

II. Research Papers

ISSUES OF PERSONAL CIVIL LIABILITY OF THE BOARD OF DIRECTORS OF SPORT-RELATED ENTITIES IN GREECE

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Abstract: *According to the Greek law, the sports-related legal entities that will be analyzed in the present research appear in various legal forms. Legal persons governed by private law, usually managing public sport facilities, non-profit legal persons governed by private law, such as sports federations, operating under the commandment of the Constitution, in order to satisfy the public interest which they exercise, according to the law. Also, legal entities governed by public law, such as the municipal sports organizations, and Sports Clubs Limited Companies. This study will attempt to compare the aforementioned legal entities with respect to the issue of the personal civil liability of the members of their Board of Directors. Even though the members of the board of Sports Clubs SAs are generally protected by the “principle of independence”, the principle is bent in the case of debts to insurance funds and tax liabilities. In the contrary, article 105 of the IntrLCC recognizes the personal responsibility for the members of the board of public law entities but has been severely restricted by more specific laws. As a result, personal liability has become exceptional, and applies in cases of unlawful acts committed at least with gross negligence, and which the public has already been convicted of damages, which can later claim by the responsible person by recourse, as well as and in cases where the member did not comply with administrative court decisions. Presidents, Managers, Legal Representatives and BoD members of all non-profit legal entities by private law, are treated differently, as they are by law joint debtors with the legal entity for public debt and asserted fines. In addition, they are jointly and severally liable for their decisions to dispose of funds other than the purpose of the entity.*

Keywords: personal civil liability, sport-related entities, Board of Directors

Introduction:

Sport-related entities appear in various forms within the Greek legal system, and, according to their purpose and nature, are divided into entities governed by

the civil law, entities governed by the public law and mixed entities. The first category includes the private companies, the second the public authorities and the third the public companies. According to the Greek law, it is rather difficult and surely exceptional to establish personal legal liability directly to the members of the board of these companies. In the following research, some of the main legal provisions related to the issue of the personal legal liability of the Board of Directors of the major entities in the sports area will be analyzed.

Members of the Bod of SAs:

To begin with, the backbone and the protagonists of the professional sport are the Sport Clubs SAs, namely football and basketball clubs, which participate in the professional divisions. Limited companies are private companies, governed by civil law. The Members of the Board are initially protected from any personal legal liability for corporate debts by the principle of “financial independence” (trennungsprinzip)¹. This principle is based on art. 70 of the Greek Civil Code (GCC) “legal transactions conducted by the administrative body of a limited company, within the limits of its purpose, bind the company” and art.1 of the Law 2190/1920 “a limited company is a capital company with separate legal personality, for whose debts it is solely responsible with its property”. It is firstly obvious that this principle is bent in the cases where the administrative body acted outside the limits of the company’s purpose. Accordingly, the Greek Supreme Court (GSC) has decided that such acts are the ones that contradict art. 281 GCC (abuse of institution), for example, when the Board uses the limited company in order to circumvent a prohibition binding them as natural persons², or to deceitfully cause damage to a third party³. The bent of the principle in these cases is temporary and limited only to the specific illegal action, for which the actor is added as a debtor who has jointly and severally liable (481 or 926 GCC) with the legal entity for the caused damages⁴. According to art. 481, joint and several debt exists when in the case of several debtors for the same benefit each of them has the obligation to pay it in full, but the lender has the right to demand it only once. Moreover, there are specific cases where the law pierces the corporate veil directly; Accordingly, art. 20 par. 1a and 6 of the Law 2523/1997 define that the members of the BoD are personally responsible for tax evasion and art. 98 par. 2 of the Greek Bankruptcy Code (GBC), which states that the members of the Board are personally, jointly and severally liable with the com-

1. Rokas N (2019), *Trading Companies*, Sakkoulas: Athens

2. Plenary Session of the Greek Supreme Court (Civil Cases), 2/2013

3. Appellate Court of Piraeus 225/2010

4. Plenary Session of the Greek Supreme Court (Civil Cases), 2/2013

pany for the damages caused due to the bankruptcy of the corporate (cessation of payments), if it was provoked at least with gross negligence or deceit. Moreover, Presidents, Members of the Board and executives are also liable with their private property for unpaid additional fees and insurance contributions to the Social Security Fund, according to art. 64 of L. 4646/19 and art.3 of the L. 4174/13. The law sets three requirements in order the aforementioned executives to be liable: That they were executives by the time the entity went bankrupt, that the debt was overdue, and that the debt was not paid with them being responsible. Finally, according to art. 79 par. 1 of Law 2527/99, Sport SAs are obligated to apprise any kind of income (such as liquidity facility or interest-free loans) granted by members of the BoD or third parties at the local Controlling Council of the General Secretariat of Athleticism within 15 days, otherwise the members of the BoD will be considered personally severally and jointly liable with the entity for the repayment.

Public Law entities:

Another category of sport-related entities is the ones governed by public law. These public entities are mainly Municipal Sports Organizations, whose goals are, between others, to support the local sports associations and to maintain and manage the municipal sports facilities⁵. Their role is crucial in promoting amateur sport within the local community. The members of the Board of these entities are chosen from the City Council. Art. 105 of the Introductory Law of the Greek Civil Code (IntrLCC) states that “For unlawful acts or omissions of public servants in the exercise of their public authority, the State shall be liable to compensation [...]. Together with the State, the responsible person is also jointly and severally liable” and art. 106 of the IntrLCC states that «The provisions of the two preceding Articles shall also apply to the liability of municipalities, communities or other legal persons governed by public law for acts or omissions by any administrative body in their service.». Even though both articles establish the personal liability of the public servants, and in this case, the Board of Directors, in practice they have been restricted from more specific laws that exclude the personal liability in most cases, for example, art. 38 of Law 3528/2007 states that the responsible public servants are responsible towards the State in the case that their acts were done at least with gross negligence, but not to the damaged party⁶. The same implies to art. 44 of the same Law, which states that municipal servants are responsible towards the local authorities, but not to the damaged party. What is obvious from a holistic view of the law, is that the State is the only responsible debtor to the damaged party and can later claim the sum of the damage from the

5. <https://www.minoapediadas.gr/municipality/history-municipality/goals-dopap.html>

6. Gerontas A., et al (2018) “Administrative Law”. Sakkoulas: Athens

actor with recourse. L. 3528/2007 introduces an extension of the limitation period for claims of the State against employees. In particular, Article 38 stipulates that "the claim of the State against its employees for compensation in cases of civil liability is now statute-barred in five years instead of the two years that are already in force. The five-year period begins after the competent body for the submission of the application for imputation became aware of the damage and its reason". It is a fact that the percentage of liability, and consequently the total amount of debt is not necessarily equal among the debtors. Art. 927 of the Greek Civil Code states that the Court of the recourse will examine the exact percentage of liability of each actor due to their unlawful act or omission, and consequently defines the exact amount of compensation they owe to the damaged public entity. The choice of the lawmaker to set the level of the liability as "at least gross negligence" is a safety valve for the Board of Municipal Sports Organizations⁷.

Non-profit organizations:

The last category that will be examined in this research is the non-profit entities governed by civil law, such as Sports Federations (HFF, HSF, HBF, etc.). According to art. 19 of Law 2725/1999, Sports Federations are private law legal persons and they are governed by art. 78 et al. of the GCC regarding unions. In this case, art. 50 of Law 4174/2013 is enlightening; Even though the members of the Board of Unions (such as the Federations) are not personally liable, art. 50 establishes an exception for presidents, managers and legal representatives of all non-profit entities; they are personally severally and jointly liable with the entity for debts to the State (fines, taxes, etc.). But this is not all, because most of the federations annually get state aid, which means that for specific action the entity will be considered as "public law entity", if three criteria exist cumulatively; if the entity is set up for the specific purpose of meeting needs in the general interest which do not fall into the industrial or commercial sector, if the entity has legal personality and if their activity is largely funded by the State⁸. For example, Hellenic Athletics Federation has been recognized as a public law entity from the Independent Authority of Public Contracts⁹ because it meets the criteria, since its role as a Federation is de facto of general interest and got financial aid by the state of 75% of its annual incomes¹⁰. So, for the acts that State's money is used, and if the rest of the criteria are met, the Board shall be person-

7. Spiliotopoulos E (2017), Administrative Law Manual, Nomiki Vivliothiki: Athens

8. EU Directive 2004/18 art. 1 par. 8, as was incorporated by the Greek legislation in art.2 par. 9 of the Presidential order 60/2007

9. Independent Authority of Public Contracts, Special Report 2/2014

10. The meaning of "largely founded" is meant by >50% of its annual income.

ally liable as mentioned for the public entities before. Lastly, another exception is set by the art. 51 of Law 2527/99, which states that the budget of each Sports Federation should be annually approved by the BoD. For the repayment of any further unsanctioned disbursal, which is not bounded by an emergency situation, the member or the members responsible for its unlawful approval are considered personally, jointly and severally liable, according to the Code of the Collection of Public Revenues.

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