

Current State and Prospects of Development of the Sports System of Ukraine: Legal Aspects Estado actual y perspectivas de desarrollo del sistema deportivo de Ucrania: aspectos legales

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Abstract: The article analyzes the current state of the sports organization system in Ukraine. The authors of the article argue that the sports system in Ukraine needs to be reformed in light of current trends in world sports. First and foremost, the need for regulatory and institutional development of the professional sport, which can have a positive impact on the development of the entire sports system of Ukraine. Currently, the dominant position in Ukrainian sport is occupied by the state and non-governmental organizations. This approach was justified under the conditions of a planned economy during the Soviet Union, but it is now outdated and hinders the development of Ukrainian sport. Instead, modern sport in developed countries is primarily driven by private initiative and the creation of appropriate conditions for a variety of private law entities to promote entrepreneurial activity in sport. The purpose of the article is to identify the key institutional and legal factors of the domestic sports system that negatively affect its development. Adequate regulatory support for commercial sports will give additional funds in domestic sports, which inevitably plays a role in improving sports achievements and restoring Ukraine's position in the world sports arena. The key direction of the development of domestic sports the author sees the further commercialization and professionalization of domestic sports. The authors of the article state that the Ukrainian legislature should as soon as possible turn its attention to the normative provision of sports, in particular - to adopt a number of amendments to the current law «On physical culture and sports» or to adopt a new law on sports and/or the law «On professional sports».

Key words: commercial sports, legal regulation of sports, participants of sports-legal relations, professional sports, regulatory support of sports.

Resumen: El artículo analiza el estado actual del sistema de organización deportiva en Ucrania. Los autores del artículo sostienen que el sistema deportivo en Ucrania necesita ser reformado a la luz de las tendencias actuales en los deportes mundiales. Ante todo, la necesidad de un desarrollo regulatorio e institucional del deporte profesional, que puede tener un impacto positivo en el desarrollo de todo el sistema deportivo de Ucrania. Actualmente, la posición dominante en el deporte ucraniano está ocupada por el estado y las organizaciones no gubernamentales. Este enfoque se justificó bajo las condiciones de una economía planificada durante la Unión Soviética, pero ahora está desactualizado y dificulta el desarrollo del deporte ucraniano. En cambio, el deporte moderno en los países desarrollados está impulsado principalmente por la iniciativa privada y la creación de condiciones apropiadas para una variedad de entidades de derecho privado para promover la actividad empresarial en el deporte. El propósito del artículo es identificar los factores institucionales y legales clave del sistema deportivo nacional que afectan negativamente su desarrollo. El apoyo regulatorio adecuado para los deportes comerciales dará fondos adicionales en los deportes nacionales, que inevitablemente juegan un papel en la mejora de los logros deportivos y en la restauración de la posición de Ucrania en el ámbito deportivo mundial. La dirección clave del desarrollo de los deportes domésticos es que el autor ve una mayor comercialización y profesionalización de los deportes domésticos. Los autores del artículo afirman que la legislatura ucraniana debería centrar su atención lo antes posible en la provisión normativa de deportes, en particular, para adoptar una serie de enmiendas a la ley actual «sobre cultura física y deportes» o adoptar una nueva ley de deportes y / o la ley «de deportes profesionales».

Palabras clave: deportes comerciales, regulación legal de deportes, participantes de relaciones deportivas-legales, deportes profesionales, apoyo regulatorio de deportes.

Introduction

In 1991, Ukraine withdrew from the Soviet Union (USSR). Therefore, with Ukrainian independence, our country declared a new economic course and began to actively implement the market model of the economy. In civil society, citizens are not the subjects of political-power relations and public law, but private individuals with their interests, subjects of private law, participants in civil-legal relations (Kharytonov, Kharytonova, Yolmachevska, Fasi, & Tkalych, 2019). Such realities require an appropriate change in legal priorities and values (Kharytonov, Kharytonova, O., Kharytonova, T., Kolodin, & Tolmachevska, 2019).

The purpose of the article is to identify the key institutional and legal factors of the domestic sports system that negatively affect its development and to offer the ways of its reforming. The key reform, which has to be done, concerns the reorientation of the whole sports system from

administrative methods of ruling to the private ones. Among other measures the state should give up excessive powers to regulate sports. The regulative effect should be forwarded not to straight regulating, but to the creating of adequate conditions for development of private sports organizations. In particular, the state has to provide the conditions to earn money for private sports organizations.

So, adequate regulatory support for commercial sport will let private sports organizations to accumulate financial resources, which will have a positive effect on the whole system of domestic sport. Besides, it will inevitably improve sports achievements of Ukrainian sportsmen abroad and restore Ukraine's position in the world sports arena. Therefore, the further commercialization and professionalization of domestic sports is the key direction of the development of domestic sports.

When reforming domestic legislation in this field, the Ukrainian legislator should use the positive experience of European countries, including Germany, France, Italy, Spain, etc., as well as the USA. In particular, it is necessary to carefully examine the models that built the sport system in these countries and to borrow the most advanced

achievements. As noted earlier, the first thing to look out for in this issue is the legal status of private sports organizations in sports.

However, the economic transformation has not reached its goal in some areas of public life. In particular, sports relations have not been properly reformed. First of all, it is about reducing the role of the state in the development of sports and creating conditions for the implementation of private initiative in sports, first of all – in commercial (professional) sports.

Material & methods

The main methods, which were used in the preparation of this article, are general scientific methods of analysis and synthesis. These methods of scientific research helped to identify the key institutional problems of the domestic sports system and to offer potentially effective ways of overcoming these problems. Analysis is the process of the mental or actual decomposition of a whole into components. Synthesis means the joining of different elements, sides of the subject into one process. The combination of these methods makes it possible to study the individual sides of the object, to make a number of scientific abstractions, to identify certain concepts. Further combination of them leads to the study of the deeper essence of the whole. The authors of the article investigated the extensive institutional system of sport, analyzed some of its elements (for example, those that do not allow domestic sports to develop), and proposed (based on this knowledge) to reform the sports system in Ukraine.

Besides, the authors of the article used the comparative legal method, as a private scientific method. The comparative legal method is one of the important means of studying of legal phenomena. Its application makes possible to identify the general, special and unitary in modern legal systems. This method made it possible to compare the different levels of the institutional system of Ukrainian sport and foreign institutional systems of sport. In addition, this method played an important role in carrying out the current research as it helped to highlight the problematic elements of the institutional system of sports in Ukraine in comparison with foreign systems, and develop recommendations for its change.

Furthermore, to prepare the conclusions of the study, the authors used a dialectical method, which allowed capturing the phenomenon of the study in its entirety, to determine the location of the problem of study among many others, its connection with them and to offer clear directions for overcoming the existing problems. The authors conclude that in order to reform the institutional system of Ukrainian sport, it is necessary to make significant changes to the law of Ukraine «On Physical Culture and Sports», as well as to adopt a number of other legislative acts that provide opportunities for the development of professional and commercial sports in Ukraine on the best world models.

The authors of the article used a wide layer of Ukrainian and foreign legislation as well as the empirical base of the research, as well as the scientific achievements of other authors. Moreover, it should be emphasized that several national and foreign authors are dealing with the problems

of legal regulation of public relations in the field of sports.

Scientists who dealt with the legal and economic problems of sports are Ana Belén Fernández-Souto, Iván Puentes-Rivera, and Montse Vázquez-Gestal (2019) Foster (2019), Kostruba (2018), Kharytonov (2018), Kharytonova (2018), Oliveira (2017), Opie (2010), Parrish (2003), Victor Gómez Sánchez, Rosario Padial Ruz, Manuel Gentil Adarve, and Javier Chacón Zagalaz (2019), Mitten (2010), Samuel López-Carril, Miguel Villamón Herrera, and Vicente Añó Sanz (2019), Serby (2017), Siekman (2012), Shishka (2018), and others.

Results

Ukraine retained the right to play a key role in the development of physical culture and sports when Ukraine abandoned the idea of administrative and planning economy in 1991. At the same time, the restriction of private initiative or the lack of free access of private structures to the national sports system resulted in the gradual degradation of national sports in the face of permanent problems with state financing of the industry.

Therefore, having switched to the market model of economic development, Ukraine did not provide the opportunity to change the model of the development of national sports.

Appropriate transformations should first be implemented in professional sport, which is a commercial area of sport. Over time, professional sports should become a locomotive for the development of the entire sports system in Ukraine.

Currently, the legal support for professional sports remains at a very low level. However, the legal status of a sports club, as a primary element of the organizational system of both professional sports and sports in general, has not been determined. The Law of Ukraine «On Physical Culture and Sport» of December 24, 1993 (1993), only mentioned a sports club as one of the participants of the relations in the field of sports. The legal definition of a sports club is extremely abstract and does not allow to clearly define its legal status.

According to Art. 9 of the named law of Ukraine, sports clubs are institutions of physical culture and sports that provide the development of certain directions of physical culture and sports, and perform physical-fitness and/or sports activities, as well as provide sports services (Law of Ukraine «On Physical Culture and Sport», 1993).

As we can see, the legislator described the sports club as an institution. It seems that the use of such a definition does not correspond to the terminology of the Civil Code of Ukraine (1993) (hereinafter – CC of Ukraine) and narrows the concept of a sports club to the maximum. For example, an institution is just one of a number of legal forms that a sports club can choose. It should be noted that the current CC of Ukraine does not contain the term «institution» at all. Instead, economic law uses that term. Thus, the current classifier of legal forms of economic activity stipulates (On approval of national standards of Ukraine, state classifiers of Ukraine... , 2019) that an organization (institution and establishment) is an organizational structure created by one or more persons (founders) (who do not participate in its management) by combining (allocating) their property to achieve the purpose defined by the founders at the expense of this property.

An analysis of this definition does not clarify the situation much, it is still unclear how the institution differs from the establishment. Even more surprising is the establishment by the legislator of such an organizational form of business as an organization, but not as a legal entity. Besides, only institutions and establishments are related to this legal form. At least, we can state that an institution and establishments, in the meaning of the current classifier of legal forms of economic activity, are synonymous terms. In this case, the Law of Ukraine «On Physical Culture and Sports» (1993) narrows the concept of a sports club to the notion of an institution that is erroneous.

It seems much more appropriate to construct the concept of a sports club based on the concept of a legal entity contained in the CC of Ukraine (2003). Accordingly, it is advisable to name a sports club an organization established and registered in the manner prescribed by law to carry out certain activities and achieve certain goals.

The key to the development of sports in developed foreign countries is the proper conditions for the implementation of sports clubs' economic activities. In particular, the possibility of integrating sports clubs into professional sports leagues (provided by the state) helps to optimize the commercial activities of each club and sports league as a whole. Eventually, this leads to the emergence of free funds that are channeled to the development of the entire sports system.

In Ukraine, the sports federations occupy a leading position in certain sports. Although it is non-governmental organizations, who implement the state policy in the field of sports, under the separate agreements with the central executive authority, which ensures the formation of state policy in the field of physical culture and sports.

It should be noted that in some foreign countries there are neither sports federations nor a separate body that provides the formation of state policy in the field of physical culture and sports. Of course, first of all, it's about the United States. This country is dominated in the sphere of professional sports, and accordingly, all the functions of ensuring the functioning and development of a particular sport are carried out by professional leagues. This is an especially true statement about team sports.

For example, the professional sports leagues in the USA are created in the form of commercial organizations. The main goal of sports leagues is to make a profit. Thus, professional sports leagues in the United States bring together sports clubs, which are separate commercial organizations, but they reconcile their behavior for the common economic benefit. In fact, professional sports leagues are full-fledged commercial structures run by sports club owners. Thus, leagues are a kind of joint ventures that act to satisfy the commercial interests of their sports clubs.

Professional sports organizations in the US create a kind of monopoly within their sports through club arrangements, mainly to maintain a competitive balance. Accordingly, monopolies in sport are not completely similar to monopolies in other sectors of the economy. Since the product that sports organizations in team sports offer to the consumer is a sports spectacle, a game between different rivals, the destruction of a competitor in sport is meaningless, since the monopolist

himself will not be able to «sell» his «product» in this case. Therefore, a product offered by a sports club to a consumer spectator cannot be delivered to it without the assistance of another sports club. Moreover, the more commensurate they are in the strength of the team in competitions, the more valuable is the product itself – that is, competitions. Accordingly, close economic cooperation between sports clubs is carried out in order to maintain a balanced competition between them. Without such a balance, the sporting «product» itself is absent. Thus, economic cooperation between clubs instead of fierce economic competition is a necessity for the continued existence of both leagues and individual clubs. Such economic cooperation is part of professional sport, which in other sectors of the economy would be recognized as a monopoly conspiracy prohibited by antitrust law.

Through the structure of joint ventures, sports leagues agree on a competitive balance. In particular, they consistently establish rules for the contracting of athletes and rules for the transfer of players to other sports clubs; determine the priority rights of sports clubs in their designated territory; regulate the peculiarities of the circulation of rights to sports broadcasts, etc.

In each of these areas, sports clubs have no right to act independently, but to exercise their rights as an integral part of the sports league. The sports league acts on behalf of the individual sports club. Thus, a sports club and a talented player cannot contract directly. Such a contract can only be concluded as a result of a specific procedure enshrined in the local acts of the respective league.

The commercial sports model proved its efficiency. In particular, in 2017, the National Basketball Association (USA) «earned» \$ 7.37 billion. The average annual salary of an NBA player in the 2017/18 season was \$ 7.15 million (Gough, 2019). It is the professional sports leagues that organize the sports process in an appropriate sport, in particular, develop rules of competition, establish requirements for professional clubs, regulate the relations associated with the transition of athletes from one sports club to another and the athlete's relations with the sports club, regulate the activities of sports agents etc.

Professional sports leagues in European countries are not commercial entities but only bring together sports clubs that are commercial entities, but the conditions for their participation in the economic activity are also clear and effective. The example of the Spanish La Liga, which is one of the richest sports leagues in the world.

As for domestic professional sports leagues, they are also starting to appear in Ukraine. However, it should be noted that national sports leagues have a different legal status than foreign sports leagues.

First, national leagues are created in the form of public organizations. Accordingly, a key feature that distinguishes professional sports from other sports activities, namely the commercial nature of sports activities, disappears. After all, the main purpose of creating a sports league is to gain economic benefits from the organization of sports spectacles. Instead, domestic leagues, as non-governmental organizations, are in fact duplicating the functions of the sports federations.

Secondly, the legal status of national sports leagues is not regulated at the legal level. Moreover, the national Law of Ukraine «On Physical Culture and Sports» (1993) does not mention at all professional sports leagues among the subjects of sports activity. However, positive foreign experience indicates that professional sports leagues, as commercial organizations that include professional sports clubs in their structure, are able to most effectively regulate relations with each other and, in general, influence the development of relevant sports.

Besides, to sports clubs, sports federations, and sports leagues, a number of other sports organizations are participants in sports relations. Each of these organizations represents one of the segments of the domestic sports system, namely – private, public or state (communal). In the vast majority, private sports organizations are commercial legal entities. In turn, public and state sports organizations are predominantly non-profit sports organizations. At the same time, the current legislation of Ukraine does not prohibit public organizations from participating in events that take place in professional sports. However, the participation of non-profit legal entities in the sports business contradicts the purpose of creating such legal entities (satisfaction of public interests) and puts other participants of professional sports (mainly business associations) in an unequal position, since the formal requirements for public associations are significantly lower and the taxation system such organizations are easier. It seems appropriate to limit the involvement of public associations in professional sports. Of course, there should be no such restrictions in amateur sports.

Therefore, the legal status of commercial and non-profit sports organizations differs significantly.

Commercial sports organizations are mainly created in the organizational and legal form of business associations. First of all, we are talking about legal entities – participants of professional sports relations. In particular, ten of the twelve Ukrainian Premier League football clubs were created in the form of business associations. At the same time, the law does not forbid to refer to commercial legal entities – subjects of relations in the field of professional sports, including public utilities and state enterprises, which are subjects of public law (for example, the municipal company MFC «Metalurg» (2019)). In addition, cooperatives are also included in the types of business associations of the CC of Ukraine. Of course, such a legal form is not characteristic of sports organizations, but the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Formations contains information, in particular, about such legal entities (for example, the cooperative «FIS» (physical education and sport) in the field of fitness and health work (Cooperative «FIS», Unified State Register of Enterprises and Organizations of Ukraine – 02018642)) (Unified State Register of Legal Entities, Individual Entrepreneurs and Public Formations, 2019).

Furthermore, the Law of Ukraine «On Physical Culture and Sports» (1993) also applies to various participants in sports in various sports and recreational establishments (centers, complexes, clubs, studios, etc.). Such establishments may also be organized in the form of business partnerships or in other forms provided for by applicable law

(for example, in the form of businesses). The activities of such organizations are to provide a variety of sports and sports services to a wide range of individuals and legal entities.

Non-profit legal entities can be created in the form of non-business partnerships (mainly public associations) and institutions (public, communal and private).

The Civil Code of Ukraine (2003) does not prohibit non-business partnerships and institutions from conducting commercial activities but provides that such activities should be carried out in conjunction with other, principal activities unless otherwise provided by law and if those activities are consistent with the purpose for which they were established and contribute to its achievement. As an example, it could be referred to the Central Sports Club of the Armed Forces of Ukraine, whose main purpose is to ensure the development of physical culture and sports among servicemen. Commercial activity for such an institution is subsidiary, minor.

In addition to the legal form, among the differences between commercial and non-commercial legal entities, the sources of property formation should also be mentioned. In particular, if for commercial legal entities the main source of property formation is a commercial activity, then for non-commercial legal entities such contributions are the contributions of the founders (participants, members).

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Moreover, the Law of Ukraine «On Physical Culture and Sports» (1993) directly refers to a number of institutions and public organizations that perform socially important

functions. These include children's and youth schools, specialized educational institutions of sports profile, schools of higher sportsmanship, Olympic training centers, and etc.

Discussion

Thus, the whole organizational structure of sports in Ukraine consists of commercial and non-commercial legal entities representing the private, public or state (communal) segment of the physical culture and sports system. The main purpose of the creation and operation of the vast majority of commercial sports organizations is to profit from participating in sporting events or providing sports and sports services. Most nonprofit sports organizations, in turn, exist to meet the social interests of a wide range of individuals. Priority legal form of commercial sports organizations is business associations, and non-profit organizations – public associations and institutions. The sources of formation of the property of commercial legal entities are, in fact, commercial activity, and non-commercial legal entities – contributions of founders (members).

A characteristic feature of the domestic sports system is the combination of two organizational models: market («Western») and non-market («Soviet»). It is said that the main driver of the development of sports in Western countries is private interest (the sports market), and the main priority of Soviet sports was the interest of the public (mass sports). Accordingly, the main organizational element of the Western (more American and less European) sport system is the private sports club and the association of sports clubs (professional sports leagues). The main «actors» in the national sport, despite the formal presence of commercial entities, still remain state and public (in fact quasi-state) organizations. This is primarily about sports federations and sports associations. At the same time, mass sport, like other sports, is now in decline (Tkalych, 2018).

The novelty of this scientific study seems undoubted, since the sport system in the largest European country needs to be renewed. In particular, the remnants of the outdated Soviet system of sports must be eliminated, and new modern European approaches to building an institutional model of sport in Ukraine will be implemented and implemented in practice.

Conclusions

Unfortunately, in Ukraine, there is still no clear state policy in the field of sports, which would provide for a program of reforming domestic sports taking into account the current world trends. The result of such an approach to the sports sector is a gradual decline in the performance of Ukrainian athletes and the decline of the sports infrastructure. In fact, in our country, there is still a quasi-Soviet system of sports in which the state has a prominent place. However, in the current conditions, the Ukrainian state is unable to fulfill its role, and it does not want to create the proper conditions for a radical change in approaches to the whole system of sport from the standpoint of commercialization and professionalization.

Moreover, it should be emphasized that in the difficult economic situation in which our country is permanently in

place, and chronic underfunding of sports, it is extremely important to form such an organizational system of sports, in which the professional sport would have a leading place. It is professional sports as a kind of economic activity that can accumulate the funds needed to build not only professional sports but also the whole system of national sports. The first step in this direction should be to improve national legislation in the field of sports, in particular - to supplement the Law on Physical Culture and Sports with a section that contains rules on professional sports or the adoption of a separate law on professional sports.

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