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Legal Aspects of work Regulation of Professional Athletes in Ukraine

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Abstract:

Topicality of the scientific study is grounded by existing faults in regulation of professional sport, in particular, in regulation of work of professional athletes. We should mention that in the Law of Ukraine «About physical culture and sport» there is only one article devoted to such course of activity in sport as professional sport. The objective of this article is generalization of scientific studies and formation of proposals concerning improvement of legal regulation of work of athletes-professionals. It is conducted the generalization of results of scientific researches of native and foreign scientists which are dedicated to regulation of work of professional athletes. It is established that for today there is no unity of thoughts of scientists on the questions of regulation of work of athletes-professionals, in particular, if activity of athletes-professionals in professional sport should be regulated under the ground of norms of civil law or on the ground of labor law. It is indicated that due to regulations of the effective legislation an athlete obtains the status of professional athlete from the moment of concluding an employment agreement (contract) with the corresponding subjects of the sphere of physical culture and sport about participation in competitions among athletes-professionals. So, obtaining by an athlete of the status of a professional is connected with the moment of contract signing with the corresponding subjects of the sphere of physical culture and sport. It is indicated that the content of a labor agreement (contract) includes conditions which determined rights and obligations of its parties. It was analyzed the main rights and obligations of parties of the labor agreement (contract), a professional athlete – from one side and an employer (subject of the sphere of physical culture and sport) – from the other side. According to the results of the scientific research it was formed the proposals concerning improvement of legal regulation of work of professional athletes. To our mind, it is possible under the grounds of systematization of norms that regulate work of professional athletes, in particular, by means of fixing of such norms in the new Labor Code.

Key words:

professional sport, professional athlete, labor agreement (contract).

The formulation of the problem. Today professional sport is one of the active areas in sport. According to ch. 1, Article 38 of the Law of Ukraine «On Physical Culture and Sports» (hereinafter – the Law) Professional Sport is the commercial direction of sport associated with preparation and conduction of spectacular sporting events on high organizational level for profit [1]. The distinctive feature of professional sport is its commercial character and, accordingly, the main goal – profit. It is common knowledge, that Professional Sport brings considerable profit, which is acquired primarily for its high level of audience interest, caused by participation in sports activities the most skilled athletes, who are able to demonstrate the highest achievements. According to ch. 2, Article 38 of the Law, activity of athletes, coaches and other professionals in professional sport that consists in preparation and participation in sport events among professional athletes, is the main source of their income, and is realized according to this Law, the Labour Code of Ukraine and other legal acts, statutory and regulatory documents of relevant subjects in the sphere of physical culture and sports as well as international sports organizations [1].

Despite the fact that in Ukraine the legislation governing activities in the field of physical culture and sport are generally framed, but the shortcomings in the legal regulation of professional sport can be observed, including the labour regulations of professional athletes. It should be emphasized that in general the law contains only one article that is directly devoted to such activities in sport as professional sport.

The analysis of the recent researches and separation of unsolved problems. The works of domestic and foreign scientists are devoted to problems of legal regulations in the sphere of professional sport, including labour regulations of professional athletes, namely: S. V. Alekseyev, V. P. Vaskevych, A. O. Polyansky, M. O. Tkalych, O. O. Shevchenko etc. At the same time, the important fact is that nowadays there is no consensus of scientists on the questions concerning Labour Regulation of professional athletes, and, in

particular, whether the professional athletes activity in professional sport should be regulated on the basis of civil or labour law?

The aim of the article is generalization of scientific investigations results and formulation of the proposals for implementation of legal regulation of professional athletes labour.

Presentation of the basic research material. Starting the consideration of the peculiarities of legal regulation of labour of a professional athlete, we should refer to ch. 2, Article 38 of the Law, stating that the activity of athletes in professional sport, is realized according to this Law, the Labour Code of Ukraine and other legal acts, statutory and regulatory documents of relevant subjects in the sphere of physical culture and sports as well as international sports organizations. Thus, for the purpose of discussion we should subdivide the regulation of athletes' activity in professional sport into the following levels:

a) separate Laws (for example, the Law of Ukraine «On Physical Culture and Sports»);

b) subordinate normative legal acts (for example, Handbook of qualifying trades workers characteristics «Sports activities» approved by the State Committee of Ukraine for Physical Culture and Sport of 17 October 2002, № 2264);

c) acts of domestic and international sports organizations (for example, Rules of the Football Federation of Ukraine concerning status and transfer of football players of 03 July 2014).

Questions connected to regulation of professional athletes' activity in Ukraine are resolved, in most cases on the basis of labour legislature. It should be borne in mind that according to ch. 2, Article 2 of Labour Code of Ukraine (hereinafter – the LCU) workers implement the right to work through concluding an employment agreement [2]. At the same time, professional athletes conclude fixed-term employment agreements (contracts) proceeding from the provisions of ch.3, Article 38 of the Law.

From the point of view of some scholars, the work of professional athletes must be ensured by means of civil legal regulation. For example scholar M. O. Tkalych believes that the basis for relations between the sports club and a professional athlete is not an employment agreement, but civil contract works, according to which one party (the executor) is obliged to carry out training activities for skills that allow to reach high results in sports, and the other party (employer) takes responsibility to pay for this work, to obtain the right to use athlete's achieved results. Thus, contracting relationships in sports require regulation instruments of civil law [3, p. 332].

However, another position concerning the professional athletes' labour regulation is substantiated in some scientific works. For example O. O. Shevchenko believes that labour relations of professional athlete should be governed by rules of labour law and a special law on professional sport, which will regulate the whole complex of relations between the state and members of professional sports. Special legal regulation is objectively needed in the emerging relationship, because of the special nature of professional athletes' work, which is possible within the differentiation of labour legislation [4, p. 6].

In some works the authors proposed to resolve the dispute on the legal nature of sports contract by the reference to the statute and regulations of the sports organizations and associations where the notion of sport contract is defined.

Thus, in accordance with Regulation of Nationwide competition for football among club teams of the Association of Professional Football Clubs of Ukraine «Premier League» season 2013/2014 biennium, contract should be understood as a form of labour agreement between the football club and the athlete with all applications, changes and amendments concluded in accordance with the legislation of Ukraine and FFU Regulation on the status and transfer of football players as well as other documents of PL, FFU, FIFA and UEFA [5].

In our opinion, quite reasonable is the position of those scientists who find it necessary to regulate the work of professional athletes by means of labour law. Indeed, as it is pointed out by M. Konini, professional sport as an activity, is the work of a certain kind, performed regularly, has a specific purpose (participation in competitions), at the expense of the employer and liability to follow the rules laid down by «labour routine» (meetings, training, daily routine, injunction on the use of alcohol drinks, etc.), and for the above mentioned, the athlete receives pecuniary recompense, preconditioned by labour agreement, and it is hired labour with its specificity, caused by the peculiarities of ongoing activities. That is why, professional sports as hired labour, is the subject of labour law and, therefore, public relations, resulting from the usage of the athletes' abilities to participate in the competitions, should be the subject of labour legislature regulation [6, p. 428].

However, the disadvantage of labour legislation of Ukraine is, in our opinion, lack of consistently and systematically settled provisions for regulation of professional athletes labour. The same problem, but with the labour legislature of the Russian Federation, is pointed out by O. O. Shevchenko. The scientist notes that unfortunately there are no separate articles in the Labour Code of the Russian Federation especially devoted to regulation of labour relationships with professional athletes. However, in this Code, in contrast to the pre-

existing Labour Code of the RF (adopted in 1971), several issues related to the peculiarities of the legal regulation of working hours and rest periods as well as remuneration of such persons to some extent have found their reflection [4, p. 12].

It should be noted that the project of LCU, which is posted on the official website of the Ministry of Social Policy of Ukraine for public discussion, contains any separate article devoted to regulation of professional athletes' labour. Taking into an account the fact that, a professional athlete, unlike other workers, performs very specific working functions, that's why, we consider, it would be reasonable to foresee peculiarities of the legal regulation of professional athletes work within a particular section (chapter) of the LCU.

The labour agreement (contract) plays very important role in the regulation of labour relations between employer and professional athletes. According to ch. 3, Article 38 of the Law athlete acquires the status of professional athlete since the contract is concluded with the relevant subjects within the sphere of physical culture and sports to participate in the competition among professional athletes [1]. Consequently, the acquisition of a professional athlete status is linked with the moment of the contract conclusion with the relevant subjects within the sphere of physical culture and sports, which may primarily be represented by sports clubs. For example, according to ch. 4 Article 4 of the FFU Regulation on the status and transfer of football players (hereinafter – the Regulation) football player acquire the professional athlete status as well as the respective rights and obligations since the conclusion of a contract with a professional club to participate in the competition [7]. And in accordance with ch. 2 Article 8 of the Regulation the contract defines the conditions of labour relationships between club and football player. Thus, the contract, which due to ch. 3, Article 21 of LCU is considered as a special form of labour agreement [2], and the basis for emergence of labour relationships. Since the contract is signed the football player acquires the status of an employee, whom the labour legislation is extended to.

It should be noted that the contractual form of labour agreement for athletes' labour regulation is not limited to football, but it is used in general for the other highest achievements in sports. An example is the ch. 1.2. of the Contract with a regular team employee of the national teams of Ukraine, which states that this contract is a fixed-term employment agreement.

Taking into an account the crucial role of labour agreements (contracts) in the regulation of professional athletes work, it seems appropriate to pay more attention to the legal characterization of the instrument for the relationships between the employer and athlete.

According to ch. 3, Article 21 of the LCU the contract is defined as a peculiar form of labour agreement, in which its validity, rights, duties and responsibilities of the parties (including financial), conditions of provided material support and organization of employees, termination of the contract conditions, including pre-term, may be established by the agreement of the parties [2]. As every complex phenomenon, the contract is a unity of form and content. According to Article 24 of the LCU the contract must be concluded in a writing form [2]. Also amendments to the contract must be only in writing.

Content of the labour agreement (contract) is specified by the provided conditions, due to which the rights and obligations of the parties are defined. The provisions of regulatory acts of some sports organizations demanding compliance with mandatory contract content requirements.

For example, according to ch. 2 Article 8 of the FFU Regulation the contract must necessarily meet «the minimum requirements for a standard contract of a professional football player, by agreement between UEFA, EPFL, ECA and FIFPro Division EU of 19 April 2012», include provisions of template contract form and clear fixed amount of salary [7].

In general, the main responsibilities of a professional athlete are participation in the training process and competitions. More detailed obligations of a professional athlete are in the contract, and may consist of the following:

- together with the coaches schedule the training and competition tasks under the individual preparation plan;
- during training sessions and competitions observe the daily routine, general and individual training and rest regime;
- to take part in educational training camps and sports competitions.

It should be noted that the liability of the professional athletes to achieve concrete results in certain competitions may be provided by the contract. This provision is detailed by the instructions on the name of the competition, the year of conduct and sports results (which are expressed in meters, seconds etc. or a reference to get a place in the competition);

- to take care of their health, personal hygiene, observe safety regulations;
- not to self-medicate and use drugs only with the permission of a doctor of the sport, in case of an injury or disease carefully observe the treatment regime and rehabilitation;

- to know and obey the laws of Ukraine, anti-doping legislature, provisions of international regulatory acts in the field of sport, the statutes of international and national sports federations, league / association or organization regulations that holds competitions, as well as the rules of the sport competitions;
- to take personal responsibility for violation of the World Anti-Doping Agency concerning the usage of illegal pharmacological drugs and the use of prohibited methods of recovery and treatment;
- to use sportswear (outfit) of the Sports Club (organization) during participation in an official sports competition;
- to take care for sports facilities, sports equipment, sports gear and sportswear and be liable for the damage. To report for usage of a given equipment, inventory and sportswear etc., in the terms established by law.

The main duties of the employer (as employers may be relevant subjects within the sphere of physical culture and sports) are to ensure working conditions for professional athletes provided by legislation, collective agreement and labour agreement (contract) as well as salary payments.

Insurance of working conditions for professional athletes consists of the training process under the supervision of qualified specialists (trainers) in training facilities (rooms, on the floors and training bases), with appropriate sports gear and equipment for safe the effective training, high-quality outfit, club clothing of the established sample, quality accommodation and food supply during the period of training sessions and participation in competitions.

Salary payments are carried out due to the established procedure of approved sportsman payment conditions. In case, if the employer is the subject within the sphere of physical culture and sport, funded by the state or local budgets, the athlete salary payment conditions are determined by the norms of existing legislation.

To the legislation, that contain the norms of the professional athletes salary payment belong: resolution of the Cabinet of Ministers of Ukraine of 30 August 2002 № 1298 «On the payment of workers on the basis of the skilled categories and salary levels unified rate schedule of workers labour payment of institutions, establishments and individual industries organizations of budget sphere»; order of the Ministry of Family, Youth and Sports of Ukraine of 4 August 2006 № 2681 «On approval of procedure for awarding regular teams employees of Ukraine»; order of the Ministry of Family, Youth and Sports of Ukraine of August 4, 2006 № 2680 «On approval of procedure for awarding certain categories of regular national teams athletes-instructors of Ukraine» etc.

If the employers are the subjects within the sphere of physical culture and sports financed by private sources (for example, professional football clubs), the salary payments of professional athletes are settled not only by centralized acts of labour legislation, but also by collective agreements, agreements, local regulatory acts of sporting organizations (team, club) [8, p. 61].

In addition to provision of necessary labour conditions and salary payments the employers – the subjects within the sphere of physical culture and sport, – are entrusted the following responsibilities:

- to follow the labour legislation of Ukraine and labour protection rights;
- to reimburse the professional athlete travel expenses (travel, accommodation, meals and other expenses during the trip);
- to provide life insurance of professional athletes, insurance for the period of temporary disability and medical insurance in accordance with the current legislation of Ukraine;
- to organize health care during professional athlete training, the diagnosis, treatment, provision of medicines and vitamins, as well as bear the cost of treatment (including the operation).

The other responsibilities, provided by the labour agreement (contract), may also be entrusted on the employers – the subjects within the sphere of physical culture and sport.

However, rather often in practice, the situation of improper performance of the Parties' obligations due to the labour agreement (contract) can be observed. In the role of offenders increasingly appear the employers, due to several factors, including the deteriorating economic situation in the country. As a result – non-payment of salaries, unjustified early termination of the agreement (contract) initiated by the employer, the refusal to bear the costs of treating athlete and others.

Of course, to protect the violated rights of the athlete, like any other citizen, there are the police, the judicial system, based on the possibility of wide application of state coercion. There are also other, purely professional bodies, such as: sports arbitration courts of various levels, bodies of dispute resolution that are created by sports federations, as well as other specific bodies. However, the effectiveness of their ongoing protection depends not only on the ability to create adverse consequences for offenders, but also responsiveness and maximum proximity, involvement and awareness of the athletes' problems [9, p. 64].

Therefore, more active support begins to get the idea of the necessity of professional athletes' unification in the trade unions, the purpose of which, according to the Law of Ukraine «On Trade Unions, their Rights and Guarantees» is the representation and protection of labour, social and economic rights and the interests of union members. The experience of many countries (England, USA, Italy, France and others.) showed the effectiveness of the trade unions, which are able to use different means to protect the rights of athletes (including as a last resort – strike).

The conclusions. On the basis of the research it has been revealed that professional athletes labour regulations in Ukraine are carried out at both the normative and contractual levels. However, professional athletes' labour regulations are not marked by systematicity and consistency of provisions. In our view, it is possible to improve further on the basis of systematization the norms, regulating the professional athletes' labour, particularly by consolidating such provisions in the new Labour Code.

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