

Legal Governance of Professional Athletics in the Czech Republic¹

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Abstract: *The paper focuses primarily on the legal status of a professional athlete in the legal order of the Czech Republic. The author describes possible statutes (employee, entrepreneur, professional soldier). Besides that, he also discusses the legal status of an athlete in the era of the socialism.*

Key Words: *Labour Law; Sports Law; Labour Code; Sports Act; Professional Athlete Status; the Czech Republic.*

Introduction

In the western liberal democracies, there commonly are laws and regulations (in the broad sense) which cover the field of sports and the status of professional athletes. As professional sports developed extensively, a need arose to regulate the field by a special legislation, let's call it the Sports Act,² which governs and to a certain extent cultivates the sporting environment through its rules as well as offers, *inter alia*, some guarantees regarding the status to professional athletes (defines their legal status and their minimum rights). This is done either directly (through interventions; e.g. Hungary, Spain, France) or in collaboration with sports organizations (liberal approach; e.g. Denmark, Finland). Regardless of how it is done, the aim is, among other things, to define in legal terms the status of a professional athlete, thus creating a possibility of effective protection of the athlete's interests where justified and necessary.

The countries of the Central and Eastern Europe followed suit with varying success. Slovakia, for instance, adopted its Sports Act in year

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² It does not necessarily have to be a single piece of legislation (centralized regulation of sporting activities covering all aspects – overall organization of sports, development and financing of sports, sports organizations, statuses of athletes and of professional athletes, etc.). Conversely, individual aspects can be regulated by individual pieces of legislation (decentralized legislation).

2015.³ Obviously, the objective of this piece of legislation was to comprehensively cover the sporting activities in legal terms. Regardless of the present factual (dis) functionality of the legislation in question, one has to appreciate the effort to define the status of professional athletes and to provide them with certainty as to the nature and the content of the legal relationship with the sports organizations.

The Czech Republic is a proverbial exception to the rule (not only) in this regard. The reasons behind the delay rest on the part of the Czech lawmakers.

The existing legislation, namely the Act No. 115/2001 Coll. on Support to Sports, simply (and only) formalizes and to some extent institutionalizes the legal framework for the promotion and support to sporting activities and sports, from the construction and operation of sports facilities to the financing of sports clubs. Effective from 1st August 2019, a specialized central state administration body for support to sport, tourism and national representation in sports, the National Sports Agency (see below), was established, with the tasks to design and to develop state policy plan for sports and to coordinate its implementation, to provide financial support to sports, to organize and to coordinate anti-doping programs and to promote sports in general. However, the status of a professional athlete remains undefined in legal terms.

Professional sports during and after socialism

The underlying cause of the present (dismal) situation lies, alongside the delays on the part of the legislator, in the pre-1989 system of sports organization.

The socialist ideology did not acknowledge the existence of professional sports and professional athletes. This did not mean, however, that professional sports, competitive/professional athletes and governmental support for the top level athletics did not exist. On the contrary, athletic achievements and athletic competition with the western democratic countries played an irreplaceable role in the socialist ideology. The state heavily supported sports and athletic training. There was a well-developed system of athletic preparation and education in sports centers available to children from a young age.

³ See Act No. 440/2015 Coll. the Sports Act.

In the context of the socialist ideology, competitive athletes were presented as amateurs who dedicated themselves to sports alongside their regular jobs. The forward of a major-league football club could thus also be employed as an electrician at a foundry. He only performed this job in theory, however, because he dedicated himself to training. The regime's goal was to capitalize on the moment when a socialist worker won over a capitalist professional.

After the revolution in year 1989, there came a gradual erosion of the previous system, both in terms of training and education and in terms of the legal status of competitive athletes. Athletes no longer had to have a regular job. Sports became professionalized and there was a gradual development of structures and relationships in individual and especially team sports (mostly ice hockey and football). Habitual ways and traditions, thanks to the regulatory mechanisms of sports unions, thus became firm rules.

Legislators did not react much to these shifts. The only area that became the subject of legal regulation was the support of sports (last modified by the Act No. 115/2001 Coll. on the Support of Sports).

The nearly 30-year absence of concrete legal regulation led to the self-regulation of professional (especially team) sports through measures established by sports associations, which function as clubs and which (to varying degrees) adopted (and continue to adopt) rules of international organizations (FIFA, UEFA, IHF, etc.). A number of small "ecosystems" formed, each representing a different sports association.

The potential legal treatment of professional sports can thus pose a great challenge in the future, because it should reflect the fact that the social phenomenon which should be subjected to legal regulation is not, given the variations among sports, associations and their rules, one entity but, rather, a series of relationships within each individual association. It is inconceivable that a public power which took so long to take notice could legitimately force the Czech professional sports to create a universal set of rules and that these rules would be followed across the board, without taking into account the specificities of each association and sport.

This is a difficult task. Continued apathy by public authorities, as proven by the application practice, will only lead to deepening of the problem and worsening of the conditions. Basic legal regulation of the

rights of professional athletes, especially in collective sports, is, however, necessary.

Existing legal provisions covering the status of professional athletes and underlying problems

The current Czech laws and regulations offer three possible statuses for athletes who engage in sports at a top professional level. In short, a professional athlete is an athlete for whom sport is the principal activity and area of interest and who does sport for pay, and that pay (usually) represents the highest income from his or her employment or self-employment.

The least utilized and the least suitable option for most sports, including team sports (among other also because of international trading with players, etc.), is the employment by a sports club. There are a number of reasons for that.⁴

Generally, it needs to be noted that the labour legislation in the Czech Republic is predominantly of mandatory nature, i.e. rules on working hours and rest periods (workload, breaks for meals or rest, rest between two shifts, weekly rest) and occupational health and safety are clearly and strictly formulated by law (or by implementing legislation). Thus, the rules cannot be applied to professional sports as they stand while they can be changed only to a limited extent. The same problem would arise in connection with international, in particular team sports which involve trading, transfers or players on loan, etc. where statutory rules on termination or modification of employment would apply.

There is, however, one advantage of the employment option which is lacking in the other option below that otherwise generally prevails and that is the obligatory insurance policy to be carried by the employer for cases of work-related injury or occupational disease.⁵

⁴ Only a few sports clubs of top competitions opted for this option, often only for a limited period of time.

⁵ For further details, see for example MORÁVEK, J. *O závislé práci, profesionálním sportu a kompletní sbírce* [About Dependent Work, Professional Sport and Complete Collection]. In: D. HRABCOVÁ, ed. *Pracovní právo 2012: Závislá práce a její podoby* [Labour Law 2012: Dependent Work and Its Forms] [online]. 1. vyd. Brno: Masarykova univerzita v Brně, 2012, pp. 107-116 [cit. 2019-07-26]. Acta Universitatis Brunensis, Iuridica, Volume 440. ISBN 978-80-210-6084-5. Available at: <https://www.law.muni.cz/sborniky/pracpravo2012/files/PracovniPravo2012.pdf>; MORÁVEK, J. and M. ŠTEFKO. *Profesionální sportovci v kolektivních sportech* [Professional Athletes in Team Sports]. *Časopis pro právní vědu*

The second option which is largely used, namely in team sports such as hockey or football, is the status of a self-employed person on the part of the athlete. The relation between the club and the player is governed by an agreement on sports activity which is entered into (as an innominate agreement) under the civil law rules and the relationship between the two parties is regarded as one between two business entities.

This option gives the parties relatively broad contractual freedom, including optional provisions on the assignment of the contract, etc. The sports clubs then apply the assignment clauses when transferring players.

However, there are a number of disadvantages.

In most cases, athletes are in a weaker position when entering into an agreement with a sports club. Consequently, it is not uncommon to include provisions which would be unallowable under the labour law and its regulations, namely contractual penalties against the athlete or a disadvantageous remuneration system requiring the athlete to pay back part of the money already received at the end of the season in dependence on the club results. Arbitration clauses are included as a rule through which disputes which have a financial aspect are transferred from the courts either to permanent arbitration panels (a better scenario) or to individually appointed arbitrators (a worse scenario). Under the Czech law, an arbitrator can be anyone with integrity, legal capacity and citizenship of the Czech Republic.⁶ No legal education is required.

Moreover, no obligatory participation in accident insurance is mandated for professional athletes with the status of a self-employed person.

The two above-named options differ significantly as regards public levies (taxes and social and health insurance). In the employment scenario, the employer, i.e. the sports club, bears 2/3 of the costs of contributions to insurance schemes. In the case of a self-employed status, all costs of public levies are borne by the athlete.

a praxi [Journal for Jurisprudence and Legal Practice]. 2013, roč. 21, č. 3, pp. 354-358. ISSN 1210-9126 or PICHRT, J., ed. *Sport a (nejen) pracovní právo* [Sport and (not only) Labour Law]. 1. vyd. Praha: Wolters Kluwer, 2014. 285 p. ISBN 978-80-7478-655-6.

⁶ Arbitrations can be, in accordance with the provisions of the Section 2 of the *Act No. 216/1994 Coll. the Arbitration Act*, held with the respect to all disputes which have a possessory aspect, that is, also in the context of the labour and employment relations. However, arbitrations are held in labour disputes very rarely in the Czech Republic.

What follows from the above-mentioned is that the scenario where the athlete acts as an independent entrepreneur is advantageous primarily for the sports club. Indeed, sports clubs also prefer it.

The Supreme Administrative Court of the Czech Republic in rulings No. 2 Afs 16/2011 and No. 2 Afs 22/2012 confirmed that both options can be applied to and chosen from by professional team sports athletes. In the rulings, the Supreme Administrative Court of the Czech Republic commented on the legal status of a professional hockey player and a professional football player (in both cases they were players of the highest competition, in the former the player was from AC Sparta Praha, in the latter from HC Sparta Praha).⁷

The findings of the Supreme Administrative Court of the Czech Republic in summary say that professional athletes (in team sports) and their legal relationships may be governed (depending on the circumstances) either by the labour law or by the commercial law (in which case professional athletes in team sports have a status of self-employed individuals/entrepreneurs). Although the Supreme Administrative Court of the Czech Republic argued that in several regards the relationship between a professional athlete and a sports club corresponds rather to the relationship between an employee and an employer, in other words that the sporting activity carries many features of a conceptual definition of dependent work within the meaning of the Section 2 of the Labour Code (under the Section 3 of the Labour Code, dependent work is to be performed exclusively in an employment relationship), it eventually ruled as above, taking into account the fact that employment rules are not suitable for professional athletics and reflecting the hitherto widespread practice which regards the club and the athlete as two independent businesses or entrepreneurs.

Finally, the third legal model governing the position of a professional athlete is the service relationship. It occurs mostly in individual sports and is different in its nature than the two models described above.

In this case, the athlete is a professional serviceman and carries out the sporting activity as a member of the Dukla Army Sports Center which falls under the Ministry of Defense of the Czech Republic. The Dukla Army Sports Center provides very good training conditions to its members

⁷ See *Ruling of the Supreme Administrative Court of the Czech Republic Ref. No. 2 Afs 16/2011* [2011-11-29]; and *Ruling of the Supreme Administrative Court of the Czech Republic Ref. No. 2 Afs 22/2012* [2012-08-01].

compared to other facilities in the Czech Republic. For this reason, the Dukla Army Sports Center athletes include prominent Czech field and track athletes, skiers, rowers, water slalom competitors or canoeists and cyclists. Handball and volleyball players are also supported in a similar fashion through subsidized organizations.

Among Dukla's (or its predecessors') athletes have been Emil Zátopek, Jan Železný, Štěpánka Hilgertová, Kateřina Neumannová, Roman Šebrle, Barbora Špotáková, Eva Samková and Ester Ledecká.

Final notes

On a positive note and thanks to the pressures from athletes themselves and the activity of international associations, there have been attempts in some sports (such as football) to self-regulate in order to improve and to regularize terms and conditions under which athletes train and perform. An example is the model standard professional contract published by the Football Association of the Czech Republic. This is clearly not enough as many problems remain unsolved. To mention just one, one can recall the difficulties with transfers of athletes in youth categories which are subjects to disproportionate compensations in favour of the home club and that in many cases de facto make the transfer impossible (if there is no additional support by parents or sponsors). This practice clearly stifles the development of young talents.

There is still much to be done to further develop the sports law in the Czech Republic. The longer we put it off, the harder it will be.

Recently, the Czech academic sphere has shown an active interest in the area of sports legislation and regulation. Sports law is taught at the Faculty of Law of the Charles University in Prague. Professional conferences and forums⁸ are held on professional sports and their legislation.

⁸ By way of examples, let's mention the conference "Sport and (not only) Labour Law" held at the Faculty of Law of the Charles University in Prague in year 2014 or the conference "Income Taxes of Team Sports Professional Athletes" held in year 2017 at the same faculty as well as the academic publications HAMERNÍK, P. *Sportovní právo: Hledání rovnováhy mezi specifickou sportovní úpravou a platným právem* [Sports Law: Finding Balance between Specific Sports Legislation and Applicable Law] [online]. 1. vyd. Praha: Ústav státu a práva Akademie věd České republiky, 2012. 87 p. [cit. 2019-07-26]. ISBN 978-80-87439-07-4. Available at: https://www.ilaw.cas.cz/upload/web/files/books/Sportovni_pravo.pdf; PICHRT, J., ed. *Sport a (nejen) pracovní právo* [Sport and (not only) Labour Law]. 1. vyd. Praha: Wolters Kluwer, 2014. 285 p. ISBN 978-80-7478-655-6; and JURKA, H. *Právní úprava profesionálního sportu v České republice a zahraničí* [Legal Regulation of

The outcomes of such efforts are relatively clear: it is necessary to define a special legal status of a professional athlete, since neither the labour law nor the civil law offers an appropriate solution.

However, politicians have been very reluctant to respond to such initiatives. Sports fall under the auspices of the Ministry of Education, Youth and Sports of the Czech Republic which is (relatively understandably) primarily a ministry with its main focus laid on education. For now, one can only speculate whether the situation will improve with the newly established National Sports Agency (with its advisory body, the National Sports Council).⁹ Some scepticism cannot be avoided when it comes to possible legislative changes as the president of the National Sports Agency is not a member of the Cabinet and as such does not have the authority to initiate new legislation. The National Sports Agency is supposed to be a relatively independent body which undermines its ability to influence the proposed and/or passed legislation at least indirectly, unlike the other governmental bodies and institutions which fall directly under and are governed by ministries whose representatives (ministers) as members of the Cabinet have wider possibilities to promote their interests (i.e. interests of their departments).

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⁹ Pursuant to the transitional provisions to the *Act No. 178/2019 Coll.*, the National Sports Agency will be fully and independently operational as of 1st January 2021. For more details, see the transitional provisions of the *Act No. 178/2019 Coll.*

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