

**PROBLEMS OF THE APPLICATION OF LEGISLATION IN THE
FIELD OF PHYSICAL CULTURE AND SPORTS**

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Purpose: to characterize from the standpoint of a systematic approach to the problem of application of legislation in the field of physical culture and sports in modern conditions of operation and to suggest ways to solve them.

Material and methods: a set of theoretical methods was used to solve the tasks of the study: analysis, comparison, generalization, systematization of literary sources and documentary materials, the method of historicism, the method of systematic approach.

Results: the system of sports legislation in Ukraine is analyzed, a number of problems are revealed, in particular: imperfection of the system of relations between the state and other subjects of physical culture and sports, unresolved issues of legal regulation of professional sports, unregulated at the legislative level relations of patronage and investments culture and sports, etc. The French experience of codification of sports legislation in the context of development of proposals for improvement of sports legislation of Ukraine is analyzed.

Conclusions: the presence of the above problems in the current system of sports legislation of Ukraine objectively confirms the need to systematize sports legislation, which will address public policy to improve the status of physical culture and sports, clarity of law enforcement, successful development of legislation and sports law.

Keywords: legislation, sphere of physical culture and sports, systematization, codification, sports law.

Introduction

As you know, physical culture and sports at the present stage of its development is not only a way to maintain and strengthen the health of the population, but also the lifestyle of a modern successful person, in particular sport is an important part of the market, public policy. After all, for any state, achievements, and especially successes, in the international sports arena are nothing more than a way to declare one's place in the international political environment. In addition, large-scale international sports competitions over the past 10-15 years leave no one in doubt that professional sports is, above all, an important part of world politics, and not just a sphere of public life [9].

As for Ukraine, in recent years, in our opinion, the status of physical culture and sports has increased significantly. Proof of this is the organization and holding of sports events on a global scale in Ukraine, including the European Football Championship (2012), the final of the Football Champions League (2018) and other events. In addition, the development of professional, amateur sports, physical education of children and youth have become a priority of public policy, as discussed in a number of laws and regulations [2, 4, 5, 6].

The analysis of recent publications shows only an episodic study of legislation in the field of physical culture and sports and the lack of a systematic approach to the study of this issue. Scientific interest in modern domestic literature [1, 7] is the formation of the field of sports law in Ukraine, the mechanism of state management of physical culture and sports in Ukraine and organizational and legal principles of public administration. At the same time, the analysis of the works of foreign authors [10, 12] shows that sports law is a serious and self-sufficient branch of law. Foreign experts in the field of sports law study the trends of "global" sports law, analyze the coherence of international sports law and business in the XXI century.

The purpose of the study is to characterize from the standpoint of a systematic approach to the problem of application of legislation in the field of physical culture and sports in modern conditions and to suggest ways to solve them.

Material and methods

A set of theoretical methods was used to solve the tasks of the study: analysis, comparison, generalization, systematization of literature sources on the research topic, which allowed to clarify the problematic field of research legislation in the field of physical culture and sports in modern conditions. Analysis, comparison, generalization, systematization of documentary materials allowed to characterize the features of the legislation in the field of physical culture and sports. The method of historicism allowed to identify the objective features of sports law as a new branch of the legal system of Ukraine. The application of the system approach method allowed to determine the general tendencies and ways of further development of the Ukrainian sports legislation.

Results of the research

Legal regulation is an important factor that affects the field of physical culture and sports and creates certain conditions for its development. In the basic normative and program documents regulating the sphere of physical culture and sports in Ukraine, in particular in the State target social program of development of physical culture and sports till 2020 [4], Strategies of formation of modern system of Olympic training for the period till 2020 [6], as well as approved in the resolution of the Cabinet of Ministers of Ukraine for № 1089 of November 4, 2020 Strategy for the development of physical culture and sports until 2028 [5] identifies a number of problems and causes of their emergence in the field of state policy in the field of physical culture and sports.

One of the key problems, as indicated in this recently adopted Strategy, is the imperfect system of relations between the state and other actors in the field, which hinders the promotion of physical culture and sports. The reasons for the problem are the unregulated at the legislative level mechanism for monitoring the qualifications of personnel in the fitness industry, the relationship of patronage and investment in the

field of physical culture and sports, insufficient number of information and social campaigns to promote sports and others. [5]. We are convinced that the solution of the above problem is possible only through the improvement of the legal framework in the field of physical culture and sports.

The key legal act in the system of sports legislation is the Law of Ukraine "On Physical Culture and Sports" of December 24, 1993. Work is constantly underway to improve its provisions, as changes have been made to it annually since 1999. In 2009, this Law was adopted by the Verkhovna Rada in a new wording, but even after that it has been repeatedly amended and supplemented. The adoption of the Law in an updated version creates new opportunities for our country to perform its tasks, but, unfortunately, does not solve all the problems that arise in the field of physical culture and sports [2].

The amendments to the Law of June 2, 2020 deserve special attention. Thus, Section II "Subjects in the field of physical culture and sports" is supplemented by Article 211 "Student Sports Union of Ukraine" and Article 212 "Ukrainian Federation of Student Sports". The Student Sports Union of Ukraine and the Ukrainian Federation of Student Sports are public associations of physical culture and sports, which have all-Ukrainian status in accordance with the law and are recognized by the International Federation of University Sports and the International Federation of Student Sports, respectively [2]. After all, this is an atypical situation for Ukraine, when public organizations are included in the legislative document and receive a separate budget column of funding. These changes to the Law will undoubtedly contribute to the development of physical culture and sports movement among pupils and students, the formation of students' long-standing traditions for exercise and a healthy lifestyle, and so on.

The issue of legal regulation of professional sports also deserves attention. In Art. 38 of the Law of Ukraine "On Physical Culture and Sports" states that the state creates conditions for further development of professional sports on a commercial basis. At the legislative level, economic and labor relations in professional sports are regulated, and measures are developed to protect the interests of professional athletes.

However, despite the declared intentions of the state to regulate relations in the field of professional sports by adopting relevant legislation, namely: in 2014 the National Doctrine of Physical Culture and Sports, in 2009 - the Strategy for the formation of a modern Olympic training system until 2020, now many issues in this area remain either unresolved or in need of improvement, and the above documents have expired.

Funding is also an acute problem in the field of physical culture and sports. After all, on the one hand, physical culture and sports are financed from the state and local budgets on a "residual basis" and need to attract extrabudgetary sources of funding, and on the other hand - unregulated at the legislative level relations of patronage and investment in physical culture and sports. create favorable and clear legal conditions for charitable assistance from caring patrons. However, to date there is no separate legal act dedicated to the financial support of physical culture and sports in Ukraine, and the existing legislation on charitable activities does not meet the needs of this area. For example, there is a need to legally define separately for this area: persons who can be patrons, recipients, final beneficiaries of patronage; principles, possible directions of patronage; issues of concluding agreements on providing patronage assistance; certain issues of activity of the profile central body of executive power, which is responsible for the sphere of physical culture and sports. To address these issues, a draft law "On Patronage in the Field of Physical Culture and Sports" was developed and submitted to the Verkhovna Rada of Ukraine, which is designed to promote patronage in the field of physical culture and sports [3].

The analysis of this bill showed that it defines the concept of "patronage" by applying it to the field of physical culture and sports. In particular, the author of the bill interprets this concept as "non-governmental voluntary gratuitous activity of individuals and legal entities that is not aimed at obtaining income." In addition, this bill even states the principles of patronage. The bill also defines the range of recipients of patronage. It can be an individual, or a non-profit organization, or a local community. The directions of use of patronage help are outlined [3]

The strengths of the proposed bill also include provisions to resolve the issue of concluding an agreement on the provision of patronage. In particular, it is mandatory

to comply with the written form of the contract, the conditions for concluding an agreement on the provision of patronage assistance are also determined. In our opinion, the provision of the bill on the rights of patrons deserves special attention. After all, the practice of cooperation between business structures and sports organizations shows that the lack of opportunity on the part of the donor to control the use of his patronage is the cause of most conflict situations. Therefore, it is very important that in accordance with the provisions of this bill, which allows the patron to exercise certain rights of the donor under the Civil Code Of Ukraine. Such rights include: the right to control the use of patronage in accordance with the purpose specified in the contract; the right to receive a legislative guarantee on the possibility of using such assistance for other purposes only with his, the patron's, consent, as well as on the right to demand termination of the contract if the said assistance is used for other purposes. In practice, we see the realization of these rights of the patron in the creation of a supervisory board at a sports organization, or any organization that receives charitable assistance, and the appointment of the chairman of this board is the patron so that he has direct control over financial policy and targeted use of funds provided by him in this organization [3].

The proposed bill creates conditions for public and state control so that there are no abuses in the implementation of patronage in the field of physical culture and sports. This provision will be provided by the following conditions: the patron will be obliged to notify the Ministry of Youth and Sports of Ukraine of the conclusion of the agreement on patronage, providing a copy of such agreement, amendments to it, termination of such agreement. The next condition is the obligatory publication on the Internet on the official website of the specified authority of the essential terms of the contract. The Ministry of Youth and Sports also has the right, in the manner and in cases established by the Government, to inspect the use of patronage.

If this bill is adopted, the implementation of its provisions will not require amendments to other laws. However, it is also advisable to adopt the necessary amendments to the Tax Code of Ukraine on tax incentives for patronage in the field of physical culture and sports, i.e. the provision of tax benefits to patrons. It is

important that the adoption of the bill will not change the indicators of state and local budgets. "At the same time, patrons will actually ensure the implementation of those goals and objectives in the field of physical culture and sports, the implementation of which should be carried out at the expense of state and local budgets" [3]. After all, from the practice of development of physical culture and sports, we know that the revenues of these budgets are constantly lacking in order to anticipate expenditures in amounts that would fully meet the needs of physical culture and sports.

Conclusions / Discussion

The presence of the above problems in the current system of sports legislation of Ukraine objectively confirms the need for systematization of legislation that will ensure proper understanding of law and law enforcement in this area. Considering the known types of systematization, it should be noted that they form a strict hierarchy, at the top of which is the codification.

The work of legal experts [9] emphasizes that currently in Ukraine there are more than 20 codes, and the process of codification of regulations continues in the direction of both revision of existing codes and development of new ones. The authors note that the researchers consider the problems of developing transport, labor, environmental codes of Ukraine and so on. We agree with the authors that the issue of codification is relevant for the development of sports law and is the best way to solve existing problems of legislation in the field of physical culture and sports at the present stage.

In our opinion, the main and most obvious argument in favor of codification is the codification of legislation in the field of physical culture and sports, which is observed in a number of foreign countries (USA, Brazil, France).

Of particular note is France, which has a Sports Code, which was developed in 2004 and adopted in 2006. Like our domestic law, French law belongs to the continental legal family. Therefore, there is an analysis of the French experience of codification of sports legislation extremely important in the context of developing proposals for improving the sports legislation of Ukraine. It should be noted that this Code "was intended to improve the understanding and accessibility of sports

legislation, in fact, for the same purposes today there is a need and development of Ukrainian sports legislation [13].

Briefly characterizing the Sports Code of France, it should be noted that it consists of 4 books, each of which is devoted to a particular aspect of sports law [11]. The first book is devoted to the organization of events in physical culture and sports. The second book is devoted to participants in sports competitions, including athletes, referees, coaches, teachers, officials. The third book is devoted to various sports practices, safety and hygiene of sports, organization and management of sporting events. The fourth book is devoted to the financing of sports and the application of legislation in legal relations arising in the "overseas sports communes".

It is worth noting that the French Sports Code has given a significant impetus to the development of French sport and created real conditions for an effective fight against corruption. The French experience of codification of sports law is a clear example of how the systematization of sports legislation solves the problem of improving the status of physical culture and sports, clarity of law enforcement, lays the vector for successful development of law and sports law.

Thus, we confirmed the data of researchers [1, 9], and the data of our previous studies [7, 8] on the existence of the problem of legislation in the field of physical culture and sports in modern conditions in Ukraine and the need to improve the system of norms in sports relations at the legislative level, in particular the creation of appropriate codified acts.

Prospects for further research are associated with the need to develop and justify specific measures to improve legislation in the field of physical culture and sports, taking into account the positive foreign experience of legal regulation of sports activities.

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References

1. Haro, H. O., Kushnir, O. O. (2017), "Sports Law: a review of national legislation and international standards", *Hospodarske pravo ta protses*. URL: https://protocol.ua/ua/sportivne_pravo_oglyad_natsionalnogo_zakonodavstva_i_mign_ardnih_standartiv/ (in Ukr.).
2. Zakon Ukrainy «Pro fizychnu kulturu i sport» [Law of Ukraine "On Physical Culture and Sports"]. Verkhovna Rada Ukrainy. Zakonodavstvo Ukrainy: ofitsiinyi veb-sait. URL: <http://zakon.rada.gov.ua/laws/show/ru/3808-12> (in Ukr.).
3. Poiasniuvalna zapyska do proektu Zakonu Ukrainy vid 01.08.2017 № 6770-1 «Pro metsenatstvo u sferi fizychnoi kultury ta sportu» [Explanatory note to the draft Law of Ukraine dated 01.08.2017 № 6770-1 "On patronage in the field of physical culture and sports"]. LIGA 360: ofitsiinyi veb-sait Liha-Zakon. URL: <https://ips.ligazakon.net/document/GH5821AA> (in Ukr.).
4. Pro zatverdzhennia Derzhavnoi tsilovoi sotsialnoi prohramy rozvytku fizychnoi kultury i sportu na period do 2020 roku [About the statement of the State target social program of development of physical culture and sports for the period till 2020]. Verkhovna Rada Ukrainy. Zakonodavstvo Ukrainy: ofitsiinyi veb-sait. URL: <https://zakon.rada.gov.ua/laws/show/115-2017-%D0%BF#Text> (in Ukr.).
5. Pro zatverdzhennia Stratehii rozvytku fizychnoi kultury i sportu na period do 2028 roku [On approval of the Strategy for the development of physical culture and sports for the period up to 2028]. Verkhovna Rada Ukrainy. Zakonodavstvo Ukrainy: ofitsiinyi veb-sait. URL: <https://zakon.rada.gov.ua/laws/show/1089-2020-%D0%BF#Text> (in Ukr.).
6. Pro skhvalennia Stratehii formuvannia suchasnoi systemy olimpiiskoi pidhotovky na period do 2020 roku [On approval of the Strategy for the formation of a modern system of Olympic training for the period up to 2020]. Verkhovna Rada Ukrainy. Zakonodavstvo Ukrainy: ofitsiinyi veb-sait. URL: <https://zakon.rada.gov.ua/laws/show/592-2009-%D1%80#Text> (in Ukr.).

7. Sannikova, M. V. (2018), "Ontology of sports law development", *Fizychno vykhovannia, sport i kultura zdorovia u suchasnomu suspilstvi*, No. 4(44). pp. 3 – 9. (in Ukr.).
8. Sannikova, M. V. (2019), "Actual problems of legal regulation and legislation in the field of physical culture and sports in Ukraine", *Slobozhanskyi naukovo-sportyvnyi visnyk*, No. 3 (71), pp. 37-42. (in Ukr.).
9. Kharytonov, Ye. O. *Sportyvne pravo: aktualni problem [Sports law: current issues]*. Odesa: Yurydychna literatura, 2018. 240 p. (in Ukr.).
10. Hartley, D. H. (2005). "International Sports Law and Business in the 21st Century"? *The Entertainment and Sports Law Journal*, No. 3(1). URL: <https://www.entsportslawjournal.com/articles/10.16997/eslj.126/> (in Eng.).
11. Julien, L. (2015), *Les institutions sportives en France (introduction an droit du sport)*, Publications Doc Du Juriste. URL: <https://www.doc-du-juriste.com/droit-prive-et-contrat/droit-autres-branches/cours-de-professeur/institutions-sportives-france-introduction-droit-sport-479549.html> (in Eng.).
12. Kolev, B. (2008), "Lex sportive and Lex Mercatoria", *The International Sports Law Journal*, No. 1-2. (in Eng.).
13. Schut, P., Collinet, C. (2016), "French sports policies for young people: fragmentation and coordination modes", *International Journal of Sport Policy and Politics*, No. 1, pp. 117-134 (in Eng.).

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