

THE FREEDOM OF PRACTICING THE PROFESSION OF COACH IN THE LIGHT OF EU LAW

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The study analyses all legal matters arising from the recent amendment of articles 31 seq. of Greek Sports Law 2725/1999 concerning the practicing of the profession of coach in Greece (requirements to obtain a State-certified coach license, classification of coaches levels that match certain possible sports employers, minimum wage etc.), especially in the light of EU law. Emphasis is given in the examination of whether the respective provisions of Greek legislation are contrary to the hierarchically superior provisions of economic freedom, business freedom, freedom to provide services, free competition, legal certainty, right to property, principle of equality and non-discrimination, as well as the Directive 2005/36/EC regarding the recognition of professional qualifications, the Directive 2006/123/EC regarding the provision of services in the internal market and the Directive 2018/958/EU regarding the proportionality test before the adoption of new regulation of professions.

1. Introduction - Scope of the Issue

In Greece, many prominent coaches of clubs and athletes (e.g. Otto Rehhagel, head coach of the national football team that won the 2004 European Championship, Željimir Obradović, head coach of a professional basketball club that won the Euroleague championships of 2000, 2002, 2007, 2009, 2011, Dušan Ivković, head coach of a professional basketball club that won the Euroleague championship of 2012, Mitch Krier, coach of an Olympic gold medalist in 2016 and winner of many more medals in World Championships, etc.) are allegedly considered to practice their profession illegally, because they do not hold a license to practice the profession of coach issued by the General Secretariat of Sports. In addition, in Greece, many prominent coaches are allegedly considered to practice their profession illegally, because they do not hold a high school diploma. Do they really practice the profession illegally though? Are their contracts, in fact, illegal and void? Is this kind of blunt (if not offensive) treatment towards them acceptable under EU Law? What is, finally, the context of the concept of the freedom of practicing the profession of coach in the light of EU Law?

2. Legal framework regarding the practicing of the profession of coach

Like in any other sporting matter, the practicing of the profession of coach is governed by the provisions of international and national laws (e.g. ECHR, CFR, TFEU, national laws etc.) and provisions of international and national lex sportiva (e.g. Olympic Charter, statutes and regulations of international and national sports federations). In Greece, the relevant framework (articles 31 seq. of Greek Sports Law 2725/1999) is categorized in 4 chronological periods of legislation: 1. Law 2725/1999, under which the rules of lex sportiva prevail and national law applies supplementary; 2. Law 3919/2011, which deregulates the employment status of coaches by abolishing the coaching license issued by the General Secretariat of Sports; 3. Laws 4809/2021, 4818/2021, 4825/2021, which give precedence to the rules of national law by reinstating the license to practice the profession of coach issued by the General Secretariat of Sports; and, 4. Law 4908/2022, which strengthens this new regime of intense state intervention in practicing the profession of coach.

The intervening, groundbreaking and significant jurisprudence of the Athens Administrative Court of Appeal¹ confirmed the abolition of the license of General Secretariat of Sports as a necessary condition to practice the profession of coach, reestablishing the theoretically self-evident principle in the field of sports law, that the right of international and national sports federations to regulate their affairs autonomously and freely² also includes the conditions, status and legal consequences of practicing the profession of coach. However, the reaction of the unsuccessful disputing party, i.e. the General Secretariat of Sports, was not the one reasonably anticipated. The legislative interventions that took place in Greece between 2021-2022 include the introduction of the obligation to obtain a coaching license from the General Secretariat of Sports in order to practice the profession of coach; the introduction of a high school diploma for obtaining a coaching license; the conversion of all coaching licenses from indefinite to fixed term (5 years); the expiration of existing licenses on 31.12.2023 with the introduction of an obligation to update them; the removal of coaches who do not update their data until 31.12.2023; the introduction of A, B and C classification levels of licenses matched to potential sporting employers; the introduction of a

1. Athens Administrative Court of Appeal 2270/2019; Athens Administrative Court of Appeal 868/2019; Athens Administrative Court of Appeal 113/2019; Athens Administrative Court of Appeal 677/2018; Athens Administrative Court of Appeal 676/2018.

2. ECHR decision 12.4.2011, 12967/07, Republican Party of Russia v. Russia, par. 79-90; ECHR decision 8.10.2009, 37083/03 Tebieti Muhafize Ccemiyet and Israfilov v. Azerbaijan, par. 72; ECHR decision 27.2.2007, 11002/05, Associated Society of Locomotive Engineers & Firement (ASLEF) v. UK, par. 38; ECHR decision 26.10.2000, 30985/96 Hasan and Chaus v. Bulgaria, par. 82, 84-86.

minimum monthly wage of 250 euros regardless of the working time; the establishment of a minimum duration of employment for 6 months, etc.

The direct consequences of the new legal regime were, among others, the professional aggravation of the vast majority of coaches from 1.7.2024, the prohibition of practicing the coach profession for people who do not hold a high school diploma, the unknown and uncertain working environment of foreign coaches and the excessive financial burden imposed on sports clubs for the employment of coaches.

3. Critical assessment of the new legislative regime

The new legislative regime for the employment of coaches does not seem to comply with hierarchically superior provisions of the Constitution, the ECHR, the CFR and the TFEU about economic freedom, business freedom, freedom to provide services, free competition, legal certainty, right to property, legal certainty and the right to property. There is also a question of the compatibility of this new legislative regime with the principle of equality and non-discrimination, since the introduction of exceptions for only certain categories of coaches is unclear whether it is justified on objective grounds. In any case, this new legislative regime violates several provisions of the Directive 2005/36/EC regarding the recognition of professional qualifications, the Directive 2006/123/EC regarding the provision of services in the internal market and the Directive 2018/958/EU regarding the proportionality test before the adoption of new regulation of professions.

Indicatively, it should be noted that there is no (at least, the required) conceptual distinction between coach, trainer and physical education teacher. Moreover, the requirements to access the profession of coach, e.g. the high school diploma, have not been published in advance, as prescribed under Article 10 of the Directive 2006/123/EC, but they also include existing cases of coaches with 30 or 40 years of expertise, a few years before their retirement. In addition, no detailed proportionality test has been carried out in advance, justifying the reasons for the adoption of the provisions under qualitative and quantitative criteria and with reference to the justification of the provisions in the explanatory memorandum, as required under Articles 4 and 6 of the Directive 2018/958/EU. Finally, regarding the substance of the matter, it is pointed out: 1. that international sports federations (and, thus, national sports federations that are their members) are in principle competent to regulate the way in which matches are held and, therefore, the access of coaches to them, regardless of the wishes of the State, 2. that the judgement of State rules on the “legality” of a coach is obviously irrelevant at the most critical international level, and 3. that international sports federations have the right to punish national sports federations that are their members and

thus do not comply with their rules by choosing to apply national law, which is contrary to the international regulations.

Especially, regarding the requirement of the high school diploma to access the profession of coach, it is observed that learning a sport concerns technical matters that obviously do not require specialized and advanced (high school level) knowledge of modern Greek or Ancient Greek, or algebra, or physics or chemistry (e.g. entanglement reduplication, polynomial equations, magnetic permeability etc.). In addition, there are no qualitative, and quantitative elements that coaches without a high school diploma have not successfully practiced their duties; on the contrary, there are many examples of such coaches enjoying significant success of their athletes. Finally, this particular measure for absolute and definitive exclusion of people who have practiced their profession successfully during the course of the years (even for decades) is not a less restrictive (*stricto sensu* proportional) measure to achieve the alleged legal purpose that is served with the particular measure. As a result, this measure does not meet the principle of proportionality and, thus, must remain inapplicable.

Indeed, the coercion of interested coaches without high school diplomas to attend high school in order to continue practicing their profession entails, at the same time, the loss of their vested professional rights, in breach of their right to property. Other individual observations of the new legal framework in Greece are the following: 1. There is no rational answer to the question as to why it is forbidden to employ as a Federal coach the best coach in the world who does not have an A level license issued by the General Secretariat of Sports; 2. There is no rational answer to the question as to what sports clubs should do when the foreign coaches that they employ do not finally manage to obtain a license issued by the General Secretariat of Sports; 3. There is no rational answer to the question why the employment of a coach is sufficient just for 6 months annually, since the employment of a coach is deemed obligatory. 4; There is no rational answer to the question if the minimum monthly salary of 250 euros is in fact reasonable even for someone who works 1 hour per month.

4. Jurisprudence on the new legislative regime

The jurisprudential approach of this new legislative framework, fortunately, confirms the humanitarian character of sports: overwhelming acceptance of the interim judicial protection of the coaches who *prima facie* do not appear to meet the very strict requirements of the national law³, total equivalence of diplomas

3. Athens Administrative Court of Appeal (Chamber) 118/2024; Athens Administrative Court of Appeal (Chamber) 112/2024; Athens Administrative Court of Appeal (Chamber) 111/2024; Athens Administrative Court of Appeal (Chamber) 110/2024; Athens Administrative Court of Appeal (Chamber) 186/2023; Athens Administrative Court of Appeal (Chamber) 185/2023.

of the coaching schools of international sports federations with the diplomas of the coaching schools of the General Secretariat for Sport⁴, leniency in the interpretation of the relevant national law provisions for coaches⁵ and recognition of professional rights also for coaches without a high school diploma⁶. In view of these decisions, which seem to reflect a very strong scientific and doctrinal opposition to the new legislative regime in Greece, the sports community highly anticipates the (legislative or not) reaction of the General Secretariat for Sport, that in the meantime observes that the new legislative regime it has established is very largely circumvented in terms of jurisprudence.

Final remarks – Suggestions

In conclusion, it should be mentioned that the starting point of any legislative amendment for practicing the profession of coach and, in general, for the regulation of any sporting matter, should be the realization that the main characteristic of sport (a phenomenon, in principle, between equal individuals) is private autonomy and self-regulation and, therefore, the relevant legislative regime should in principle have only a guiding character and not the character of state intervention. Moreover, in any case the fundamental principle of legal certainty requires the introduction of transitional provisions, in particular for belatedly required documentation, which undermines the legitimate expectations of the persons concerned. Finally, the consultation of the State with international sports bodies (e.g. the International Olympic Committee and the international sports federations) is essential for the harmonious coexistence of national laws and *lex sportiva* as well as for the State's effective extroversion. Anything else, such as what is unfortunately observed in Greece from 2021 until today for the exercise of the profession of coach, reflects at least a distorted understanding, if not a complete bypass, on the one hand of the European *acquis* and, on the other hand, of sports self-governance.

4. Athens Administrative Court of Appeal (Chamber) 2091/2022; Athens Administrative Court of Appeal (Chamber) 1330/2022; Athens Administrative Court of Appeal 62/2021.

5. Athens Administrative Court of Appeal 252/2024.

6. Athens Administrative Court of Appeal of Athens (Chamber) 118/2024; Athens Administrative Court of Appeal (Chamber) 112/2024.