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LEGAL ASPECTS OF EMPLOYING ATHLETES

Abstract. The Act of 25 June 2010 on sports defined the concept of professional sports. Thanks to this, it was finally possible to say goodbye to apparent amateurism and the employment of athletes in fictitious positions in workplaces. Currently, athletes are employed by sports clubs. The regulations governing the employment of athletes vary depending on the given sports association, but they must be consistent with the statutes of the world sports federations. The author presents the issue of employing athletes using the examples of the regulations in force in the Polish Football Association and the Polish Athletics Association.

Keywords: amateur sports, professional sports, sports clubs, employment of athletes, Bosman's law, players' contracts.

Introduction

According to Art. 2 sec. 1 of the Act of 25 June 2010 on sports (hereinafter referred to as the Sports Act), sports are all forms of physical activity that, through occasional or organized participation, affect the development or improvement of physical and mental fitness, the development of social relations or the achievement of sports results at all levels. The above definition therefore includes any physical activity, from which the following types of sports can be derived:

- amateur sports, which by definition are recreational forms of exercise and are intended to provide entertainment and relaxation. The ability of people practicing this form of sport is measured by sports competitions, available in a version for amateurs and allowing almost everyone to participate, regardless of age and movement predispositions.
- competitive sports, which are forms of physical activity aimed at competition and achieving the best possible results. Practicing this form of sport is associated with membership in sports clubs and associations.

According to the Physical Culture Act of 18 January 1996, professional sport is competitive sport practiced for profit purposes, however, in the currently applicable Sports Act, such a definition does not appear. Historically, the concept of sport has been used in reference to various human activities, placed in different places on a continuum combining work and play, competition and recreation. Contemporary attempts to define sport continue to reveal its dynamic and constantly changing nature (Gardiner et al., 2006, p. 14). Modern sports can be spoken of from the end of the 19th century. At that time – in June 1894 – the International Congress for the Revival of the Olympic Games was convened, initiated by the French aristocrat – Baron Pierre de Coubertin. At this congress, the International Olympic Committee (IOC) was established, which was entrusted with the task of organizing the first Olympic Games of the modern era in Paris in 1900. The IOC president was the Greek entrepreneur Dimitrios Vikielas, who ultimately pushed through the decision to hold the games in 1896, and Athens was to become their venue. Starting in 1896, every four years the best athletes met at the world's biggest competition. In 1900, Pierre de Coubertin, a supporter of complete amateurism in sports, was elected president of the IOC, as a result of which professional athletes were not eligible to compete in the games. The regulations introduced by Coubertin resulted in the disqualification and stripping of medals of the two-time gold medalist of the Stockholm Olympics (1912) – Jim Thorpe, for playing baseball in a semi-amateur team in 1909–1910 and receiving payment for playing. A similar fate befell the Finnish Olympic multiple medalist from 1920 to 1928, Paavo Nurmi, who was accused of receiving cash prizes for competing in competitions in Germany in 1927. Despite the lack of clear evidence, he was disqualified just before the Olympic Games in Los Angeles (1932), for violating the regulations on amateur sports, although in this case the athlete retained his previously won trophies. These events contributed to the gradual change of the regulations on amateurism. In Poland, however, until the outbreak of World War II, the appearance of amateurism was maintained. Athletes training in clubs were employed full-time in the so-called patronage plants, such as Huta Batory, which was the “patron” of the Ruch Hajduki Wielkie club (since 1939 – Ruch Chorzów) or received support from national minority organizations – this applies to national clubs: Jewish (e.g. Jutrzenka Kraków, Hasmonia Lwów, etc.), German (1.FC Katowice), or Ukrainian (Ukraina Lwów). The army was also often the “patron” of sports clubs, especially after 1926. Military sports clubs (WKS) were established at specific military units (e.g. WKS 1st Legions Infantry Regiment Wilno, WKS 22nd Infantry Regiment Siedlce), or several military associations were combined

into one, e.g. WKS Grodno, WKS Śmigły Wilno, or the most famous – WKS Legia Warsaw. The regulations on amateur sports in Poland were as rigorous as those issued by the IOC, which on the one hand allowed the best athletes, including footballers, to participate in the Olympic Games, but on the other hand prevented the development of players abroad. An example is the case of two footballers from the Lviv Sports Club Pogoń Lwów, Józef Słonecki and Emil Görlitz, who left for the professional team Eder Triest and after returning had to try very hard to regain amateur status in order to continue playing football in Poland. The post-war reality not only did not change the system of apparent amateurism, but contributed to its deepening, not only in Poland, but also in other countries of the so-called “people’s democracy”. At that time, sports clubs lost their legal personality in favour of sports associations assigned to specific ministries. And so military, militia (guard), mining, railway, chemical, etc. clubs were established. Athletes were employed in fictitious positions, paid like professional competitors, but officially still considered amateurs, and as such were allowed to compete in the Olympic Games. Only Juan Antonio Samaranch, the president of the IOC in the years 1980–2001, agreed to allow professional athletes to participate in the Games – the first professionals were tennis players and basketball players from the American NBA league. This was a milestone in eliminating the pathology of “state amateurs” from the Eastern Bloc countries.

Since the beginning of the 1990s, organizational changes have also taken place in Poland within sports associations. Sports clubs were transformed into sports joint-stock companies (SSA), and departmental, military, and police clubs disappeared. Competitors became employees of sports associations, not of the establishments sponsoring a given club.

The purpose of this study is to present and discuss the legal aspects of employing athletes.

Legal basis of the activity of sports clubs and associations in the Republic of Poland

The basis of the activity of sports clubs in Poland is the Act of 25 June 2010 on Sports (SPORTS ACT). In the content of art. 3, the legislator defines a sports club as the basic form of conducting sports activity, whereby at least 3 sports clubs are entitled to establish a sports association. The previously cited Act on Physical Culture of 18 January 1996 provided (in its original wording) that sports clubs were to be established in the form of

physical culture associations or joint-stock companies (art. 6 sec. 1 and 2 Physical Culture Act). Joint-stock companies were and still are legal persons in the current legal status. Physical culture associations also had legal personality. The Physical Culture Act also allowed the creation of sports clubs in other organizational forms, provided that such clubs could not participate in sports competitions (Article 6, paragraph 3 of the Physical Culture Act). It was therefore possible to run a sports club within an organizational unit without legal personality and directly by individuals, as part of an individual business activity (Krześniak, 2020). Sport in Poland was organized in a way that referred to the so-called European model, which assumes its institutionalization with a hierarchical and pyramidal structure (Badura et al., 2011). The pyramid of the European sports model looks as follows: the top is made up of European federations (e.g.: UEFA – Union of European Football Associations, CEV – European Volleyball Confederation, EHF – European Handball Federation, etc.). Lower in the hierarchy are national federations (sports associations), e.g.: PZPN – Polish Football Association, PZKosz – Polish Basketball Association, ZPRP – Polish Handball Association, etc. The next level is made up of regional associations, in the case of Poland, which is a unitary country, this role is fulfilled by district branches of national federations, usually at the voivodeship level. At the base of this structure are always sports clubs. Although the legislator has decided not to emphasize the basic role of sports clubs in the organizational structure of sports, there is no doubt that this has no impact on this structure. Similarly as before, the organization of sports at the lowest level takes place in practice through the use of the club formula, higher are sports associations, and at the highest are Polish sports associations. The above does not mean, of course, that sports activities cannot be carried out without a club – such a situation can occur in individual sports, in which, in principle, non-affiliated players can participate in sports competitions. This situation is sanctioned by the legislator, indicating that sports activities may be conducted “in particular” in the form of a sports club (Badura et al., 2011). According to the Sports Act, sports clubs participate in competitions organized by sports associations. Moreover, in accordance with art. 15 sec. 1 and 2 of the Sports Act, in sports in which sports competition is organized in the form of league games, a Polish sports association may establish a professional league. In the event that more than half of the sports clubs participating in league games operate in the form of joint-stock companies, the Polish sports association is obliged to establish a professional league. The Act does not define the concept of a professional league. It should be understood as meaning sports competi-

tions conducted and managed in a professional and professional manner by an entity established for this purpose, operating in any form. In the case of non-Olympic sports, in which Polish sports associations do not operate, this right is granted to everyone and is a manifestation of the practical implementation of the principle of freedom to undertake economic activity. In the case of sports, in which Polish sports associations (PSA) operate, the right to establish a professional league by PSA itself and the obligation to take over the competences in the scope of managing a professional league by an entity established for this purpose have been confirmed by the provision of Article 15 of the Act. In the case of professional leagues operating within Polish sports associations, the company running them must be in the form of a limited liability company or a joint-stock company (Krześniak, 2020). W. Cajsel has a slightly different view of this issue, according to which, in accordance with the provision of the commented provision in a given sport in which sports competition is organized in the form of league games, the relevant Polish sports association may establish a professional league. This is therefore not an absolute requirement, because the legislator used the word “may”. Moreover, this requirement applies, as it should be assumed, only to team disciplines, because in principle, competition there is conducted in the form of league games (Cajsel, 2011). A Polish sports association is obliged to establish a professional league if more than half of the clubs participating in the league competitions in the highest league operate in the form of a joint-stock company (Krześniak 2020). Such leagues were established, for example, in football (Ekstraklasa S.A.), volleyball (Polish Volleyball League), basketball (Polish Basketball League), etc.

Only clubs operating as joint-stock companies or limited liability companies can participate in professional league competitions in team sports. The possibility of running a club in a professional league, also in the form of limited liability companies, was added by an amendment to the act, which came into force on 12 September 2017. This change is justified (Krześniak, 2020).

Legal basis for employing athletes

Professional sport is not a uniform field. Depending on the sports disciplines and competitions, we can talk about many types of sport. The first division of sports disciplines is Olympic and non-Olympic sports, i.e. such disciplines and/or competitions that are or are not held during the Olympic

Games or the Winter Olympic Games. The next division is summer or winter disciplines, sports practiced outdoors or indoors. However, from the point of view of the legal aspects of employing athletes, the most important division of sports disciplines is cited by M. Matuszak:

1. individual sports – where the athlete competes independently (e.g. tennis, table tennis, swimming, most track and field competitions);
2. team sports with individual starts – where the athlete competes independently, but their results are counted towards the team classification (e.g. speedway, cycling, relay races);
3. team sports – where the athlete plays as part of a team, which is often led by a coach (e.g. football, handball, volleyball, hockey);
4. e-sports – where an athlete can perform both individually, in a team with individual starts, and in team sports, depending on the type of competition (Matuszak, 2023, p. 80).

Depending on the sports discipline practiced by a given athlete, their employment in a sports club may vary. Athletes therefore have the opportunity to perform their work on the basis of an employment contract, a civil law contract (including, above all, a contract to which we apply the provisions on mandate) or as part of their own business activity. The Supreme Administrative Court in the Resolution of 22 June 2015 stated that under Polish law, including in particular tax law, it was allowed, under certain conditions, to classify athletes' income as sources of income from non-agricultural economic activity and, in the judgment of 25 October 2017, that an athlete may be a taxpayer of goods and services tax. Within each of the above-described legal bases of employment, the issues of subordination of the athlete are shaped differently (Matuszak, 2022, p. 30). Z. Kubot points out that the u.o.s does not specify the legal bases for the employment of professional athletes. In this respect, this act differs from the Physical Culture Act, which in art. 22 sec. 2 specified the legal bases for the status of a professional athlete. In its original wording, this provision read: "Athletes with the status of a professional athlete are persons practicing sports on the basis of an employment contract and receiving remuneration for this". After the amendment carried out by the act of November 4, 1999, the phrase "or civil law contract" was added to art. 22 sec. 2 of the Physical Culture Act. In this way, the possibility of choosing the legal basis for the status of professional athletes was allowed, which in practice meant that the status of professional athletes increasingly became a civil law status (Kubot, 2015). As an introduction to the further discussion on the legal basis of employment of athletes, it should be noted that employment agreements for athletes (more often referred to as "contracts") have a specific nature, which

is regulated by extremely extensive internal regulations of individual sports federations (Biliński, 2017, p. 252). In further considerations, I will use the regulations applicable to football players. Based on the FIFA and PZPN Regulations, contracts with players are always concluded for a specified period. The minimum term of such a contract is the period from the date of its entry into force until the end of the season, while the maximum term is five years. The maximum term of the contract is established with due regard to the balance of interests of clubs and players. On the one hand, it refers to the average period in which a club can create a competitive team, and on the other – to the appropriate period of binding the player to the club, which does not interfere with the proper development of his career. Contracts with a term longer than five years are permitted only when permitted by national law. As a result of a dispute between footballer Jean-Marc Bosman and the football club RFC Liege (Royal Football Club de Liège), a groundbreaking judgment of the European Court of Justice was made, now known as the Bosman Law. J-M Bosman wanted to leave RFC Liege after his contract expired and take up a position with another club (Union Sportive du Littoral de Dunkerque), however, based on the regulations at the time, the club from Dunkerque had to pay a transfer fee that it could not afford. According to Bosman, such a situation was contrary to the principle of free movement of workers, and in 1995 the ECJ agreed with the footballer. Since then, a player whose contract is ending can move to another club for free. This judgment resulted in a change in FIFA's regulations on player transfers. In Article 18 of the Regulations, we can read that "a footballer may start negotiations and sign a contract with a new club only if his contract with his current club has expired or will expire within the next 6 months". The six-month period provides the player with a reasonable period in which to sign a contract with a new club. It also gives the current club time to protect itself against squad instability and possibly find a new player. In addition, a club intending to sign a contract with a player who is under contract with another club must inform that club in writing of its interest before starting negotiations with the player. The club with which the player is under contract must agree to talks between its player and the potential new club. Without such agreement, the new club may find itself encouraging the player to breach the contract if negotiations with the player continue.

Regardless of the sport in which a player plays, he can only have one contract with one club. Signing a contract with a new club automatically terminates the previous contract, with the player and his new club being required to pay compensation to the previous club, the amount of which is

specified in the regulations. Comparing the statutes of sports associations representing the most popular disciplines – individual, i.e. athletics (PZLA) and team – football (PZPN), differences in the approach of these national associations to the regulations regulating the status of athletes are striking. In the statute of the Polish Athletics Association, in § 11 section 1, it is mentioned the right of athletes to participate in sports competitions. Only athletes subject to the competence of the Association, entitled to participate in sports competitions in accordance with the World Athletic (WA) regulations and complying with the WA regulations may participate in sports competitions organized by the Association or under its authorization. Further, in section 3, it is indicated that athletes subject to the competence of the Association, participating in sports competitions in athletics, are required to have a license granted by the Association. This means that an athlete practicing track and field does not have to belong to a sports club as long as he or she has a license entitling him or her to start in competitions. Athletes may train under the care of individual trainers. However, if they are members of sports clubs, they are obliged to meet the requirements listed in § 11, section 4. These obligations will be discussed in more detail in the next part of this study. It should be emphasized that the PZLA does not differentiate between players associated with the association into amateurs and professionals. The situation is different in the case of footballers. The Statute of the Polish Football Association very precisely defines the status of players. Article 69 clearly states that football in Poland may be played by players with amateur or professional status, while the status of players playing football and changes in club affiliation are determined by the PZPN Board, after consulting the professional league, in accordance with the content of the current FIFA Regulations (Fédération Internationale de Football Association) regarding the status of footballers and football transfers. The statute explicitly states that if a player receives remuneration for playing football, then he is considered a professional footballer. At the same time, the IOC changed the rules of the football tournament at the Olympic Games, where instead of amateur teams, youth teams under 23 (U23) now compete, thus maintaining the apparent amateurism ceased to make sense. In turn, art. 71 of the PZPN Statute clearly emphasizes that every professional footballer must have a written contract with the club in which he currently plays. This provision should be understood literally, i.e. only footballers associated with clubs are entitled to participate in professional games. This will apply to Polish representatives, who must be associated with clubs, regardless of whether it is a club in Poland or abroad. If we assume that games organized under the auspices

of FIFA (World Championships) or UEFA (European Championships, Nations League) are intended for professional footballers, unaffiliated players cannot play in them. The obligation to have a valid contract with a club as a necessary condition for professional football is also one of the results of the “Bosman case”, because previously, when a player agreed to move to another club, and his previous club did not consent to it (e.g. due to too low a transfer fee), the player could start playing for the new club after a one-year waiting period. During this period, he could not train either in the club he was leaving, or in his new club, or in any other, but he could play in international matches for the national team of his country. In the interwar period, there were at least two examples of players in Poland who were not affiliated with any club but played for the national team – Karol Kossok (1932) and Edward Madejski (1938), the latter even played at the World Cup in France in 1938.

The admissibility of playing sports on the basis of an employment contract or a civil law contract may be expressly provided for in the provisions of the Act on Sports, as it was in Article 22, Section 2 of the Act on Physical Culture. The freedom to choose the employment status and civil law status of a professional athlete is currently a typical solution in Poland, used by sports clubs. The choice of employment or civil law status of a professional athlete is decided by the will of the parties, and in practice by the will of the sports club. Courts, when considering a claim to establish the existence of an employment relationship for a professional athlete, should consider the will of the parties expressed in the civil law contract constituting the basis for the status of a professional athlete as decisive (Kubot, 2015).

Rights and obligations of an athlete employed in a sports club

A sports contract is a specific form of establishing an employment relationship between an employer – a sports club and an employee – an athlete. By signing a contract with a given club, the athlete undertakes, like any other employee, to perform his work diligently and conscientiously, under the direction of a person indicated by the employer – the coach, and at the place and time indicated by the employer. The latter obliges the athlete to participate in training sessions designated by the trainer and to be ready to start in competitions. These obligations arise directly from the nature of the employment relationship. Due to the specific nature of professional sports, the basic employment obligations contained in Article 100 § 2 of the Labour Code cannot be directly applied to athletes. The basic obligations

of an athlete are generally contained in contracts, as well as in the statutes of sports clubs and resolutions adopted by sports associations. In particular, an athlete who is a member of a club is obliged to:

1. Represent the club in national and international sports competitions, as well as in events and meetings popularising the club. This is the athlete's basic activity. He must remain ready and at the coach's disposal when selecting the staff for specific sports competitions. Of course, this does not mean automatic participation in the competitions, however, an athlete selected for the team cannot refuse to participate without a clear reason. In addition to participating in competitions, an athlete is obliged to participate in press conferences, meetings with fans or sponsors and similar events aimed at promoting the club, at the request of the coach or club management.

2. Actively participate in the training process and in sports competitions. This is also an obligation that can be defined as basic for a professional athlete. The athlete is obliged to participate in training and, in the event of an injury, to recover as quickly as possible and return to appropriate physical condition.

3. Undergo mandatory medical examinations. The athlete must be under the constant care of a sports doctor, regularly undergo health assessments, participate in medical examinations before the start of the season, and cooperate with the club doctor during the treatment of the injury.

4. Use only pharmacological agents prescribed by the club doctor and/or undergoing anti-doping control tests during and outside competitions, conducted by the relevant national and international bodies. The problem of pharmacological support for athletes (so-called doping agents) may contribute to the loss of good name not only of the athlete himself, but also of the club, sports association, or even the entire sports discipline, as was the case with cycling or weightlifting.

5. Compliance with sports regulations and rules of sports competition, as well as compliance with a sports lifestyle. In this case, we can talk about several aspects. First of all, the athlete should compete in accordance with the regulations in force in a given discipline – avoid fouls, comply with the rules of the game, rules in force at competitions, etc., should treat opponents, judges and coaches with respect and avoid situations in which he may be excluded from the competition (disqualified). The obligation to comply with a sports lifestyle refers in turn to the period outside competitions or training, when the athlete is not on the premises of sports facilities. Players are then required to refrain from drinking excessive amounts of alcohol, taking drugs and other intoxicants, etc., and to avoid moral scan-

dals, traffic offences and other. The player is also obliged to follow a diet specified for them, eat meals with an appropriate energy value and providing appropriate ingredients necessary to maintain proper form and physical condition.

6. Take care of the property entrusted to them, in particular sports equipment, for which they bear full financial responsibility.

7. Not to take actions that may jeopardize the good name of the club, its owners, sponsors and persons directly associated with it. Such actions include players (and coaches) taking part in betting on their club. Players cannot place bets on the results of their club – the result of a match, the results achieved in competitions, but also, for example, receiving a yellow card, committing a certain number of offences, etc.

Other obligations arising from the statutes of sports associations include, for example, compliance with the regulations of the international federation and the Polish sports association when concluding advertising contracts and individual sponsorship agreements. In this case, however, the athlete has quite a lot of freedom. There are known cases where a sports association or club uses sports equipment manufactured by company X, but the athlete has an individual contract with company Y. In such a situation, the athlete can obtain consent to use their equipment, most often such consent concerns footwear. Athletes, on the other hand, cannot enter into contracts with entities whose activities are contrary to the policy of the sports association, international federation or the IOC, betray the idea of sport, promote risky or harmful patterns of behaviour, etc.

Another obligation or prohibition often included in contracts with athletes is for the athlete to refrain from risky behaviour. In some contracts, athletes are prohibited from, for example, riding a motorcycle, practicing extreme sports, parachuting, hang gliding, etc.

The rights of players employed in clubs include, first and foremost:

1. The right to receive their salary according to the contract on time. Paying salary is the club's basic obligation. Failure to pay on time is grounds for terminating the contract by the player due to the employer's fault. It should be added that the sports association may also impose numerous sanctions on clubs in connection with the untimely payment of player salaries. In particular, these include: taking away points obtained in league games, prohibiting transfers to and from the club, suspending the license to play at a given level of the competition or refusing to grant a license to play at a higher level in the event of promotion, up to and including penal demotion of the club by one or more levels of competition.

2. The right to medical care and biological regeneration.

3. The right to freely choose a club after the expiry of the current contract. The player has the right to sign a new contract with the current club or move to another club in the country or abroad.

4. The right to freely dispose of his image in advertising contracts. This right may be partially limited in order to protect the good name and important interests of the club, however, the player may appear in advertisements for various products, including those not directly related to sports. However, he should not advertise alcohol or tobacco products, bookmakers, casinos, etc.

5. The right to be called up to the national team. As a rule, the club is obliged to release the player for national team training camps, as well as for official competitions of the level of continental or world championships. The club may, but does not have to, release the player for unofficial competitions (so-called friendly), even if they are organized under the auspices of international sports federations.

Summary

The evolution of professional sports regulations in the world and in Poland has allowed for the elimination of existing pathologies in sports. First of all, the apparent amateurism at the Olympic Games has been curbed. It was no coincidence that Olympic medals in football from 1952 to 1980 were won almost exclusively by teams from communist countries. They sent their first teams to the Olympic tournaments – practically professional footballers, but with amateur status, because this was the status in force in these countries. The new regulations regulating the status of athletes clearly distinguish amateur from competitive (professional) sports. The most important legal regulation is the statement that anyone who receives remuneration for playing sports is a professional athlete.

Polish sports associations operate within the framework of international sports unions and their statutes must meet the requirements of international organizations. Therefore, it is not entirely possible to unify the statutes of individual sports associations, which results from the specificity of a given discipline. However, based on the analyzed statutes of several sports associations, similarities can be observed in the regulations related to the employment of athletes in clubs. In all the analyzed statutes, the condition for allowing an athlete to participate in competitions is their membership in a club. Therefore, every professional athlete must have a valid contract with one sports club, which they represent in the competition. The em-

ployment of athletes by sports clubs does not contradict the principles of freedom of contract, choice of employer and place of work.

The above considerations only signaled the issue of the basic rights and obligations of the athlete, while omitting the rights and obligations of the club. However, this subject is very broad and requires a deeper analysis.

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