2021, ***Retos***, *41*, 131-137
 ISSN: Edición impresa: 1579-1726. EdiciónWeb: 1988-2041 (https://recyt.fecyt.es/index.php/retos/index)

To the Peculiarities of Legal and Non-Legal Regulation of Social Relations in the Field of Sport

A las peculiaridades de la regulación legal y no legal de las relaciones sociales en el ámbito del deporte

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Abstract: Sport is a unique area of social relations, which is officially autonomous and ruled not only and not so much by national law, but to a greater extent – by the rules of sports organizations. Due to the fact that sport has an autonomous character, which, in particular, is characterized by the presence of various regulatory sources that comprehensively affect the relevant social relations, the concept of a unique «sports legal order» is now beginning to take shape. The study aims to analyze social relations in the field of sport and the peculiarities of their regulation. Moreover, the research methodology includes a set of methods of scientific cognition, among which are the methods of analysis, synthesis, induction, deduction, formal-logical method, historical method and comparative legal method. Regulation of relations in the field of sports is significantly different from the regulation of other social relations. The presence of such features gives grounds for sports officials to declare the special status of the field of sports and the need to remove it from the general legal order. As a result of the study, the authors of the article came to the conclusion that modern sport has an autonomous status and is a special area of legal and non-legal regulation, which has the characteristics of an independent legal order. At the same time, it is too early to claim the existence of a full-fledged «sports legal order».
Key words: legal regulation, non-legal regulation, autonomy of sport, sports law, legal order.

Resumen: El deporte es un área única de las relaciones sociales, que es oficialmente autónoma y se rige no solo y no tanto por la legislación nacional, sino en mayor medida, por las reglas de las organizaciones deportivas. Debido a que el deporte tiene un carácter autónomo, que, en particular, se caracteriza por la presencia de diversas fuentes regulatorias que inciden de manera integral en las relaciones sociales relevantes, comienza a tomar forma el concepto de un «orden jurídico deportivo» único. El estudio tiene como objetivo analizar las relaciones sociales en el ámbito del deporte y las peculiaridades de su regulación. Además, la metodología de investigación incluye un conjunto de métodos de cognición científica, entre los que se encuentran los métodos de análisis, síntesis, inducción, deducción, método lógico-formal, método histórico y método jurídico comparado. La regulación de las relaciones en el campo del deporte es significativamente diferente de la regulación de otras relaciones sociales. La presencia de tales características da motivos para que los oficiales deportivos declaren el estatus especial del campo de los deportes y la necesidad de eliminarlo del orden legal general. Como resultado del estudio, los autores del artículo llegaron a la conclusión de que el deporte moderno tiene un estatus autónomo y es un área especial de regulación legal y no legal, que tiene las características de un orden legal independiente. Al mismo tiempo, es demasiado pronto para afirmar la existencia de un «orden jurídico deportivo» en toda regla.
Palabras clave: regulación legal, regulación no legal, autonomía del deporte, derecho deportivo, ordenamiento jurídico.

Introduction

Sport is a special area of public relations. Having emerged in ancient times as a way to develop skills for hunting or later – as a special form of preparation for military confrontation, over time, sport has become a full-fledged area of leisure, business for a whole stratum, a kind of arena for opposing states and peoples, the sphere of political interests, and, at present, a powerful sector of the world economy.

Modern sport is a complex system consisting of many levels, one of the main of which and the most dynamically developing is commercial sport.

This perspective places sport as a central axis that integrates new elements and factors that require greater attention within the management of a global sports structure or system (Carranza-Bautista, 2021)

As social relations in the field of sports became more complicated, there was an increasing need for their

Fecha recepción: 12-10-20. Fecha de aceptación: 27-11-20
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proper legal regulation. At the same time, in addition to legal regulation in sports, there are strong traditions of local non-legal regulation of relevant relations. In addition, from the very beginning modern sport has developed mainly as an international phenomenon. Accordingly, sports began to actively use various methods of legal and non-legal regulation of these relations, which have traditionally been used in different countries. Thus there was an actual interpenetration of elements of different legal systems in the field of sports. Now there are grounds to talk about the emergence of a separate sports legal order, which is autonomous in relation to public legal order. At the same time, it is necessary to investigate whether it is premature to single out a separate sports legal order, because the question remains whether such a category contradicts public legal order, which a priori extends its effect to all legal relations in society. The purpose of the article is to analyze social relations in the field of sport and the peculiarities of their regulation.

Relations in the field of sport can be governed by the national law of the country (or by the law of an intergovernmental association, for example, European Union (EU) law) or by the «soft» law of sports organizations. At the same time, the governing bodies in sports claim priority in the settlement of relations in the field of sports, justifying their rights by the autonomy of sports, while the public authorities do not fully recognize the autonomous status of sports.

For several decades there has been a competition between various governmental and non-governmental, national and international bodies and organizations for the right to regulate relations in the field of sports. As a result of this struggle, an independent legal order was formed, which is unique to the field of sports. This article was conceived, in particular, in order to analyze the features of this «sports law» and to identify general directions for its improvement.

Besides it should be remembered that modern sport needs private legal mechanisms of regulation, because they provide the best way to protect the rights of individuals and legal entities – participants in relations in the field of sports. The key reform, which has to be done, concerns the reorientation of the whole sports system from administrative methods of ruling to the private ones (Tkalych et al., 2020).

Material & methods

The research methodology includes a set of methods of scientific cognition, among which are the methods of analysis, synthesis, induction, deduction, and comparative legal method.

The method of analysis allows to investigate a certain phenomenon through the study of its separate elements. It was used in the study of an array of empirical material concerning the features of legal and quasi-legal regulation of relations in the field of sports.

In particular, the method of analysis allowed to reveal the principle of sports autonomy through the prism of a thorough study of regulations of public authorities, which were about giving the governing bodies in sports the competence to resolve relations in the field of sports.

The synthesis method as a rule, complements the method of analysis and allows you to summarize the results obtained by studying the separate elements of a particular phenomenon using the method of analysis.

The synthesis method was used to formulate the final conclusions of the study based on the analyzed material. In particular, the main conclusion of the study is the assertion that currently there is objectively a special regime of legal and quasi-legal regulation of relations in the field of sports. However, to claim the existence of a unique sports law, an alternative to public law, is premature.

In addition, the method of deduction was used to formulate intermediate conclusions on the features of legal and quasi-legal regulation of relations in the field of sports, based on the general provisions of the studied materials. This method reflects the process of inferring what is guaranteed to follow if the initial assumptions are true.

Thus, taking into account the introduction of the principle of sports autonomy, we can conclude that at the moment both legal and quasi-legal regulations are used. However, there are no clear boundaries for their application, so there is constant competition between them.

Besides, the method of induction, as a method of cognition based on a formal-logical mental conclusion, which allows to obtain a general conclusion based on the analysis of individual facts allowed the authors to summarize the features of normative regulation of relations in sports, based on a combination of regulatory influence the nature of sources, among which the leading place is occupied by acts of regulation of sports organizations, acts of sports arbitration courts (first of all – CAS), national and international regulations, acts of judicial authorities, etc.

Finally, the comparative method was used to compare

the features of legal and quasi-legal regulation of relations in the field of sports in different countries.

In particular, the comparative legal method makes it possible to compare the positive and negative features of the legal phenomenon in order to improve legal regulation. It was found that the quasi-legal method of regulating relations in the field of sports is more effective than purely legal, as it allows better and faster regulation of relevant relations. On the other hand, this method uses elements of private law regulation and gradually acquires the characteristics of a separate legal order.

A number of authors are concerned with the problems of sports autonomy and sports law in general. Among others we should mention Duval (2002), Latty (2007), Chaker (2004), Henry (2009), Camy, Clijsen, Mafella, and Pilkington (2004).

Results

Ñlaims of governing bodies in the field of sports on the right to regulate public relations in sports are traditionally justified by the principle of autonomy of sports.

The very term «autonomy» is translated from the Greek as «self-government» (literally: áõôïò – «self» and íîìïò – «law»). Today, this principle of organizing the functioning of the sports sphere is enshrined in the documents of international sports organizations.

The emergence and formation of the principle of autonomy in sports is associated with the historical features of the formation of the modern system of sports. In particular, the main actors in the «American» model of sport from the beginning were private (mostly commercial) organizations. In fact, such a phenomenon as professional sports was formed in the United States of America. Accordingly, American sport as such, in contrast to European sport, is, in fact, a professional sport, in which the key role is played by private sports organizations, not the state. Thus, for American sports, autonomy within the national legal order is not unnatural. In Europe, on the other hand, there is fierce competition between public authorities and sports organizations for influencing sports relations. In addition, unlike the United States, European countries have different legal systems, and the sports system is common and tightly integrated. Accordingly, in Europe it is much more difficult to coordinate activities to regulate relations in the field of sport between public authorities and sports organizations.

At the same time, the very principle of sports autonomy was laid down in the concept of the founder of the Olympic movement, Pierre de Coubertin. However, officially the term «autonomy» in the field of sports was first used in the 1949 Olympic Charter (1949). According to Art. 25 of this document, the National Olympic Committee must be independent (from public authorities), which is a condition for its recognition (by the International Olympic Committee (IOC)). In 1955, the Charter was supplemented by the rule that the National Olympic Committees should be completely independent and autonomous, as well as completely free from any political, religious and commercial influence (International Olympic Committee, 1955).

In 1958 it was added that NOCs which failed to comply with this rule would forfeit their recognition and lose the right to send participants to the Olympic Games. Note can be taken of the inclusion of a reference to commercial influence, which coincided with the timid beginnings of sponsorship and television rights at the Melbourne Games in 1956 (Chappelet, 2010).

With the active mediation of the IOC, the principle of sports autonomy has been enshrined in the statutory documents of most national sports federations (so-called «sports governing bodies»).

As for the recognition of the principle of sports autonomy by public authorities, it was more difficult and slower. Moreover, the process of recognizing the autonomy of sport by public authorities is not over yet.

In particular, in the 70-80s of the last century, there were 3 basic legal acts aimed at regulating relations in the field of sports. This is the European Charter for Sport for All (Committee of Ministers, 1975), adopted by the Council of Europe in 1976; The International Charter on Physical Education and Sport, adopted in 1978 by the General Conference of UNESCO and the Anti-Doping Convention, adopted in 1989 by the member states of the Council of Europe. Interestingly, none of the above documents mentioned the autonomy of sport.

It was not until the late 1980s that European intergovernmental organizations began to mention the autonomy of sports organizations. This was mainly done at meetings of the Council of Europe's Committee on the Development of Sport. In 1992, however, the Council of Europe introduced the concept of sports autonomy in Article 3 of the European Charter for Sport for All: «Voluntary sports organizations have the right to establish autonomous decision-making processes within the law. Both governments and sports organizations must

recognize the need for mutual respect for their decisions (1992)».

In 2000, the EU Heads of States and Governments signed the «Nice Declaration» (2000), which addressed the following: «The European Council (EC) emphasizes its support for the independence of sports organizations and their right to self-governing. The EC recognizes that subject to national and EU law and on the basis of principles of democracy and transparency, the right to carry out organizational measures and measures to promote the relevant sport belongs to sports organizations… «.

The principle of «sport autonomy» was also enshrined in Chapter 4 of the White Paper of the European Commission on Sport, published in July 2007. This document, in particular, states that the Commission recognizes the independence of sports organizations and representative sports structures (eg leagues). In addition, it recognizes that leadership in sport is primarily the responsibility of sports governing bodies, and to a lesser extent of Member States. The Commission considers that most challenges should be addressed through self-regulation, which should respect the principle of good governance, subject to EU law, which can be used in the alternative, if necessary.

In April 2008, the European Parliament, in considering the report on the implementation of the White Paper on Sport, fully supported the principle of autonomy of sport and sports organizations.

In January 2008, the Parliamentary Assembly of the Council of Europe unanimously adopted Resolution 1602 (2008) on the need to preserve the European model of sport, which, in particular, recognized the right of autonomous activities of sports organizations. Sports federations have been recognized as key bodies in the field of sports, empowered to regulate relations within the relevant sports. The resolution also called on the governments of the Member States to recognize the «specificity of sport» and the right of sports organizations to autonomy.

Thus, the official European institutions recognize the principle of autonomy of sport. On the other hand, no legal act of the highest legal force, in particular a regulation or directive of the Council of the EU or the European Parliament, does not directly indicate this. In addition, it should not be forgotten that, despite the recognition of the principle of the autonomy of sport, the European Union is certainly extending its regulatory influence to certain areas of relations in the field of sport. In particular, the previously mentioned White Paper of the European Commission on Sport and its annexes stipulate that EU law regulates competition in sport, as well as other types of public relations related to economic activity. In addition, EU law regulates relations related to the protection of the rights of workers, members of national minorities, representatives of certain social groups that may be subject to discrimination.

At the national level, the limits of sport autonomy also vary across the EU, from the United Kingdom, where sports organizations have a wide range of powers, to Poland, where a relatively «interventionist» (state-run) model of sport has been introduced. At the same time, it should be borne in mind that EU regulations have priority over the national legislation of the member states, including the definition of the limits of sports autonomy.

Ponkina (2013) in her author's concept notes that the autonomy of sport – is a characteristic (and at the same time – the principle of organization and functioning) of sports, reflecting the decentralization of management in this area, normative and rule-making, institutional-structural and organizational-activity, financial-economic, political and ideological independence of sports from public authorities (except for lawful control and supervision by public authorities in general), from political organizations, religious associations and business organizations, independence from authorization, interference and pressure from them.

Thus, the autonomy of sports is the right of sports organizations to regulate public relations arising in the field of sports, independently, without the intervention of public authorities or international organizations.

The only problem that stands in the way of implementing this principle is the difficulty of distinguishing between public relations in the field of sports, which are subject to legal regulation and those subject to self-regulation (in the literature you can find such terms to denote this phenomenon as quasi-legal regulation, normative non-legal (non-legal) regulation, etc., and the norms of the relevant sports organizations are called «soft law» norms, self-regulation norms, corporate norms, «Lex sportiva» norms, etc.) by sports organizations.

It should be noted that the principle of sports autonomy also allows to involve broad sections of the population in the formation of national and international policy in the field of sports. «Thus, we refer to active citizen participation, expressed in a national sports

policy formulated in a process from the bottom up, exposing the main problems that the population itself visualizes in their territories; the public-private intersectoral coordination that, through a national sports system ...reconfigures the map of roles and responsibilities (Castillo-Retamal, et al., 2020).

At the same time, despite the formal recognition of the principle of autonomy of sport, for many years there have been attempts by state and interstate institutions to increase the scope of legal regulation in sports, and, instead, attempts by sports organizations to protect self-regulation within existing limits. increase it.

One such period of active rivalry for power in sport was the early 1990s. In particular, it was then that athletes began to appeal to national courts to appeal against decisions of sports authorities to remove athletes from doping competitions. State courts have also begun to look more actively at other disputes that have arisen in the field of sports.

One of the most high-profile cases that changed the face of modern football, and sports in general, was the «Bosman case.» In 1995, Belgian footballer Jean-Marc Bosman filed a lawsuit with the European Court demanding that Union of European Football Associations (UEFA) repeal what he considered to be the discriminatory rules that existed in European football at the time. The first rule concerned the need to pay compensation to the sports club with which the player enters into a contract in favor of the player's previous club, even if the contract with the previous club has long expired. The second rule concerned the prohibition of playing in official matches for more than three foreigners at a time. Bosman filed a lawsuit for failing to sign a contract with French club Dunkirk because the club failed to pay $ 1 million in compensation to Liege, for which Bosman played until then, but the contract with which at that time ended. In addition, the conclusion of the contract was hindered by the rule of limiting the number of foreigners in official matches (EUR-Lex, 1995).

Thus, the European Court of Justice accepted the case for its consideration and later concluded that the UEFA regulations grossly violate the labor legislation in force in the territory of the European Union and restrict the free movement of labor. He decided to lift the restrictions on the number of foreigners from EU countries, and, in fact, introduced the status of a free agent: the players after the end of the contract were given the right to change the club without compensation. UEFA's attempt to challenge the European Court's decision was unsuccessful. Moreover, the EU has threatened to outlaw UEFA if it does not recognize the court's decision.

The second lawsuit that affected modern sport and increased the powers of public authorities in the field of sport was the case of Mecca Medina v. The European Commission, which was ruled by the European Court of Justice on 18 July 2006.

The fact was that the doping test of professional swimmers David Mecca-Medina (Spain) and Igor Maitsen (Slovenia), taken in 1999, was positive, after which the International Swimming Federation, applying the anti-doping code of the Olympic Movement, banned them from participating. in competitions for four years. The sentence was later reduced to two years by the Court of Arbitration for Sport.

In May 2001, Medina and Maitzen lodged a complaint with the European Commission's Directorate-General for Competition, arguing that the International Olympic Committee's anti-doping rules were contrary to EU rules on competition and the free movement of services.

In August 2002, the European Commission rejected the complaint on the grounds that the IOC's anti-doping rules did not fall under Articles 81 and 82 of the Treaty on European Union (abuse of a dominant position). Athletes appealed the decision to reject their complaint to the European Court of Justice.

The trial court dismissed the appeal, arguing that the IOC's anti-doping provisions were purely sporting and therefore not covered by EU law.

Instead, the Court of Appeal found that sporting anti-doping rules were subject to EU law, although there was no violation of athletes' rights in this particular case. In addition, the court noted that any relationship in the field of sports, if they have an economic component, are subject to EU law. Moreover, even purely sporting relations cannot a priori be removed from the scope of EU law.

The Bosman case and the Mecca-Medina case marked another stage in the intervention of public authorities in the field of sports. Sensing the threat of increased state intervention in the field of sports, as well as realizing that the competition between the two systems can significantly complicate the regulation of relevant relations, sports organizations have taken active action. In particular, it was decided to radically strengthen the role of the Court of Arbitration for Sport, which until then almost did not work, and make it a global arbitration institution that affects the entire system of world sports (Foster, 2019).

Another way to limit the role of government agencies in regulating relations in the field of sports, according to the famous sports lawyer Foster (2019), was the «legalization» of the sports system. At both the international and national levels, sports rules and regulations have begun to take the form of regulations; the developers of such acts were often lawyers; the structure of the disciplinary bodies of sports organizations changed and they began to resemble state bodies, of which lawyers also often became members; when considering cases, more attention began to be paid to formal legal procedures, observance of the principles of proportionality of punishment, proper governance, etc. These changes have been particularly noticeable at the international level, where the IOC, as the main governing body in world sport, and the CAS, as the main arbitration body in world sport, have become the leading authorities.

The result of the active work of sports organizations, which was to change approaches to regulating relations in the field of sports, in particular – the legalization and formalization of the sports system, as well as – in the implementation of relevant ideological work was the emergence of a global sports system with independent law.

In this regard, Treubner (1997) notes that the central ideology of world sports law is that it is an autonomous transnational legal order and, therefore, it is beyond the control of nation states and their legal orders. This gives grounds to claim that national courts and legislatures do not have jurisdiction over it, which gives it the right to be «law without a state».

Discussion

Thus, sport is gradually becoming a sphere of public relations with a unique mechanism of legal and «quasi-legal» regulation. Indeed, sport is a unique area of public relations. It is radically different from traditional areas of legal regulation, which are subject to the influence of national law or, in the case of a foreign element – internationall law. The fact is that in sports such linearity does not work. In particular, sports clubs, although registered under the laws of a particular country, are more subject to the rules of international sports federations than to national authorities. A similar situation exists in the field of sports justice: disputes in the field of sports are much more often considered by sports arbitrations than by general courts. Moreover, the statutory documents of governing sports bodies often explicitly prohibit athletes, clubs and national federations from applying to national courts. In addition, unlike other areas of legal regulation, sport has an autonomous status. This means that sport is partially «removed» from the public order. And although the limits of such autonomy are not yet fully established (for example, commercial sports organizations are mainly created in the organizational and legal form of business associations (Tkalych, Davydova, & Tolmachevska, 2020)), so the activities of such organizations a priori cannot be completely removed from the scope of national law), today there is every reason to argue for the emergence of an independent sports law or «quasi-legal» order.

In this regard, we can join the conclusions of Foster, a major supporter of the concept of «global sports law», who notes that modern global sports law is characterized by the following features:

1. It is a product of regulatory activity of sports bodies. Regulatory influence on players, sports officials and other actors in the field of sport is created by a hierarchical pyramid, where international sports federations issue rules binding on national associations, which, in turn, oblige athletes and other subjects to comply with these rules. entities operating under the jurisdiction of the association. This creates a voluntary, at least in form, regulatory regime, consisting of a set of mandatory rules adopted by sports organizations.

2. This is a private contractual procedure. It is legitimate on the basis of agreements between various entities in the field of sports on voluntary subordination to sports federations, which are the creators of the relevant regulatory regime. An additional argument in favor of the formation of a separate private contractual procedure are the rules of dispute resolution, enshrined in various documents of sports organizations. First of all, it is the duty of all participants in sports relations to apply for protection of their rights not to national courts or other public bodies, but to private organizations for the consideration of sports disputes.

3. Sports law has an international character. The globalization of sports in recent years has helped strengthen the role of sports federations and other sports bodies in the world of sports. Thus, the importance of world sports bodies such as the IOC and FIFA has increased as the Olympic Games and the FIFA World Cup have become global mega-events.

4. This is a unique legal order. This conclusion can be made on the basis of the obligation to obey the rules of sports bodies by all participants in the relationship. Such subordination is a prerequisite for participation in sports

competitions and other relations under the auspices of the relevant sports organizations (Foster, 2019).

Conclusions

Sports law is still prematurely recognized as an independent legal order, because the very term «legal order» implies the existence, first of all, of legal norms. In this case, the law-making function should belong to public authorities.

The normative regulation of relations in sports, based on a combination of regulatory influence of different sources, among which the leading place is occupied by acts of regulation of sports organizations, acts of sports arbitration courts (first of all – ÑAS), national and international regulations, acts of judicial authorities, significantly different from the regime of legal regulation of other social relations.

Thus, it is difficult to deny that sports law as a global «quasi-legal» order exists de facto. At the same time, the main feature of such a «quasi-legal» order is that private law mechanisms are used to exercise regulatory influence on the relevant social relations. Accordingly, national and international public authorities should not compete with sports organizations, but together improve the mechanism for regulating public relations in the field of sports, based on the private nature of the relationship.

Further research on the regulation of relations in the field of sports, in addition to the study of the principle of autonomy of sports, may be associated with the establishment of the legal status of entities in the field of sports, in particular - their rights and responsibilities. In addition, the study of the phenomenon of sports law in general, as well as determining the place of sports law in the legal system are promising.

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