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Рецензент: докт. біол. наук, проф. Мицкан Б.М.

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Liliia Biletska, Svitlana Malona

STATE OF SPORTS LAW IN THE UKRAINIAN LEGISLATION

У статті розглянуто правова регламентація спортивної галузі. Проаналізовано стан законодавчої бази України зі спортивного права та визначено його місце в правовій системі. Досліджено предмет спортивного права та визначено критерії відокремлення від суміжних галузей. Проаналізовано підстави для визначення існування спортивного права як самостійної галузі права. Використовували методи аналізу та узагальнення науково-методичних й нормативно-правових джерел, узагальнення та порівняння. Формування ефективної системи спортивного законодавства України вимагає комплексного підходу та передбачає взаємозв'язок спеціальних нормативних актів щодо спорту з нормативними актами інших галузей права.

Ключові слова: спортивне право, спорт, фізична культура, галузь права, система права.

В статье рассмотрены правовая регламентация спортивной отрасли. Проанализировано состояние законодательной базы Украины по спортивному праву и определено его место правовой системе. Исследованы предмет спортивного права и определены критерии отделения от смежных отраслей. Проанализированы основания для определения существования спортивного права как самостоятельной отрасли права. Использовали методы анализа и обобщения научно-методических и нормативно-правовых источников, обобщение и сравнение. Формирование эффективной системы спортивного законодательства Украины требует комплексного подхода и предусматривает взаимосвязь специальных нормативных актов по спорту с нормативными актами других отраслей права.

Ключевые слова: спортивное право, спорт, физическая культура, отрасль права, система права.

In the article the legal regulation of the sports industry. The state legislative framework of Ukraine on sports law and its place legal system. Studied the subject of sports law and the criteria of separation from the related industries. Analysis basis for determining the existence of sports law as an independent branch of law. We used methods of analysis and synthesis of scientific-methodological and normative-legal sources, synthesis and comparison. Formation of an effective system of sports legislation of Ukraine requires an integrated approach and provides interconnection special regulations on sports regulations with other areas of law.

Keywords: sports law, sports, physical education, field of law, legal system.

The problem statement and the analysis of the recent research. Ukrainian sports legislation is being formed and includes the Law of Ukraine “On Physical Culture and Sports” from 24.12.1993, № 3808-XII, Law of Ukraine “On anti-doping control in sport” from 05.04.2001, № 2353-III, and the Law of Ukraine “On the support of Olympic, Paralympic Movement and sport highest achievements in Ukraine” dated 14.09.2000, № 1954-III [1, 2, 3]. The existing rules regulate only general positions and they are almost impossible to apply in particular cases in practice. Taking into account the problems existing in Ukrainian sports, the current legal regulation is not sufficient, in our opinion; some statements of legal acts require reviewing and substantial revision. The lack of a perfect legal bases on sports rights, which would be able to regulate various aspects of sports relations, has been generating internal use and, in fact, selfregulating legal acts which sometimes leads to negative social consequences [4].

Today jurisprudence remains problematic determine where sports law in the legal system of Ukraine. This, in turn, complicates the process of improving the legal rules governing sports relationship, and as a result – a wide range of sports relations is not regulated in the Ukrainian legislation.

Research aim to analyze the reasons for determining the existence of law as an independent branch of law.

Research methods. The analysis and synthesis of scientific-methodological and regulatory legislation sources on the topic of the research; systematic analysis, generalization and comparison have been implied.

Research results and their discussion. Sports Law occupies a prominent place in the law of most foreign countries and is actively developing in the post-Soviet countries (such as Russia, Belarus), where his work dedicated to the development of young scientists, holds conferences and seminars between scientists constantly maintained a lively debate about the appropriateness of recognition or non-recognition of sports law as a separate law, despite the very different approaches to building the right structure and different degrees of development and provision of physical culture and sports in each country.

In those states, which houses the classic version of the legal system of separation of public and private sports right is characterized in that it has elements of both private and public law. If the relationship aimed at conducting competitions in the sport – namely, sports federations, athletes or club governed by rules of law, the case of private law. If we take the relationship between the Sports Federation and relevant executive authority to implement the authority to subordinate this federation of sport, it comes to public law. The combination of public and private factors in sports law is also specific in terms of the method of regulation that combines authoritative and independent regulation.

Currently, worldwide sports right very rapidly developing as a branch of law, and discussions on the feasibility highlighting it in a separate field for more than 20 years ago ceased. In Ukraine, as in most post-Soviet countries, by contrast, discussions on this subject do not cease. Among the professionals who support and justify the allocation of sports law as a separate branch of the complex should be called a group of scientists from Russia: S. Alekseev, A. Hlashev, M. Mina, NV Chaban, from Belarus – V. Tikhon, the US – Nafziger, German – Hilpert Horhst, Netherlands – prof. Siekman and many others.

A number of thesis example of Russia who devoted their labor of sport and its regulatory mechanism somehow touched topics possible existence of sports law as a separate branch and, in my opinion, wrongly concluded there are no grounds for such isolation. For example, A. Chesnokov, N. Ovchinnikov, A. Yehorychev.

Sports activities are a special type of social activities, in which there have been focused private and public interests regarding health, employment, competitive achievements, mass public events, economic providing, economic activity, the functioning of economic organizations, state support for sports etc.

Legal nature of the “sports law” is an interdisciplinary, based on complex heterogeneous nature of sports relations. “Sports law” is a complex that includes borrowing and adaptation of legal mechanisms and legal means of a number of institutions branches of law, constitutional law, civil law, administrative law, commercial law and labor law. The developers of Ukrainian law “On Physical Culture and Sports” did not always come out of the complex nature of the sports legal relations that actually led to the low efficiency of the regulations of this legal act, including its numerous gaps, declarativeness, absence of systematic approach to the subject of legal regulation.

The system of law is a dynamic phenomenon and the emergence of new fields is inevitable and depends on the level of the society development because the law as a regulatory mechanism for most public relations cannot be constant, ignoring the time demands and social needs. Sports law has been determined by the objective character of social relations which are the subject of legal regulation of the sphere, and their natural development should possess its own place in the system of law in Ukraine.

We can see that sports law, as part of the legal system of Ukraine, in its normative and functional properties is beginning to acquire the signs of the independent field, within which specific legal institutions have been combined, including: the institution of sports mediation, the arbitration institution of sport, the institution of anti-doping sports procedural rights etc. However, the legislation of Ukraine at the present stage of development still requires significant improvement, both in terms of regulation of new types of legal relationships and in the delimitation of sports law subject from other legal areas, including civil, labor and others.

Given that the Ukrainian jurisprudence does not approve the division system of the right to private and public, that determine where a particular field of law in the system of domestic law is by comparing it with the related fields of law and national legal systems definition criteria for separating them.

Constitutional law as a leading industry right of all states is a common form, which separated all other branch of law. Thus, the basic regulation of the law, the Constitution of Ukraine, establishes the duty of the state to take care of the development of physical culture and sports – art. 49 [1]. Basic legal act sports law – the Law of Ukraine “On Physical Culture and Sport” [4] was designed to the Constitution of Ukraine. For implementation provided by that law principles and taking into account the development of the sport have been adopted other laws and regulations. In general the system of sports law as of 2014 is more than 1400 legal acts.

Many common athlete has the right to civil and labor law. This applies primarily to the subject of legal regulation. Public relations, are the subject of these industries, similar. Civil law is a system of legal rules governing property and related moral relations that are based on discretionary – free will of participants and their independence and nepidporyadkovanosti.

Subject to sports law includes those property relations that arise in connection with activities in the sports field – agreement on provision of sports services, sponsorship agreements with athletes and clubs transfer agreements (sale, lease athletes), etc., and non-property relations in field of intellectual property – for example on the transfer of rights to trademarks and trade names of sports events, the agreement on transfer of rights to broadcast competitions and more.

The above relations that are subject to regulation of sports rights, beyond sporting activities are not implemented and are meaningless, which is why they can not be entirely attributed to the subject matter of civil law. As regards employment and value of sports rights to it, the similarity features of these industries is that workers work the sports field has its own specifics, especially regarding employment and professional athletes such relations is regulated sports law. For example, the lease athlete by nature is mixed because it has features of

both agreements civil and labor. Employer Sportsman Club leases, but also the athlete himself perform work duties in the new sports club, who took it out.

Many rules dictated by international federations of the sports, each sport has its own specific requirements for the regulation of labor athletes of this sport. Sometimes the requirements for international sports federations to establish certain obligations for professional athletes as a category of workers contrary to domestic law. For example, in game sports, sports club can terminate the contract with the athlete before the end of the competitive season, or in the so-called “protected period”, in football it is three years; Athlete can not terminate the contract with the employer club, even if it is not satisfied with the working conditions and so on. Special rules on professional athletes work referred to in Articles 23, 231, 232, 233 of the Law of Ukraine “On Physical Culture and Sport” [4]. For example, in the Russian Federation Labor Code in a separate chapter is devoted to the field of sports workers, which also indicates the great importance of this activity for the country as a whole.

In conducting the competition a person who organizes and conducts them, was to ensure public order and the safety of spectators and participants. Violation of public order perpetrators are subject to administrative or even criminal liability. That administrative and criminal law affect the relationship sport, protecting the subjects of these relations. Similarly, in the fight against the use of banned substances in sport. For their use athlete is punished methods specific to sports law. However, a person who distributes such substances or encourages their use others and may incur criminal liability.

The subject of administrative law is managerial relations that arise between state through its authorized bodies and individuals and legal entities on the basis of legal acts. Administrative law regulates sports public relations through the adoption of administrative acts by imperative generate, modify or terminate sports relationship.

Commercial Law and related legal sports. Yes, recreational and sporting activities (organizing and conducting sports professionals and sports enthusiasts, the activities to prepare athletes for competitions in various sports recognized in Ukraine) is subject to licensing under §. 51 Art. 9 of the Law of Ukraine “On licensing certain types of activities” *upovnovazhenym* executive body of commercial law rules governing standardization and certification of sports equipment, technology and sports facilities.

It should also be noted that in Ukraine there is no single legal act which could systematize the existing legislation on physical culture and sport and reflect the global trends in the legal regulation of sports relations [4]. This, of course, creates a braking effect on the development of sports law. In our opinion, firstly, it is high time to demand legislative codification of law in the area of our study; secondly, the relevance of reforms in the sphere of physical education and sport, regulation of relations in various legal institutions, taking into account at least certain European standards. This step is very important for Ukraine as an associate member of the European Union.

For example, we can use the experience of Russian Federation. Professor S.V. Alekseev published the manual “Sports Law in Russia”, designed for university students of law faculties. This is the first fundamental law textbook devoted to the comprehensive review of regulatory norms in physical culture and sports Russian Federation. Taking into account the recent changes, the appropriate regulatory framework has been summarized, systematized and commented, the directions for improvement have been set. The practice of normative documents regulating relations in the sports field has been analyzed. The experience of regulation in physical culture and sport in foreign countries has been generated. The formation and teaching of sports law, which is the newest area of law in post-Soviet countries, have been highlighted.

So, in today’s conditions, unfortunately, the legal regulation of sports has not been provided, science attaches little attention to developing the problems solutions which not only

hinders the development of sports law, but also directly affects the legal practice. It should also be noted that the existing rules regulate only general statements and in reality it is almost impossible to apply them in practice.

Conclusion

Summarizing, we can state that sports law, as part of the legal system of Ukraine, in its normative and functional properties, is beginning to acquire the signs of the independent field within which there have been combined the specific legal institutions: the institution of sport mediation, the institution of sport arbitration, the institution of anti-doping and procedural sports law etc. Formation of an effective system of sports law Ukraine – a lengthy process, requiring a comprehensive approach to the regulation of relations in the field of sports, the relationship provides special regulations on sports regulations with other areas of law.

Prospects for future research is to work on the legislation of Ukraine, which requires substantial revision, as a part of a settlement of new types of legal relations and in the delimitation of sports law subject from other legal fields, including civil and labor areas.

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Рецензент: канд. наук з фіз. вих., доц. Луцький В.Я.