

# *Historical, Philosophical, Legal and Staff Problems of Physical Culture and Sports*

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## **ONTOLOGY OF THE DEVELOPMENT OF THE SPORTS LAW BRANCH**

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### **Abstracts**

**Relevance of the Research Topic.** The dynamic development of social relations, as well as the complication of the mechanisms of their legal regulation led to the numerous scientific discussions on the system and structure of law. This is primarily about the issue of identifying new branches of law. The modern stage of development of professional sports indicates the accumulation of a sufficiently large amount of specific features of building relationships in the field of physical culture and sports, which require their legal permission, which determines the need to form the field of sports law. **The purpose of the research is** to find out the necessity, validity and expediency of distinguishing the branch of sports law. **Methods of research** – the analysis of literary sources and the method of historicism. **Results of the Study.** The legal system has a complex, multi-level structure containing hierarchical relationships, the central element of which is a complex of fundamental branches of law: constitutional, administrative, civil, criminal law, and others. Besides the study of issues related to the need to identify new branches of law and secondary entities in the existing system of law, there being a scientific discussion. Sports law is a complex branch of law, a special combination of norms that make up a secondary integrated education. **Conclusions.** It was revealed that the organizational and legal problems of the management of physical culture and sports and the legal nature of forms of management as a whole remains fundamentally insufficiently studied. It is established that in the context of the emergence and formation of the sports law branch, the very essence of sport is regarded as a complex component of physical culture, its functions and significance as a community and social phenomenon in the structure of a particular state. It is established that a complete representation of this phenomenon and its fundamental justification can be achieved only from the position of the modern theory of systems.

**Key words:** system of law, sphere of physical culture and sport, branch of law, legal relations.

**Марина Саннікова. Онтологія розвитку галузі спортивного права. Актуальність теми дослідження.** Динамічний розвиток суспільних відносин, а також ускладнення механізмів їх правового регулювання призвів до численних наукових дискусій із приводу системи та структури права. Ідеться, насамперед, про питання щодо виокремлення нових галузей права. Сучасний етап розвитку професійного спорту свідчить про нагромадження досить великого обсягу специфічних особливостей побудови відносин у сфері фізичної культури й спорту, які вимагають свого правового дозволу, що й визначає необхідність формування галузі спортивного права. **Мета дослідження** – з'ясувати необхідність, обґрунтованість і доцільність виокремлення галузі спортивного права. **Методи дослідження** – аналіз літературних джерел та метод історизму. **Результати дослідження.** Система права має складну, багаторівневу структуру, що містить ієрархічні взаємозв'язки, центральним елементом якої є комплекс фундаментальних галузей права (конституційне, адміністративне, цивільне, кримінальне право й ін.). Навколо вивчення питань, пов'язаних із необхідністю виокремлення нових галузей права та вторинних утворень у системі права, існує наукова дискусія. Спортивне право – комплексна галузь права, особливе об'єднання норм, які становлять вторинне комплексне утворення. **Висновки.** Виявлено, що організаційно-правові проблеми керування фізичною

культурою й спортом і правова природа форм керування загалом у своїй основі залишаються недостатньо вивченими. З'ясовано, що в контексті виникнення й формування галузі спортивного права саму сутність спорту розглянуто як складний компонент фізичної культури, його функції та значимість як суспільно-соціального явища в структурі конкретної держави. Установлено, що повного уявлення цього явища і його фундаментального обґрунтування можна досягнути лише з позиції сучасної теорії систем.

**Ключові слова:** система права, сфера фізичної культури та спорту, галузь права, правові відносини.

**Марина Санникова. Онтология развития отрасли спортивного права. Актуальность темы исследования.** Динамичное развитие общественных отношений, а также осложнение механизмов правового их регулирования привело к многочисленным научным дискуссиям по поводу системы и структуры права. Речь идет, прежде всего, о вопросе выделения новых отраслей права. Современный этап развития профессионального спорта свидетельствует о накоплении достаточно большого объема специфических особенностей построения отношений в сфере физической культуры и спорта, которые требуют своего правового разрешения, что и определяет необходимость формирования области спортивного права. **Цель исследования** – выявить необходимость, обоснованность и целесообразность выделения отрасли спортивного права. **Методы исследования** – анализ литературных источников и метод историзма. **Результаты исследования.** Система права имеет сложную, многоуровневую структуру, содержащую иерархические взаимосвязи, центральным элементом которой является комплекс фундаментальных отраслей права (конституционное, административное, гражданское, уголовное право и др.). Вокруг изучения вопросов, связанных с необходимостью выделения новых отраслей права и вторичных образований в существующей системе права, идет научная дискуссия. Спортивное право является комплексной отраслью права, особым объединением норм, которые составляют вторичное комплексное образование. **Выводы.** Выявлено, что организационно-правовые проблемы управления физической культурой и спортом и правовая природа форм управления в целом в своей основе остается недостаточно изученной. Установлено, что в контексте возникновения и формирования отрасли спортивного права сама сущность спорта рассматривается как сложный компонент физической культуры, его функции и значимость как общественно-социальное явление в структуре конкретного государства. Установлено, что полное представление данного явления и его фундаментальное обоснование может быть достигнуто только с позиции современной теории систем.

**Ключевые слова:** система права, сфера физической культуры и спорта, отрасль права, правовые отношения.

**Formulation of a research problem and its significance.** The dynamic development of social relations, as well as the complication of the mechanisms of their legal regulation led to the numerous scientific discussions on the system and structure of law. This is primarily about the issue of identifying new branches of law. There are such among them: medical, agrarian, constructive, investment, sports, etc. [5; 8; 10]. This situation is understandable, because the mentioned dynamics of the complication of social relations is in a proximate causation with any particular internal and external factors of the development of society.

Numerous works of both domestic and foreign scholars are devoted to the study of individual aspects of the legal system. We should take note of particular importance of works by S. [2], Yevhrafov [5], O. Petryshyn [15], N. N. Onishchenko [16], and others. However, despite a wealth of scientific works, the problem of identifying branches of law attracts attention with new force and challenges the legal science from time to time.

**The goal and the specific tasks of the article.** The purpose of the research is to find out the necessity, validity and expediency of distinguishing the branch of sports law.

**Methods of research.** The following methods were used in the research: the analysis of literary sources in order to determine the state of the research topic, to formulate an understanding of the fundamentals of constructing a general theory of the process of forming a sports law branch; the method of historicism as a reflection of a variety of natural experiment in the development of systems that are self-organizing in order to analyze the proceeding processes, and on its basis, the determination of regularities, which allows to ensure the ability to observe the peculiarities of these processes.

**Statement regarding the basic material of the research and the justification of the results obtained.** The need to regulate legal relations in the field of physical education and sports undoubtedly covers the norms of various branches of law (civil, labor, economic, administrative, etc.), which result from a number of contradictions in such regulation and greatly complicates its effectiveness. Therefore,

the scientific position regarding the necessity of identifying the field of sports law in Ukraine and scientific developments regarding the substantiation of its subject and method of legal regulation are understandable.

The system of law is a complex, multilevel, united by a logical hierarchical interconnections organism, the central element of which is a complex of stable, immutable fundamental (primary, profile, basic) branches of law. Traditionally such branches of the theory of legal science recognize constitutional, administrative, civil, criminal law, which form the immutable base of the legal system [9; 14; 15]. At the same time, in the course of its development, on the basis of fundamental branches, separate structural units were isolated, which were transformed into secondary (derivative) branches of law: labor, land, family, financial law [2].

Even in the Soviet legal ideas the understanding of the fundamental (primary, profile, main) branches of law was confirmed, according to which they cover such types of social relations, which, in their deep economic, sociopolitical content, require a qualitatively peculiar, fundamental legal regulation and therefore determine the main, typical features of the legal toolkit [2; 4; 6].

Also, the abstract theorem established as the traditional one, according to which the field of law as elements of the law system differ on the subject of legal regulation, which to a large extent determines their peculiarities [9; 14; 15]. Although this criterion is the main one, it is not sufficient and unambiguous for the unconditional allocation of branches of law. This, primary, is due to the diversity and multi-levelness of social relations. The use of the subject of legal regulation as a criterion for the allocation of branches of law (as Alieksieiev argues) leads to the allocation of certain areas, broad areas of legal regulation (industrial law, agricultural law, etc.), which should also be regarded as a branch of law in this case [2].

That is why in the process of a systematic approach in law development, the theory of legal science came to the necessity of applying additional criteria in the allocation of truly special and individualized legal arrays that have all the necessary qualities of independent elements of the law system. It is commonly known that such additional criteria are: the method of legal regulation of social relations, principles and functions. The given criteria form and distinguish mechanism and the legal regime of the branch of law among other.

As Anufrieva pointed out, the category of the law system belongs to the general abstract legal phenomena, which are the broadest in scope and deep in content after the category of «the essence of law» [3]. In this regard, it is impossible to give an objective assessment of the need of immediate selection of a number of branches of law. Each of them requires a separate thorough study and an individual approach.

Coming back to the issue of the allocation of the field of sports law in Ukraine, it should be noted that the system of law is objective and reflects the level of development of social relations, in contrast to the system of legislation, which depends on the subjective factor - the activity of the legislator. A doctrinal thesis is also generally accepted. According to it the law system does not coincide with the legislative system, since the last one is much broader [15] and its internal organization does not and should not coincide with the structure of law. It is a matter of the fact that one or another field of law should not necessarily correspond to the field of legislation with a similar name, since they are formed on different grounds and their development is influenced by different factors. So, if the branch of law is a homogeneous social relationship, for the settlement of which one method of legal regulation is applied, then it is not necessary for the field of law. The subject of the legislation is formed by diverse social relations, united by one or another common aspect of legal reality, around which, in order for proper control, rules in the spheres of public administration, national economy, economic activities are unified. That is why the branches of the law apply several methods of legal regulation, one of which is the main one.

Within the framework of our research, it is important to draw attention on the theoretical construction proposed by S. Alieksieiev who in his publications, since 1975, repeatedly justified the concept of the division of the branches of law into traditional and integrated (secondary) [7]. Indeed, in his work «The Structure of Soviet Law» Alekseyev notes that it is worth considering such types of branches of law as basic and complex [2]. At the same time, the author explains: «complex fields are endowed with only a part of the signs and characteristics of the field of law and are a kind of 'layering' on the surface of the legal system.

Being extremely clear in terminology, the investigated legal formations should be called «semi-field». However their secondary, derivative character can be reflected in the word «complex», which, in conjunction with the term «field», indicates the peculiarities of these entities as such components of the Soviet legal system, which express one of the facets of a certain sphere of legal regulation.

In his fundamental scientific work 'The General Theory of Law' in 1981 Alieksieiev noted that «the complex education that emerges as a result of intersectional codification is formed at the branch level. They introduce a special legal regime of regulation, and there is no reprobatation to call such education branches with the obligatory addition of the word «complex» [2]. Thus, analyzing the position of the author from the above mentioned issue, applying the term «complex field» refers not to the branch of law, but to the field of law. Moreover, explaining his opinion, the author emphasizes that «only integral ones should be considered in the formation of legal norms that are really objectified in the legal system and which, without violating the basic structure of law, exist as secondary legal formations».

Thus, returning to the possibility of understanding sports law as a complex field of law, it seems necessary to appreciate it as a special union of norms, which constitute a secondary complex education, since they do not form their own qualitatively peculiar, fundamental legal regulation and, accordingly, are not endowed with the main, typical features of legal instruments.

At the same time, the role of secondary complex entities in the system of law is important, since it allows us to outline a certain aspect of social relations. The application of the legal category «branch of law» to designate such entities is a consequence of the complexity of the multidimensional legal terminology, which is often used without a thorough analysis of the developments in the theory of legal science.

Within the framework of our research, the opinion of D. Azmi is reasonable and appropriate. The author believes that the constant allocation of individual branches of law and increase of their number is not perceived positively. However, it must be recognized that this process is caused by changes in the perception of legal reality, mentality, worldview, but not unconditional grounds for the selection of a particular branch of law [1].

Nowadays, sociopolitical and economic changes in all spheres of activity that have taken place in the world since the early 90's of the 20th century have intensified the problem of the legal nature of forms of physical education and sports management . Attempts to solve it are mostly private, what is mentioned in studies of individual issues. This leads to the need of considering the general laws of the formation of legal behavior in the structure of extremely complex social interconnected relationships, which are formed in the collective interaction and the corresponding social system of the state [13].

This is explained by the fact that the diverse needs of the citizens of society are limited. Due to the fact that we need more than spending time by oneself, this leads to the need for interaction with other people. Such interaction gives rise to the formation of the state. Its essence is to attract other people to meet the various needs of every individual. The need for communication with others in many respects leads to mutually determined common relations, fixed by the established legal forms of behavior.

In a stable system of relations we can talk about the statistical average of all the diversity of needs and their satisfaction. The whole set of needs for their satisfaction can be represented in the form of a ranked number of significance and degree of order in their interdependence.

The established system of formed relations preserved in their reproduction as a certain culture, which includes the achievements of mankind in the industrial, social and intellectual relations. In the structure of general culture, physical education, and sport as its component are considered to be factors to meet their needs in the holistic system of development of society, including the entire complexity of the differentiation of labor for its organization and management.

Professional sport as a branch of labor activity in a particular society is controlled by its legal basis. Professional sport, becoming a type of consumer activity, has no differences in its nature demand and its organization from any other professional activities. In this case, the essence of nature lies in the fact that the employee adapts to the activity, and not the activity to the employee. One, who is adept at the appropriate kind of sports professional activity, passes into the rank of professional sports, occupying the corresponding level in its hierarchy. In this case, sports are not just fun, but the tool for satisfaction of relevant needs, in particular entertainment of the audience.

The dynamics of entertainment demand and its structure completely depends on the commitment to the interests of the viewer, which determines the demand for the development of the appropriate kind of professional sport.

Regarding this, the viewer becomes the main factor in the economic provision of professional sports as a satisfying factor in their interests. Changing the popularity of entertainment by any kind of professional sport determines the coefficient of its competitiveness.

In general, the viewer chooses a kind of entertainment and acts as a «consumer». Different kinds of entertaining, which also includes professional sports, are «satisfying factor», which leads to a competition for the spectator. It occurs both between different professional sports, and in each clubs between its teams, and in general, all professional sport against other types of entertaining business. The complexity of these relationships is represented by the system «consumer-satisfying factor», whose behavior is described by the Lotka–Volterra equations, which requires careful examination of the variety of these relationships [5].

The needs of citizens that make up the society are diverse. The abilities of each particular type of entertainment are limited. There is a need for an interconnected agreement between the accomplice and the assistants, what generates the division of labor of workers who produce the product of entertainment exclusively from the point of view of consumers' interests. This indicates that professional sport does not represent in its organization any peculiarities in the construction of its legal basis.

Regulation of behavior in the structure of the general social relations that have developed in the Forms of government is determined by the rights in which sports law is formed as a fragment of civil, labor, administrative, criminal, criminal and other types of rights, as well as their branches.

The current stage of development of this industry of entertainment business has led to the accumulation of quite a large amount of specific features of building relationships in physical education and sports, which require their legal permission, which determines the need for the formation of sports law.

All the diversity of forms of relations in the structure of competition, which arises in the professional sports that entered the entertainment business, is actually generated by the dichotomous form of constructing the encountered imperatives. We can be observed features of emerging forms of the relationship in the ranked image of their interests in the validity of the opposition, the duration of its process and the territorial location in the ordered distribution in the appropriate scales of semantic spaces [11].

In each section of these kind scales reflecting the distribution of forms of predetermined relationships, there are its features of constructing their legal regulation, based on the partial correlation of the dichotomous contradictions of the conflicting imperatives expressed by the corresponding sovereigns. Naturally, that all these features dictate the need for the emerging field of sports law and the development of appropriate research methods.

**Analysis of the research into this problem.** Developed legal system is a complex multilevel mechanism, elements of which are combined with each other by rigid static and flexible dynamic links. At the same time, we share the opinion with D. Azmi [1] and Yevhrafov [5], that no matter how ramified this system is, the core (a system of law that is objectively existing and constantly complicated) should stay stable and indestructible. In the case of sports law it would be wiser to speak about the objective existence of the field of legislation and to solve the problems of legal regulation of social relations in the field of physical education and sports through the prism of the structure of legislation [13]. The scientific discussion on the subject under research is evidence that the system of law is a complex phenomenon of legal reality and requires further in-depth study.

In modern legal literature, not only different opinions about elements of the system of law are expressed, but even opposite: from the isolation of the so-called complex branches of law to the complete denial of the existence of its internal structure. Thus, Yampolska [18] believes that «the branch of law can not be considered an internal unit of legal matter. Such a unit, the main element is the rule of law in force, that acts, regulates, lives in legal relationships. The legal matter is integral, the only one, and its branch is not a field, but a rule of law. « This position was supported in the publications of some authors [6; 17].

As Alieksiiev rightly pointed out, the essence of the problem consists in the fact that in the literature one term «branch of law» refers to two apparently similar, but different in its content phenomenon. In some cases, it is about the scope of legal regulation - any set of legal norms, which is allocated on the subject of

regulation; in others - the real, objectively determined and existing element of the integral system - the right as a single structural entity [2]. The above thesis is extremely accurate in the context of consideration of the issue of the allocation, in particular, of the sports law of Ukraine.

The results of our study supplement the results of scientific research, presented in the works of O. Petryshyn [15], N. Onishchenko [16] concerning the general theory of state and law.

**Conclusions and prospects for further research.** It was revealed that the organizational and legal problems of the management of physical culture and sports and the legal nature of forms of management as a whole remains fundamentally insufficiently studied. This raises the task of consistently orderly reviewing the essence of legal regulation, the nature of law and legislation, the essence of power and the sovereign that personifies them. All these concepts are related to the interdependence of relations among people and are expressed in the structure of their needs in mutual services and their exchange.

It is revealed that in the context of the emergence and formation of the field of sports law the very essence of sport is considered as a complex component of physical education, its function and significance as a social phenomenon in the structure of a particular state. It is identified that a complete representation of this phenomenon and its fundamental justification can be achieved only from the point of view of modern system theory.

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