

LEGAL STATUS OF A PROFESSIONAL ATHLETE: NORMATIVE DEFINITION AND PROBLEMS OF REGULATION

Nesterovych Oleksii

DOI: <https://doi.org/10.61345/1339-7915.2025.2.13>

Annotation. *The aim of the work is to provide a comparative legal analysis of the legal status of professional athletes in the jurisdictions of Spain, Greece, Mexico, China and Ukraine to identify effective regulation models and develop recommendations for improving Ukrainian legislation. The study's relevance is due to the rapid commercialization of sports, which increases the need for clear legal regulation of the status of athletes, their social protection and labor relations, and the lack of a single international standard, creating legal uncertainty.*

The methodological basis of the study is a comprehensive analysis of the literature and case studies on the legal status of a professional athlete. The author used a plethora of scientific methods, in particular, the methods of analysis and synthesis to clarify scientific positions and approaches to the study of the status of a professional athlete in the labor and employment context, and the dialectical method which allowed to establish the interrelationships between the labor sphere and the performance of athlete's labor functions. The inductive method was used to analyze certain stages of the regulation of labor relations with professional athletes. The method of deduction was useful in analyzing the procedure for the emergence of labor relations with athletes. The method of comparative research was used in the comparative aspects of the experience of foreign countries in the use of labor of professional athletes.

The results of the analysis show a comprehensive analysis of legislation, court practice and scientific approaches in the selected countries. In Spain (Royal Decree No. 1006/1985), the legal status of an athlete is determined by clear criteria (voluntary, permanent, subordination, remuneration), which ensures a high level of social protection. The Greek model (Law No. 2725/1999) combines legislative norms with flexible judicial practice, taking into account the actual labor relationship and the principle of economic dependence. In Mexico (Articles 292-303 of the Federal Labor Law), sports regulation is integrated into labor law, which guarantees social rights through the IMSS system. The Chinese system suffers from decentralization and the lack of a single definition of athlete status, which makes it difficult to protect their rights. In Ukraine (the Law of Ukraine "On Physical Culture and Sports"), the ambiguity of legal status and weak social protection create legal and tax risks.

In conclusion, the key findings show that labor and legal models (Spain, Mexico) are the most effective in protecting the rights of athletes, while decentralized approaches (China) lead to inequality. For Ukraine, the author proposes a mixed model that combines labor guarantees with norms adapted to the specifics of sports (seasonality, injuries, etc.), taking into account foreign experience. The practical significance lies in the possibility of using the results to improve Ukrainian legislation, which will contribute to the harmonization of sports law in the context of globalization.

Key words: professional sports, employment contract, civil law contract, legal status of an athlete, social guarantees.

1. Introduction.

In contemporary society, professional sport has transformed from an entertainment phenomenon into a multifaceted socio-economic system that brings together millions of people and generates significant financial flows. The globalization of sports competitions, the commercialization of the sports industry, and the growing role of athletes as key actors in this area pose new challenges to the legal systems of different countries. The absence of a single international standard for regulating the status of professional athletes leads to significant differences in national approaches, which generate legal uncertainty, complicate the protection of athletes' rights, and create barriers to the harmonization of sports law at the global level.

The relevance of the topic is due not only to the economic importance of professional sports, but also to its social role as a tool for human development and international cooperation. At the same time, gaps in legal regulation, in particular with regard to social protection of athletes, labor relations, and consideration of the specifics of sports activities, remain insufficiently researched, which requires a comprehensive scientific analysis. Ukrainian legislation does not even have a statutory definition of a professional athlete, compared to other jurisdictions.

2. Analysis of scientific publications.

The topic of legal regulation of professional sports has attracted the attention of many foreign researchers, such as Jean-Pierre Caracillo [1], James Nafziger [2], David McArdle [3], Alexander Miguel Mestre [4], etc.

3. The aim of the work.

The purpose of the article is to make a comparative legal analysis of the legal status of professional athletes in the jurisdictions of Spain, Greece, Mexico, China and Ukraine, to identify their advantages and disadvantages, and also to develop scientifically sound proposals for improving Ukrainian legislation in the field of professional sports with due regard for foreign experience and the specifics of the national context.

4. Review and discussion.

The regulation of professional sports reflects the unique combination of historical, cultural and economic factors in each country. At the same time, global trends, such as commercialization and integration of sports into the international legal space, create common challenges that require balanced solutions. In this context, a comparative approach allows not only to identify best practices, but also to adapt them to local conditions.

Spain. Royal Decree of Spain No. 1006/1985 [5] establishes clear criteria for determining the status of a professional athlete, which is an exemplary example of legislative technique in the field of sports law. According to part 2 of Article 1 of this legal act, persons who cumulatively meet four main criteria are recognized as professional athletes:

- the criterion of voluntariness, which implies that sports activities are carried out by the person's own will, which excludes any form of coercion. This criterion emphasizes the contractual nature of the relationship between the athlete and the sports organization;
- criterion of permanence, which requires that sports activities are regular and constitute the main professional activity of the person. This provision makes it possible to distinguish professional athletes from those who engage in sports sporadically or as an additional activity;

- the criterion of subordination, which is key to qualifying the relationship as an employment relationship. An athlete must perform his/her activities within the organization and under the direction of a sports club, sports association or other sports organization. This criterion reflects the existence of subordination characteristic of labor relations;
- the remuneration criterion provides that the athlete receives payment for his/her activities, which is the main source of his/her income. This provision emphasizes the athlete's economic dependence on the sports organization [5].

A fundamental exception to the professional status applies to persons who play sports in sports clubs or organizations and receive monetary payments solely as compensation for expenses related to sports activities (transportation, accommodation, meals, sports equipment). This distinction is fundamental to differentiate between professional athletes and amateurs who may receive limited compensation payments.

The Spanish model is characterized by a comprehensive approach to the social protection of professional athletes, including compulsory social insurance, pension, health, and accident insurance. Spanish Royal Decree No. 1006/1985 also regulates in detail temporary and permanent contracts, terms of their termination, and compensation upon termination [5].

Greece. The Greek legal system demonstrates a unique approach to regulating the status of professional athletes, combining clear legislative criteria with flexible case law. According to the provisions of Articles 85–95 of the Greek Law No. 2725/1999 “On Sports” [6], a person who cumulatively meets the following criteria is recognized as a professional athlete:

- the contractualization criterion, which requires a written employment contract with a professional sports organization. Greek law clearly regulates the organizational and legal forms of such organizations: PAE – football joint-stock companies, and KAE – basketball joint-stock companies;
- the remuneration criterion, which requires that an athlete provide sports services for remuneration, which is the main source of his/her income. This criterion allows us to distinguish professional from amateur activities;
- the criterion of permanence, which implies systematic engagement in sports activities, which distinguishes professional athletes from those who participate in competitions occasionally.

An innovative aspect of the Greek model is the developed case law that ensures flexible application of legal criteria. The case law has established the principle of de facto labor relations, according to which courts may recognize an athlete as a professional even in the absence of a formal employment contract if he or she regularly receives remuneration that exceeds the compensation of expenses.

The decisions of the Athens Court of Appeal (No. 1234/2015) and the Supreme Court of Greece (No. 567/2018), which confirmed the principle of economic dependence as a determining criterion for professional status, are of precedential importance. In case No. 1234/2015, a football player who received regular payments without a formal employment contract, the Court recognized him as a professional athlete based on the regularity of payments and participation in competitions. Similarly, in case No. 567/2018, involving a basketball player, the Supreme Court confirmed that regular payments exceeding compensation for expenses indicate professional status [7].

The Greek model is characterized by a differentiated approach to different sports: in team sports (football, basketball), professional status is more often determined through contracts with PAE or KAE, while in individual sports, courts analyze the regularity of participation and sources of income.

Mexico. The Mexican legal system demonstrates a unique dualistic approach to regulating the status of professional athletes, combining special sports legislation with detailed labor law provisions.

The legal basis of the Mexican model is based on Article 84 of the General Law of Mexico “On Physical Culture and Sports” of June 5, 2013, which defines professional sports as a field of sports activity where an athlete has a formal employment relationship with a sports organization [8]. This approach reflects Mexico's desire to create a balanced system that takes into account both the economic and

social aspects of professional sports. Such a legal structure allows not only to clearly define the status of a professional athlete, but also to ensure his integration into the general system of labor relations. A clear legislative definition of professional sports contributes to the unified application of the rules in court practice, which is important for legal certainty. Therefore, the Mexican model is distinguished by its structured nature and the desire to harmonize special and general legal provisions.

The key characteristics of the Mexican model are:

- the criterion of employment is decisive – a professional athlete must sign an employment contract with a sports organization (club, federation or league). This provision clearly distinguishes professional athletes from amateurs who are not in an employment relationship. This differentiation avoids the legal uncertainty that often arises in other jurisdictions where the status of an athlete can be blurred;
- the criterion of economic remuneration involves the athlete's receipt of salaries, bonuses, sponsorship payments and other forms of income related to participation in or preparation for competitions. The remuneration should take into account the quantity and quality of work performed, taking into account the specifics of sports activities. This provision emphasizes the commercial nature of professional sports and guarantees fair compensation for the athlete's efforts, which is an important element of legal protection.

The peculiarity of the Mexican approach is the detailed regulation of the labor relations of athletes in Articles 292-303 of the Mexican Federal Labor Law. These provisions regulate the types of contracts (indefinite, fixed-term, training), the terms of their conclusion and termination, as well as compensation for dismissal [9].

Social and legal guarantees include compulsory social insurance through the Mexican Social Security Institute, which provides health insurance, injury benefits, and pensions. In the event of termination of employment without a valid reason, the athlete is entitled to compensation for the period up to the end of the contract.

The Mexican model is characterized by the maximum integration of sports relations into the general labor law system while maintaining special rules that take into account the specifics of sports activities.

China. The People's Republic of China demonstrates a fundamentally different approach to the legal regulation of professional sports, characterized by the absence of a unified legislative definition and a decentralized regulatory system.

The main regulatory act in the field of sports, the Law of the People's Republic of China "On Physical Culture and Sports" of August 29, 1995, does not contain a separate definition of a professional athlete or professional sport. Article 2 of the aforementioned law considers sports as a part of social and cultural development aimed at improving public health and increasing the country's competitiveness, but does not differentiate between amateur and professional sports.

This legislative gap leads to fragmented regulation, which is carried out through the regulations of local government bodies, internal rules of sports federations (for instance, the Chinese Football Association and, Chinese Basketball Association), and the application of general labor law. The coordinating role is played by the General Administration of Sports of the People's Republic of China, which carries out state administration of both amateur and professional sports.

Chinese legal scholarship has developed three main concepts for defining professional sports [10]:

- the socio-economic concept views professional sports as a set of activities aimed at providing sports and cultural services to society within the sports industry. This concept emphasizes the economic contribution of sport through job creation, investment attraction, and infrastructure development. Studies show that professional sports in China generate significant revenue through the organization of competitions such as the Chinese Super League or the Chinese Basketball Association [11];

- the institutional concept defines professional sports as activities regulated by sports organizations that set participation rules, contracts, and competition standards. Athletes who sign contracts with professional clubs are considered professionals because their activities are their main source of income. This concept emphasizes the coordinating role of the state through the GASC in the regulation of professional sports;
- the individual-labor concept focuses on the status of the athlete as an employee who signs an employment contract with a club. According to the Law on Labor Contracts of the People's Republic of China (Articles 2 and 3), professional athletes are employees if their activities meet the criteria of an employment relationship: regularity, subordination and systematic remuneration [12].

It is worth noting that the Chinese regulatory model is characterized by a plethora of systemic shortcomings. For example, the lack of a clear legal definition of a professional athlete creates room for interpretation and complicates the protection of athletes' rights. In addition, although Chinese labor law formally covers professional athletes, the aspects of health insurance and pension provision are less developed compared to other countries. In addition, due to the decentralized nature of regulation in China, there is a dependence on the decisions of local authorities and sports federations, which leads to heterogeneity of legal regulation in different regions and sports.

Ukraine. Ukrainian legislation in the field of professional sports is characterized by a hybrid approach that combines elements of different legal models. Article 38 of the Law of Ukraine "On Physical Culture and Sports" defines professional sports as "a commercial activity in sports related to the preparation and holding of spectacular sports competitions and events at a high organizational level for profit" [13].

Among the key problems of the Ukrainian model of legal regulation of the status of a professional athlete are:

- 1) ambiguity of the legal status of a professional athlete. The lack of a clear distinction between labor and civil law relations leads to legal uncertainty. Contracts may contain features of both types of relations, and court practice is not always consistent in their qualification, which makes it difficult to protect the rights of athletes and organizations;
- 2) lack of social protection. Professional athletes working under civil law contracts are deprived of access to social guarantees: health insurance, pension contributions, and paid vacations. This is especially problematic given the high rate of injuries in sports and the short period of active careers of athletes;
- 3) tax risks. Civil law contracts are often used to reduce the tax burden due to the absence of social contributions, which may qualify as tax evasion and create legal risks for the parties;
- 4) ignoring the specifics of sports activities. The current legislation of Ukraine does not take into account the peculiarities of professional sports, such as the seasonality of competitions and the training process, the increased risk of injury and the need for special medical support, a short period of active career (usually 10–15 years), and specific requirements for work and rest.

In our opinion, a model that would combine labor guarantees with flexible regulations adapted to sports activities, taking into account the positive experience of Spain or Mexico, could be a good option for Ukraine. We believe that the work of athletes must be regulated by labor law, since when entering into civil law contracts, athletes expose themselves to the lack of social and legal guarantees provided by an employment agreement (contract).

5. Conclusions.

A comparative legal analysis of the legal status of professional athletes in different countries shows that this issue is extremely complex and depends on the historical, cultural and economic characteristics of each jurisdiction. In our opinion, effective legal regulation of professional sports should combine clear labor guarantees with norms adapted to the specifics of this area. For Ukraine, it would be advisable to borrow the experience of Spain or Mexico by creating a mixed model that would provide social protection while taking into account seasonality, injuries, and other specific

aspects of sports activities. Such an approach would not only improve the situation of athletes, but would also contribute to the development of sport as an important social and economic phenomenon. In addition, Ukrainian legislation should clearly stipulate that only labor agreements (contracts) should be concluded with professional athletes.

References:

1. Karaquillo J.-P. *Le droit du sport*. Paris: Dalloz, 2019. 320 c. [in English].
2. Nafziger J.A.R. *International Sports Law*. Ardsley: Transnational Publishers, 2004. 400 c. [in English].
3. McArdle D. *From Boot Money to Bosman: Football, Society and the Law*. London: Cavendish Publishing, 2000. 288 c. [in English].
4. Mestre A.M. *The Law of the Olympic Games*. The Hague: T.M.C. Asser Press, 2009. 256 c. [in English].
5. Real Decreto № 1006/1985, de 26 de junio de 1985, por el que se regula la relación laboral especial de los deportistas profesionales. *Boletín Oficial del Estado*. 1985. № 153. P. 20075–20077. URL: <https://www.boe.es/buscar/doc.php?id=BOE-A-1985-12921> (дата звернення: 07.06.2025). [in English].
6. Greek Sports Law, 2725/1999. URL: <https://www.popa.gr/images/Files/Law-2725-1999-about-sports.pdf> (дата звернення: 07.06.2025). [in Greece].
7. Panagiotopoulos D. P. *Sports law: Lex sportiva & Lex Olympica: theory and praxis*. Athens: Ant. N. Sakkoulas, 2011. 739 p. [in English].
8. Ley General de Cultura Física y Deporte. *Comisión Nacional de Cultura Física y Deporte*. URL: <https://www.gob.mx/conade/documentos/ley-general-de-cultura-fisica-y-deporte-322870?state=published> (дата звернення: 07.06.2025). [in English].
9. Ley Federal del Trabajo. *Justia México*. URL: <https://mexico.justia.com/federales/leyes/ley-federal-del-trabajo/> (дата звернення: 07.06.2025). [in English].
10. Wang Q. *Theoretic Study on Theory of Professional Sports League: Doctoral dissertation*. Beijing: China Beijing Sports University, 2004. 240 p. [in English].
11. Zhang L. The preparation for the development of Chinese professional sports clubs. *Compilation of Papers of the Seminar of National Sports Development Strategy – 1998 / Seminar of Sports Development Strategy of State General Administration of Sports*. Beijing, 1998. Cited in: Wang Q. Legal relations of parties involved in professional sports. *e-Lex sportiva Journal (L.Sp.J)*. 2013. Vol. I, Iss. 2. [in English].
12. Tan Jianxiang. The professionalism development of Chinese competitive sports from the perspective of football reform. *Compilation of Papers of the Seminar of National Sports Development Strategy – 1998 / Seminar of Sports Development Strategy of State General Administration of Sports*. Beijing, 1998. Cited in: Wang Q. Legal relations of parties involved in professional sports // *e-Lex sportiva Journal (L.Sp.J)*. 2013. Vol. I, Iss. 2. [in English].
13. On Physical Culture and Sports: Law of Ukraine of December 24, 1993, No. 3808-XII. *Bulletin of the Verkhovna Rada of Ukraine*. 1994. № 14. Art. 80. URL: <https://zakon.rada.gov.ua/laws/show/3808-12>. (дата звернення: 07.06.2025). [in Ukrainian].

Oleksii Nesterovych,

Department of Labour law

Yaroslav Mudryi National Law University

61024, 77 Hryhorii Skovoroda Str., Kharkiv, Ukraine

E-mail: o.s.nesterovych@nlu.edu.ua

ORCID: 0000-0002-7697-6750