

THE IMPORTANCE OF KNOWING AND OPERATIONALIZING THE EFFECTIVENESS- EFFICIENCY-LEGALITY IMPERATIVES IN SPORTS MANAGEMENT

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Abstract: *Issues in the field of management, its impact on both sports structures and/or organizations and their activities are in the focus of those actively involved in sports management. The social environment can exert a number of influences on the entire sports system through complex factors whose knowledge can facilitate its operating mechanism.*

This paper addresses the importance of legal factors with regards to the best management practice for sports structures/organizations and their activities – seen as an integral part of environmental factors. We emphasize the need to harmonize the national normative with the already globalized sports framework that is in continuous dynamics, which reflects the efforts of today's society to have a “Clean Sport” that can only be generated by “Clean Societies”.

Our suggestion and main focus is that the sports manager profession/position, at least in Romania, should be acquired through academic pathways and/or even the qualification provided by a postgraduate degree.

Consequently, the main idea of this paper is to present the necessity to assimilate the legal culture and recognise the importance of human/athletes' rights in the expert knowledge of Sports Law, as an integral and mandatory part for training sports managers.

Keywords: Management, sports structures/organizations, sports activities, legal legislative factors, sports law, Lex sportiva.

Introduction

We will try to assess, with the appropriate objectivity required, the role and importance of the legal factor in the management of organizations and physical education and sports activities (according to the provisions of art. 2 of the European Sports Charter), being 'marked' by the axiological neutralism as much as possible when referring to behavioral sciences (as is the case in Law) inter-related with management, mainly in the field of economic sciences. Each of us has expressed, in one way or another, the opinion that good management of sports organizations must be subordinated to the imperatives of effectiveness, efficiency and legality.

In order to avoid falling into the trap of ambiguity of the terms used in sport, we decided to operate with the terms, definitions and notions already legalized following the development of international normative acts to which many states have adhered.

For instance, we refer to the meaning of the term 'sport', which is actually the domain and main activity of sports organizations. In the modern society, at European level, the term 'sport' is defined in art. 2, para. (1), lett. (a) of the European Sports Charter as follows: "All forms of physical activities which, through organized or unorganized participation, have the purpose of expressing or improving the physical and mental condition, developing social relations or obtaining results in competitions of any level". The definition was then taken over by the *White Paper on Sport*, which came into effect at the same time as the birth of the legal force of the Lisbon Treaty, together with the Charter of Fundamental Rights of the European Union.

The sport is assigned a lot of values and functions, which are not always consistent with the positive social and legal values. When assessing sports behavior or related issues, the important principle that "No one is above the law" has not constantly been respected, as sport is often confiscated by illicit interests and pressure groups.

The social dimension of law

Economic sciences (Economics) deal with the study of the production, distribution and consumption of material goods and services; among the issues of interest, we mention: money, banking and financial life, public finances, international economy, labor relations, business organization, consumer economy, public facilities economy, etc.

Economy is a part of social life. But the law has a social dimension. "Why a social dimension?" The law is a complex product of society; its norms intervene in the production process establishing general rules for the repeated daily act of production, distribution and exchange of products and activities. Work requires

accepted rigor. Human freedom is only complete insofar as it does not hinder the freedom of others. Human rights cannot be shaped; they can only become realities in an interaction based on the coexistence of freedoms rather than the brutal and damaging assertion of personal rights and interests by others. The superiority of the legal reflection of the necessary correlation between rights and duties, as well as the nobility of the act of justice (as an independent activity in a democratic society), make up the coordinates that decisively mark the social dimension of the law. It is claimed that the sport has been marketed, but the management of sports organizations and sports activities is also subordinated to the law of order.

Sports structures in Romania – the object of sports management

In Romania, art. 2 of the updated Law no. 69 of 2000 states that: para. (3) Physical education and sports include the following activities: physical education, school and university sports, sports for all, performance sports, physical exercises for maintenance, prophylactic or therapeutic purposes; para. (4) The state guarantees the exercise of the public and private sector functions in the fields of physical education and sports in accordance with the principles of responsible collaboration between all stakeholders; para. (5) The practice of physical education and sports is a right of the person, without any discrimination, guaranteed by the state. The exercise of this right is free and voluntary and is carried out independently or within the association sports structures. (6) The state recognizes and guarantees to the natural and legal person the right to free association for the purpose of establishing sports structures.

The sports structures in Romania are listed in art. 21: A) sports associations; B) sports clubs, including those organized as companies (based on Law no. 31/1990 of companies), educational establishments with a sports program or profile, palaces and clubs for children and students; C) county and Bucharest municipality associations by sports branch; D) professional leagues; E) national sports federations; F) Romanian Automobile Club, for the motorsport and karting activity; G) other national sports organizations. Art. 22 of the Law provides that: (1) sports structures are associations of private law or institutions of public law set up, as the case may be, for the purpose of organizing and administering a sports activity and whose objective is to promote the practice of one or more sports disciplines by their members and the participation in sports activities and competitions. (2) for the purposes and under the conditions established by the law, sports clubs, public legal entities organized under the subordination of central/local public administration bodies or subordinated to public higher education institutions may operate.

Sports services, efficiency and effectiveness in services and management

Products and services are not produced or consumed alone. Sports services and services, viewed as a commodity, are the main activity of sports organizations, more precisely of public- or private-law sports structures. In this context, the sports company should be regarded as part of the national subsystem of physical education and sports, as part of the whole social system – in the case of Romania. The company or enterprise is not limited only to the economic field, for it has a much larger scope; its object of activity can be from any field, implicitly that of physical education and sports, provided that economic or social profit is obtained by entrepreneurs.

We will present some considerations regarding the issues of profit and efficiency of physical education and sports structures and activities. The 'profit' of sports companies mainly includes the advantage achieved by fulfilling other 'functional requirements' than the commercial ones, which make the subsystem of physical education and sports fulfill other social tasks.

The Romanian society is governed by the rule of law and begins to impose its values. Under these conditions, a new societal model is built, namely the liberal compliance model – the law begins to be effective, exceeding the simple declaration. In the liberal compliance model, compliance frameworks are easily determined and there is no interference with the field of private life – human rights are often invoked, but human interest, obligations and duties are less often invoked. The whole private law is based on the idea of interest and especially material interest. But should any interest be legally protected? Can any interest give rise to a right? Then, in what sense should the idea of interest in legal relationships be taken? The interest cannot be legally justified unless it is in accordance with the conceptions of justice. Only the mere interest – according to the ideal of law – should be established. We believe that we have sufficiently motivated the assertion that the management and the physical education and sports institutions should be mainly subordinated to two imperatives: efficiency and effectiveness.

Physical education and sports are remarkable social activities. The social is based on the normative framework. Legal order in the sports activity must be respected. It is important to know the normative framework of these activities – which favors and conditions the decision-making process in the physical education and sports system.

The extraordinary development of contemporary sport over large geographical areas has led to an increase in the number of participants and the establishment of new sports organizations. However, establishing new sports organizations has resulted in burdening international sports structures. This certainly leads to a lot of questions. One of them would be: what place did international sports structures occupy and can occupy in the legal and economic organization of the world in which they operate? The answer to this question can only

be given insofar as the institutional identity of these structures relates to the attributes of legitimacy and legality, which can generate the efficient and effective management framework. In order for the management of an organization to be considered efficient, the legal factors (in the sports organization environment) should be exploited not only in the sense of exploiting the opportunities offered by the positive law, but also in respect of the order of both the law and sports. Sanctions received as a result of violation of legal norms, including those referring to what we call *Sports Lex*, can cause major dysfunctions in the management of sports organizations and activities. Therefore, if management science does not expressly include the content of the legality imperative into the concepts of efficiency and effectiveness, it is our duty to distinguish it and propose it as a concept of management science. We consider it necessary to give some details about two terms used in management, namely efficiency and effectiveness. Most Romanian dictionaries accept both terms as synonymous (efficiency = effectiveness), but the management terminology differentiates between the two notions. In a recent management dictionary, efficiency means a result or situation characterized by positive outputs of a system, which are higher than the inputs used. Efficiency reflects performance management at the system level. Achieving efficiency is a fundamental objective of the management of any organization and its activities. Effectiveness is a feature of a decision, activity or behavior of an organization, which designates its ability to ensure that the desired effects are reached, namely to achieve the proposed goals under the pre-established conditions of time, cost, etc. Peter Drucker, in his book *The Effective Executive: The definitive Guide to Getting the Right Things Done* (1966), states that 'effectiveness is the knowledge-specific technology of a worker within organizations. In the case of manual work, we only need efficiency, that is, the ability to do things well, not the ability to do what is good'.

The legal-legislative factor

In the following, we will go through some examples focusing on the importance of the legal and legislative factor constituted by the set of legal regulations with direct or indirect influence on the physical education and sports organizations and their management – regarded as integrated into all the environmental factors, including the economic, management, technical and technological, demographic, socio-cultural and political ones.

Naturally, the state also plays an important role in the existence and development of social assistance institutions. Not only that the state regulates by legal norms the establishment of legal persons with the object of physical education and sports activity, their legal capacity, the ways in which they manifest themselves in the dynamics of legal relations, their possible reorganization and the cessation of their existence as subjects of law, but it also organizes a complex

system of records of their existence. Thus, only for the purposes and under the conditions established by the law, sports structures can operate legal persons of public law organized under the subordination of the central or local public administration bodies. The possibility of setting up private law institutions (structures) results from expressing the right to free association, a constitutional law expressly provided for by art. 37, par. (1) in the Romanian Constitution. The establishment of physical education and sports structures of private law and law is carried out according to both the law (Ordinance 26/2000 on associations and foundations, Law no. 69/2000 of physical education and sports and the regulation for implementing it, the New Code of Civil law, Law no. 31/1991 on companies) and the requirements of the specialized public administration).

Increasing professional liability by legalizing it

According to the rule of law, no one can be above the law – neither the natural person, nor the legal person and no particular field of activity – in our case, the field of physical education and sport.

It is recognized that the participants in sports activities must also respect: The state order, which refers to the administration of the economic means of sports services and benefits, to the issue of engaging legal responsibility under its different forms (criminal, contraventional-administrative, civil law, labor law, etc.), thus guaranteeing the subjects, as part of the legally established sports relationships, the protection of their subjective rights through the coercive force of the state. The state order also includes the norms regarding the international agreements to which Romania has adhered and whose object is the sports activity. Knowledge of the legal system is required for all participants in physical education and sports activities. In this field, values such as life, health, bodily integrity, dignity, justice, equity, freedom, etc. must be protected and promoted. The sanctions received as a result of the violation of legal norms can cause major dysfunctions in the management of physical education and sport organizations; The area of the sports field governed by the sports regulation (and the game rule); The area of international sports structures, with extension into the area of national sports structures that draw up their statutes, regulations, etc., according to the statutes of the international sports federations.

In the traditional doctrine, the Civil Code subjected civil liability, at least technically, to different regimes, as civil liability is a tort or a contractual liability. Thus, only two forms of liability were inherent in civil law: criminal liability and contractual liability. Today, the New Romanian Civil Code and the EU regulations regarding the institution of civil legal liability report the emergence of the third form of civil liability, namely professional liability. Thus, we will be able address the issue of civil liability by understanding the quality of the common

law of criminal liability and referring to the new form of civil liability, professional liability.

By identifying the facts of malpractice in the activity of physical education and sports, we will achieve a picture of the emergence of obligations resulting from damages caused to the athletes or third parties, but will also be able to particularize the professional liability of those whose object is the sports activity (own sports and related occupations) including coaches, physicians, physiotherapists, physical education teachers, sports structures, etc. Thus, we will have the support of effective attempts to harmonize the Romanian sports legislation with those of the European and Euro-Atlantic structures in which we have integrated.

The new concept of legal ethics in sports. Professional malpractice

The concept of “legal ethics” refers a legal order to be imposed on all professionals involved in sports activities. Thus, the concept of ethics, and even more, legal ethics, is a polysemantic notion. This situation is favored by the intertwining of morals (ethics), law and professional practices. Studying legal ethics, as part of applied ethics, is an imperative not only for the law of science, but also for moral philosophy. For these reasons, moral philosophy has been marked in recent years by the singular development of its sub-domain known as 'applied ethics'.

The research of the legal ethics, as part of the professional ethics, is in an incipient phase in Romania. This explains the very low interest, perhaps for reasons of immorality or amorality of the professionals, press and politicians, in legalizing the sports activities. It is true that we are still in the presence of interpretations that would not make it possible to hold professionals responsible for the wrongdoing, because the existence of codes of ethics in certain professions is invoked in the interest of delaying the employment of the institution of legal responsibility.

Under these circumstances, we will be able to “define” (at least theoretically) the legal ethics through the effort of understanding and interpreting the legal norms, followed by their application in absolute good faith.

The ethical-legal principle underlying the employment of civil liability was introduced in the regulations of the Civil Code, in art. 1.349, thus: the breach of the general obligation to respect the legal provisions or the rules established by the custom of the place, if it had as a consequence the attainment of the subjective rights and the legitimate interests of other persons, obliges the guilty person to complete reparation. In contractual terms, this principle is enshrined in the provisions of art. 1.350 C. Civ. The universality of this rule makes it applicable in all cases, establishing the legal framework in which the victim can claim and obtain the payment of damages.

This principle has profound moral significance, and it is fair to restore the

social balance destroyed by an unlawful act, which ensures the reparation of the damage suffered by the victim, by the one who is guilty of the created situation. This dimension of civil liability results from the fact that, exercising their freedom, man builds their own personality, but at the same time must also take responsibility for their actions. Thus, the man who acts consciously is responsible for their own acts and the derived consequences, being forced to restore the distorted social balance. True responsibility is always associated with the commutative justice order, which tends to establish a legal reaction meant to remove the consequences of the harmful fact. The relationship between ethics, morals and law thus focuses on the idea of the perpetrator's guilt. Freedom and responsibility are two complementary and indispensable concepts that characterize human dignity.

Ethical-legal interpretations of civil liability towards professional malpractice

The legal relationship between a professional (sports profession / sports structure) and the service beneficiary (client, student, performance athlete, spectator, etc.) cannot be completely subordinated to the rules established by a civil contract, on the one hand, and those of liability. Essentially delinquent, on the other hand, it would require a demanding interpretation of the coordinates of its functionality. This is the reason why the debates about the conditions and basis of the professional liability tend to detect its specific elements so as to argue the necessity of harmonizing the legal norm with the realities of today's society, which is facing an increased danger of prejudice, referring here to the damages produced in the activity of physical education and sport.

Due to the diversity and complexity of the professional civil liability hypotheses, it is necessary to legally establish abstract rules applicable in all cases of wrongdoing in order to ensure the more effective protection of the victim, by supporting them with obtaining compensation.

The regulation of the criminal and contractual civil liability in the current Civil Code of Romania aims to establish the rules of principle that, in terms of professional malpractice, are meant to govern the conditions of initiation and success of the action in committing the responsibility, respectively to lead to the restoration of the social balance destroyed by committing a fact that had the consequence of causing harm to another person. In order to ensure full protection of the victim of the crime, it tends to objectify the professional liability of the professional, being engaged in most situations independent of any guilt. Thus, the analysis is transposed into a causal plane, the mere production of the damage triggering the civil liability mechanism. As a special hypothesis of legal liability, civil liability for professional malpractice is that the legal report born from the violation, by certain categories of persons generically called professionals, of the

rules of conduct established by the law or the professional body to which they belong, causing harm to another person, and their obligation to repair it.

As can be seen from the definitions set out above, the structure of the legal report of liability for professional malpractice includes the four classic elements of civil liability in general: the injury, the wrongful act of malpractice, the causal link between them, and the fault of the responsible person.

Legal harmonization of sports activities via the globalization of sports

The harmonization of sports activities requires a globalized approach via an international legal framework of acknowledged principles, standards and norms. There are numerous international instruments that support the efforts to strengthen cooperation and present a unified front, striving to eradicate doping, protect clean sport and ensure that fundamental rights and human rights are institutionally guaranteed. Sport can be a provider of a role model via values characterizing its nature and the education of its spirit, with the support of the Katowice Declaration, Macolin Convention and other sports centers focusing on clean sport and human rights.

Anti-Doping Rights Act: The Katowice Declaration

A global anti-doping program has recently been set up under the Katowice Declaration, based on the 2021 Code and Standards¹, in order to ensure that fundamental rights within the sports field are clearly set out and universally applicable. The general concept of “fundamental rights” includes human rights protected at both conventional and constitutional levels, and EU’s basic freedoms have also been considered. Certainly, the latter are not human rights technically speaking, but can play a significant role mainly in doping disputes. According to the WADA code, the fundamental rationale is to preserve what is intrinsically valuable about sport and how we play true and clean. Hence, the Code emphasizes the human spirit, body and mind, and lists a series of values, namely “ethics, fair play and honesty; excellence in performance; character and education; fun and joy; teamwork, dedication and commitment, but also respect for rules and law².

Under the auspices of the Macolin Convention

Within the spirit of the Macolin Convention focused on the Manipulation of Sports Competitions, a number of concrete priorities were identified and re-

1. 2021 Code Review, <https://www.wada-ama.org/en/what-we-do/the-code/2021-code-review>

2. *Supra*, 2021 WADA Code Review.

inforced the “Macolin Roadmap” phrase, which has led to its ratification and entry into force on the 1st of September 2019³. Enriched by the conclusion of the 3rd International Conference 2018, partners are sharing the challenges and target the threat that sports manipulation poses to sport and society by building trust amongst the actors and implementing strategies of collecting, sharing and processing information. The idea is to create a legal and cultural environment, report suspicious activities via effective mechanisms and focus on prevention by improving education and awareness programs.

Applicability of the Human Rights in Sports

Nowadays, fundamental rights are only applied vertically between the state and the individual, which means that the horizontal application between individuals is not incorporated in the legal framework. Hence, this classic view of fundamental rights in doping control by sports federations, for instance, they would apply to the disciplinary procedures carried out by sports governing bodies that act by virtue of power from the state⁴, which is the case for the French national sports Federations⁵. On the other hand, in most countries, sports federations and their disciplinary bodies are private and do not exercise power delegated by the state as is the case in the UK, US, Germany and Switzerland. Therefore, fundamental rights are inapplicable to doping controls carried out by sports governing bodies that are legally established as private entities. The British Government shared the same view when specifying that the Human Rights Act “should have no direct horizontal effect”⁶.

Furthermore, in terms of management, education and ensuring equality, diversity and inclusion in sport, we notice that this approach has been limited so far mostly to the UK, where national sport agencies, equity organizations and sports governing bodies focus on such values and standards. A Sporting Future for All document, issued by the Department for Culture, Media and Sport in 2000, stressed the need to develop policies and strategies to manage and encourage diversity in British Sport, whilst the emergence of a social inclusion discourse was taking place in relation to equality, diversity and sports rights. But talking about

3. Council of Europe, <https://www.coe.int/en/web/sport/about-the-convention-on-the-manipulation-of-sports-competitions>

4. Rudolf Bernhardt, *Fairneß-Garantien in den Europäischen Menschenrechten*, in *Sport, Recht und Ethik* (Stuttgart, 1998), p.54.

5. Jean-Christophe Lapouble, *Les droits de l'homme et la lutte contre le dopage: le cas français*, *Petites affiches*, March 5, 1997, pp.12-13.

6. Peter Goldsmith, Timothy Dutton, Thomas Keith, Deepak Nambisan, "Human rights and the business lawyer: The impact of the U.K. Human Rights on commerce", [2001] B.L.I. 55 referring to the ministerial comments made during the passage of the Act through Parliament.

the value of diversity is not the same as having diversity, because it is in the opposition between valuing diversity and being diverse that it reproduces.

Finally, organizations tend to engage when prompted by legislation and government policy. The equality agenda in sports came from the UK Government in the early 1990s. Important changes were made to equality laws, first by strengthening the Race Relations Act in 2000, and then by the planning of a new holistic Equality Act, which was enacted in 2010. So, through this Act, many organizations felt that such legislation could be applicable to them and so policy commitments to equality were seen to be a form of proof of meeting statutory legal obligations. In addition, in return for substantial public funding, recipient sports organizations were required to set and meet a range of Key Performance Indicators underpinned by a broader process of modernization, which required sport to professionalize its otherwise volunteering activities. Hence, the human rights principles, standards and norms along with equality, diversity and inclusion initiatives become attractive to organizations when they appear to complement wider strategic goals, the so-called business case for equality, and to prompt a kind of interest convergence with diversity and inclusion policy objectives.

Conclusions

We believe that it is necessary for the legal and legislative factors to be considered of major importance in the management of institutions whose object of activity are the physical education and sports activities. The training of 'sports workers', as well as the management of specialized structures in a developing society, with a development perspective, demands general culture and modern specialized training – including legal, capable of producing mutations in the way of approach and reception. This means and should be considered at present the activity of physical education and sports.

Thus, we stress the importance that the profession/function of sports manager, at least in Romania, to be obtained through university or post-university studies via the specialized knowledge of public and private law and, of course, sports law.

The considerations regarding the topic addressed compel us to support the necessity of assimilating the legal culture and knowledge of the “Sports Law” as an integral and mandatory part in the training of sports managers.