude that most of the norms of corporate (local) acts that have been adopted and are currently in force in Russian professional hockey (Regulations, athlete statuses, etc.) are legitimate, valid and sanctioned at the legislative level. At the same time, taking into account the legal nature of the corporate (local) acts under consideration, we note that they cannot be legally higher than the law and contradict the current legislation, since they are adopted by sports entities (sports federations, leagues, etc.).

There is no doubt that without a "soft law" (*soft law*), today, neither practically nor theoretically, the entire complex of relations in the field of sports cannot be settled. This allows us to conclude the following: 1) corporate (local) acts adopted and implemented in the field of sports should not contradict the current legislation, as well as acts of international law and international treaties. 2) "*Soft law*" (*soft law*), as well as contractual regulation (*selfregulation*) of sports relations, at the present stage of sports development in modern Russia, occupy the main position in the system of

regulating relations in the field of sports) 3) Considering that the relations under study are mostly regulated at the level of soft law norms, the resolution of conflicts in the field of sports with the participation of athletes and coaches should be carried out by specialized arbitration bodies.

Conclusions

The scope of this paper does not allow for a deep and detailed analysis of the norms of the Sports Law. We will refer to it in further research. In this article, we are primarily interested in the norms of "soft law" - corporate (local) acts regulating relations in the field of professional sports with the participation of athletes (for example, the Kontinental Hockey League). Thus, in accordance with Article 24 of the Law on Sports, athletes have the right to choose sports, participate in sports competitions in selected sports in accordance with the procedure established by the rules of these sports *and regulations* about sports competitions, conclusion of employment contracts in accordance with the procedure established by labor legislation, etc. In addition, in accordance with the specified norm, athletes are required to comply with the provisions (regulations) about physical culture events and sports competitions in which they take part, and the requirements of the organizers of such events and competitions, etc.

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