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Economic benefit and the law in sport

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ABSTRACT

The following article is intended to analyse potential economic benefits in professional competitive sport. Professional sport is not to be perceived only from the perspective of emotions evoked by sportsmen competing in various disciplines. Currently, sport has become a great business that generates noticeable revenues and provides employment to many individuals. Hence, the scientific discipline referred to as the sports law has been receiving more and more interest as it not only tackles upon the legal status of sports federations, sportsmen or clubs but also has to deal with the issues of sports economy, sponsorship agreements in sports, the image of contestants as well as numerous other problems. Therefore it seems justifiable to commence a scientific debate on economic benefits in sport and their forms on the basis of legal regulations regarding sport.

Keywords: economic benefit, sports law, professional sport

1. INTRODUCTION

Lon Luvois Fuller in the book entitled “The Anatomy of Law” specifies that the rational legal system ought to be designed based on certain economic calculations. In his opinion, this means that effective legal system may be drawn up once the analyses of potential benefits and costs have been performed [1]. Fuller addressed the issue in his other publication entitled “Morality of Law”, where he shows two concepts of economy related to the matter in question. The first one assumes that the interchangeability of goods remains the subject matter

of economy, the so called exchange economy. The latter one assumes the most effective use of accumulated means in order to achieve the assumed objectives, the so called marginal utility economy [2]. The aforementioned philosophical and economic divagations by L.L. Fuller seem to give the essence of professional sports activity but also of all other sectors of free-market economy. Professional sports is characterised by the redistribution of the means earned within the sector of economy. Such a situation leads to their further effective usage and the development of this sphere of social life.

It is beyond any doubt that professional competitive sport could not exist without huge economic investment. Multi-million financial means invested in professional sport appear to be the major factor creating various events held on the world's sports arenas. [3] It must be stated, however, that professional sports should not be perceived exclusively as a perfectly prepared marketing spectacle and a business opportunity devoid of any morality. Professional sports holds a 2% share in the world's GDP. Sports sector highly influences economy as well which can be seen in employment and tourism [P. Godlewski: Globalny i lokalny wymiar współczesnego sportu. Sport i reakcja a wyzwania współczesnej cywilizacji, Uniwersytet Szczeciński Zeszyty Naukowe Ekonomiczne Problemy Usług (689) (2011) 11].

2. PROFESSIONAL SPORT

Employing various professionals remains indispensable for proper functioning of sports clubs or organisation of sports events. For the professional sport to function, one needs not only the contestants, coaches and highly specialised management cadre but also administrative and technical personnel. Mass sports events must be protected by the relevant security services and medical back-up. Similar regularity may be observed when touristic services are to be analysed. The majority of international sports competitions are held in very attractive tourist areas of the world. Such events attract the individuals passionate about a given discipline on the one hand and those being into travelling on the other. [4]

Unfortunately, a positive impact of sports activity over economy is tightly related to a permanent commercialisation of sport and moving away from the "fair play" [5] principle, which expresses the idea of fair competitive sport [A. Sznajder: Charakterystyka rynku sportu profesjonalnego, *Gospodarka Narodowa* (10) (2007) 45]. The subsequent part of the article attempts to analyse selected legal regulations regarding the sport law as far as economic benefit in sport is concerned.

The sport law remains an interdisciplinary discipline in legal sciences encompassing the matters typical for public authorities (e.g. safety of mass sports events) on the one hand as well as private and legal regulations (e.g. professional sports agreements). [See more: T. Davis: What is sports law?, *Marquette Sports Law Review* Volume 11 Issue 2 (2001)] However, it must be underlined that sport law is formulated (mainly in the form of statutes, codes, regulations) by international sports federations. Such entities create legal reality with regards to sport while other legal provisions regarding sport, such ones created by individuals countries, remain complementary to various regulations [P. Łebek: Autonomia organizacji sportowych, *Problemy Współczesnego Prawa Międzynarodowego Europejskiego i Porównawczego* (9) (2011) 154-157].

3. FEDERATIONS

International sports federations do not have legal capacity on the ground of international public law, they remain, the so called, international non-governmental organisations bearing the character of associations operating pursuant to domestic law in the country where they are based [D. Wolski: Regulacje przyjmowane przez międzynarodowe organizacje sportowe a prawo krajowe, *Problemy Współczesnego Prawa Międzynarodowego Europejskiego i Porównawczego* (14) (2016) 136-139]. International sports organisations are mostly located in Switzerland due to its favourable tax system. They group the national sports federations from various countries [D. Pałucka: Obowiązek przynależności polskiego związku sportowego do międzynarodowej organizacji sportowej, *Ius Novum* (4) (2016) 226-227] (e.g. FIFA includes the Polish Football Association within its structures). The national sports federations group sports clubs for a given discipline and organise professional competition on a national level.

Both the country sports associations and their members (clubs, players, coaches, provincial sports associations, etc) remain under obligation to observe the statutes and other regulations established by the international sports federations. On top of that, all subjects participating in a given sports discipline must use the appealing path, i.e. appealing committees established within a given domestic and international sports federation [E. J. Krześniak: Prawne mechanizmy zabezpieczenia realizacji zasady autonomii sportu na przykładzie struktury i sposobu funkcjonowania Międzynarodowej Federacji Piłki Nożnej (FIFA), *Przegląd prawa handlowego* (2) (2016) 17-19].

The Court of Arbitration for Sport (CAS) based in Lausanne remains the final instance to appeal from decisions and adjudications passed by international and domestic sports federations. The said tribunal operates as a court of conciliation and, as a rule, should pass individual verdicts in every case [6].

The statutes of international and domestic sports organisations as well as regulations of individual sports leagues contain a series of provisions which may influence a potential economic benefit in sport. [7]

The statute of FIFA (Fédération Internationale de Football Association) in its provisions regarding the membership assumes that the functioning within the structures of an international federation shall bring economic benefits in the future. Article 10-20 of the FIFA statute sets forth that only a single state football federations may be affiliated with FIFA. This means that only one sports association from every country may organise professional league in football and only such federation may receive FIFA's recognition FIFA [Fédération Internationale de Football Association (2016, April). FIFA STATUTES Regulations Governing the Application of the Statutes. Retrieved from <http://resources.fifa.com>].

Such a principle results from the statutes of other international sports organisations. Additionally, FIFA members must observe FIFA's statutes and regulations and they are entitled to nominate the candidates to take up managerial positions within the organisation or its commissions. The teams affiliated in domestic sports federations may participate in competitions and events organised by FIFA, which allows them to participate in any related financial awards. Financial gratifications resulting from the participation in the World Cup, the Euro Cup or the Champions' League run into millions of Euro. Whereby, winning such a tournament guarantees noticeably higher amounts for the domestic federations and the teams.

To sum up, individual entities operating in professional sport obtain noticeable economic benefits from the membership in international sports organisations.

4. BENEFITS

In the context of potential economic benefits in sport, one must pay attention to some provisions of domestic sport associations or the regulations of professional sports leagues.

Economic benefits in the form of a remuneration or financial awards obtained by the clubs or domestic sports federations are subsequently distributed among the players and coaches as well as other participants of professional sports activity. Sports clubs taking part in sports competitions receive financial means distributed by domestic and international sports federations due to having waived their share of revenues in favour of the federations. There are, however, legal regulations which deprive the players themselves of their autonomy. One of such provisions is exemplified by article 72 paragraph 1 and 2 of the statutes of the Polish Football Association. According to the wording of the article: “A member of the national team provides the Polish Football Association, on an exclusive basis with their image as dressed in the national team kit. The Association is entitled to use the said image for its commercial purposes within the range set forth by the regulations of the Association. Prior to being qualified for the national team or the Olympic team, a player hereby grants their consent for their image in the national team kit to be disseminated pursuant to article 81 clause 1 of the Act dated 4th February 1994 on Copyright and Related Rights (Journal of Laws from the year 2006, number 90, item 631, as amended)” [Statut Polskiego Związku Piłki Nożnej Retrieved from <http://www.pzpn.pl>].

The aforementioned legal provision raises a moral and legal aspect as well as an aspect of economic interests of the parties. On the one hand, playing for a national team remains a great honour for the players. On the other hand, however, consent for using the player’s image wearing the national team kit may remain in contradiction to the player’s interests as far as moral and economic matters are concerned, as the player may disapprove of the way their image is to be taken advantage of or such a usage may contradict the sponsorship obligations of the player or the club they play for.

There is no doubt that using the player’s image wearing the national team kit regardless of their individual interest may result in economic benefits during their further career. As for the economic benefit, selected provisions in the regulations of sports competition for individual professional leagues are of great importance as well. Pursuant to article 9 of the

Regulation for Ekstraklasa SA (the entity managing the highest football league in Poland [Zarząd Polskiego Związku Piłki Nożnej (2015, April 21). *Regulamin rozgrywek piłkarskich o mistrzostwo Ekstraklasy na sezon 2015/2016 i następne*. Retrieved from <http://www.ekstraklasa.org>].) clause 9.3, season 2016/2017, any number of non-EU players may play in a match of the league. However, during any game on the pitch only two such players may participate. Similar provisions apply in other professional sports leagues. Just to compare, the Polish Basketball League has a clause referring to two Polish players playing in one match. In this case, basketball clubs are under obligation to maintain two players of Polish nationality in the field at all times during the match [Wojczyński, J. (2016, January 12). *TBL w 8 sekund: powiększenie, zamknięcie, miejscowi. Sprawdzamy reformy. Przegląd sportowy*. Retrieved from <http://www.przegladsportowy.pl>].

Under the said circumstances we deal with a duty imposed over the clubs playing in the highest basketball league. However, appearances of non-EU players in Polish football league remain optional. Economic benefits related to the constraints for the players can be demonstrated as the lowering of contractual requirements for foreign players. Regulations of this sort may bring about a better selection of non-EU players by a given sports club, while in the case of the provisions regarding Polish basketball players, it can remain beneficial economically for the Polish national basketball team.

5. CONCLUSIONS

There is beyond any doubt that the two aforementioned legal regulations in professional sports leagues have an impact over the value of players on the transfer markets. Such a situation may result in increased expenditures for the clubs which have to be allocated to the contracts for such football or basketball players.

It does happen occasionally that the regulations of professional sports leagues contain the provisions regarding the maximum contract values for the players. Pursuant to article 23.1 of the Regulation of the Polish Basketball League, the league management board are entitled to introduce a maximum factor with regards to the remunerations to be paid for the contracts of professional basketball players [Regulamin rozgrywek Polskiej Ligi Koszykówki S.A. (2016, May 12) Retrieved from <http://www.plk.pl>]. Such regulations seem to be highly required in professional sport. The amounts of money allocated to the players' transfers and their remunerations in professional sports go beyond any limits and reach extremely high values. The introduction of constraints with regards to sportspersons' remunerations shall result in a certain level of competition being maintained, at least seemingly, between rich and poor sports clubs.

Some economic benefits within organisational and procedural spheres may be noticed in legal regulations referring to sport. As it has already been mentioned at the beginning of the following article, the majority of legal provisions within the sports law are formulated by international sports organisations. The private and legal character of the norms enacted by sports federations results in the entire decisive and organisational centre being centred around the sports organisation devoted to a given discipline only. This contributes to its quicker and hassle-free management. The procedural sphere with regards to sports dispute resolution seems to be economically beneficial as well. The judiciary in professional sport is based on arbitration, which frequently shortens the time needed to solve a sports dispute. On the other hand, practically unlimited power of international sports federations and the lack of their control by the entities of international public law may cause political pressure and attempts to interfere the independence of individual countries.

Economic benefit in sport on the ground of the sports law may function in various forms. Not only is it limited to financial benefits demonstrated by huge revenues generated by sports business but may include advantages in personal sphere on the basis of personal and marketing development of a given player or organisational benefits due to effective functioning of sports federations as far as management and law enacting are concerned. [8] It must be highlighted, however, that financial and organisations benefits resulting from activities performed within professional sport should not be abused and economic and

political interests of sports federations ought to be safeguarded in line with the “fair play” principle.

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