

PROBLEMATIC ASPECTS OF THE LEGAL STATUS OF ATHLETES ACCORDING TO THE LEGISLATION OF UKRAINE**ПРОБЛЕМНІ АСПЕКТИ ВИЗНАЧЕННЯ ПРАВОВОГО СТАТУСУ СПОРТСМЕНІВ ЗА ЗАКОНОДАВСТВОМ УКРАЇНИ**

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The article is dedicated to the problem of the legal status of athletes according to the legislation of Ukraine. The legal status of athletes mediates three types of legal statuses: constitutional and legal, industry and special. The main obstacle to a clear definition of the legal status of athletes is the lack of standardized approaches to understanding of sports law and the reluctance of legislators to recognize the relations in the field of sports as a subject of legal regulation of civil law.

Key words: sports, professional sports, legal status, sports contracts, civil law.

Автор статті досліджує проблеми правового статусу спортсменів відповідно до законодавства України. Правовий статус спортсменів опосередковує три види правових статусів: конституційно-правовий, галузевий та спеціальний. Основною перешкодою для чіткого визначення правового статусу спортсменів є відсутність уніфікованих підходів до розуміння спортивного права та небажання законодавця визнати частину відносин у сфері спорту предметом правового регулювання цивільного права.

Ключові слова: спорт, професійний спорт, правовий статус, спортивний контракт, цивільне право.

Автор статьи исследует проблемы правового статуса спортсменов в соответствии с законодательством Украины. Правовой статус спортсменов опосредкует три вида правовых статусов: конституционно-правовой, отраслевой и специальный. Основной преградой для четкого определения правового статуса спортсменов является отсутствие унифицированных подходов к пониманию спортивного права и нежелание законодателя признать часть отношений в сфере спорта предметом правового регулирования гражданского права.

Ключевые слова: спорт, профессиональный спорт, правовой статус, спортивный контракт, гражданское право.

There is no a unified view on the problem of the definition of the legal status of participants of the legal relations in legal literature. The concept of «legal status» is often equated with the term «legal position». Indeed, the word «status» in Latin means «state», «position», «condition». It is the generally accepted that the legal status (legal position) of a person is a system of enshrined in legal acts and state-guaranteed rights, freedoms, duties, responsibility, according to which the individual as a subject of law coordinates his behavior in society. Accordingly, the legal status of an athlete is a system of rights, freedoms, duties and responsibility of the person engaged in sports.

It should be noted that there are no the national fundamental researches of the legal status of athletes. V.P. Vaskevych, O.A. Shevchenko, D.I. Rogachov, T.U. Korshunova, K.M. Husov, A.F. Antipov and others explore the problematic aspects of the legal status of the subjects of sports activity and sports law issues in general in the Russian Federation. In the USA and Europe the mentioned questions are within the scope of research of such scientists, as John Spangler, Paul Anderson, Matthew Mitten, Timothy Davis, Rodney Smith, Robert Berry and others.

The aim of this research is to determine the problematic aspects of the legal status of athletes according to the legislation of Ukraine and to determine the ways to overcome them.

The legal status of the athlete is complex, consists of several interconnected constituent elements and at the same time combines several legal statuses. For example, a professional athlete is an individual, a citizen of Ukraine. According to this, he is endowed with all the rights and shall assume all the duties provided by the Constitution of Ukraine. The complex of these rights and duties is the constitutional and legal status of a person. Within this status a person is endowed with personal, social, cultural and economic rights and has the corresponding duties. Constitutional and legal status of an athlete is closely intertwined with his branch status through the realization of the right to entrepreneurial activity (Article 43 of the Constitution of Ukraine [1]) and the right to work (Article 44 of the Constitution of Ukraine), guaranteed by the Constitution. In particular, the State ensures the right of athlete to carry out any

of legitimate activity for profit, ensures the right of athlete to safe working conditions and deserved reward, etc.

The next and the main part of the legal status of a professional athlete is a branch status. The main aspect, that directly affects the amount and quality of the rights and duties, forming the branch status of athlete, is the correct definition of the nature of relations, in which he acts.

Thus, the current legislation provides that the legal status of athletes in relations with sports organizations, in particular of professional athletes – with professional sports clubs, is regulated by the Labor Code of Ukraine [2] (Part 2 of Art. 38 of the Law of Ukraine «On Physical Culture and Sports» [3], hereinafter – the Law). In our opinion, the position of the legislator is misguided, as a large array of relations between athletes and sports organizations should be regulated by the civil law. The very definition of professional sports, enshrined in Art. 38 of the Law, confirms the correctness of this view: «Professional Sports is a commercial direction of activity in sports associated with the preparation and carrying out of entertainment sporting events at a high organizational level for profit». There was the following definition in the legislation of the Russian Federation from 1999 to 2007: «Professional sports are entrepreneurial activities which aim to satisfy interests of professional sports organizations, of athletes, who has chosen sport as their profession, and of spectators» [4, p. 2]. Thus, at least, the relations between athletes and sports clubs and the relations between sports clubs concerning the transitions of athletes should be recognized by the civil law, because they are actually commodity-money. Determination of the legal nature of relations involving athletes and application of the most adequate method of legal regulation of the appropriate relations directly affect the determination of the branch status of athlete according to the national legislation. Thus, the problems of determination of the branch legal status of athletes are due to non-availability of unified understandings of the definition of sports law. Some researchers determine sports law as a separate branch of law. Thus, S.V. Alekseev considers that «sports law is a formed at this time, a specialized complex branch of law, related by the inner unity system interconnected legal and corporate norms, which fixed the basic principles,

forms and order of physical culture and sports activities» [5, p. 133]. S.M. Bratanovskiy, V.V. Saraev, S.S. Medvedev and others support the position of S.V. Alekseev to recognize the sports law as a complex branch of law.

One of the first researchers of sports law in I.S. Kuznetsov says that «sports law is a branch of legislation, including normative acts aimed at the regulation of social relations during the preparation of athlete to sports competitions and participation of legal entities in activities associated with the organization and carrying out of sports events at both the national and international levels» [4, p. 2].

Another Russian researcher O.V. Serdyukov determines the sports law as a complex branch of legislation, with a special object of legal regulation, consisting of basic normative legal act – the Federal Law «On Physical Culture and Sports in the Russian Federation», which acts as a backbone branch center, and a number of laws and other normative legal acts, which have such distinguishing features, as internal structuring and consistency [6, p. 10].

Deputy Head of Sports Arbitration at the Chamber of Commerce and Industry of Russian Federation V.V. Chubarov is more categorical: «... as branch of law Sports Law does not exist. We can speak about sports law as a formed branch of legislation, like the military or the customs law» [7].

E.V. Poghosyan has the similar position: «... the idea that sports law is a separate branch of the Russian law cannot be considered as a reasonable. It is more correct to say about the sources of sports law, which include national and international laws, international agreements, customs, judicial precedents in the field of sports activity» [8, p. 7].

Scientists of Western countries also are not characterized by unity in the definition of the legal nature of sports law. Thus, one of the first scientists-researchers of peculiarities of legal regulation of relations in the field of sports Edward Grayson says that «sports law as a separate branch does not have a legal foundation, because neither the common law, nor the law of equity will not allow to create a legal structure that is used exceptionally to the relations in the field of sports. Norms of various branches of law, used to regulate the relations in the field of sports, to the same extent are used to regulate any other public relations» [9, p. 7].

Another famous scientist and sports functionary Charles Woodhouse has a similar point of view: «I always said that sports law does not exist. However, there is a necessity of application of variety of legal institutions, such as contract law, administrative law, competition law, intellectual property law, tort law and labor law to specific situations in sports» [9, p. 8].

On the other hand, lawyers-functionaries Byeloff, Kerr and Demetriou do not doubt the existence of sports law: «Mechanism of legal regulation of sports activity, of relations between sports organizations, of conflicts in sports differs from the mechanism of legal regulation of other relations. Today the separate legal structures are formed in the field of sports». Professor Ian Blekshou maintains stance on the existence of sports law («Lex sportiva») [9, p. 8].

In our opinion, it is impossible to define the legal status of athletes because of the conceptual disadvantages in the views on the definition of the essence of sports law. And such situation, when the legislators refuse to pay more attention to the relations between subjects of sport within the civil law and the aspiration to use the already available tools of other branches of legislation, including labor, will lead to new collisions in the regulation of these relations. Experience of Russia proves this possibility. Thus, V.P. Vaskevych gives an example the case on the claim of a professional player to professional sports club.

The courts of first and second instance accepted the contract of the player with the club as a civil legal. However, the Supreme Court of the Russian Federation did not agree with the decisions rendered in the case, reversed them and sent the case back for a new trial. During the new trial the contract was recognized as an employment contract with elements of civil law, which do not conflict with the valid labor legislation [10, p. 15]. Thus, the court complied with the law that gives priority to the labor legislation, but to adopt of a fair decision had to apply to the constructions of mixed (complex) contract.

It is difficult to agree with the position of O.A. Shevchenko, who believes that, despite the variety of implemented functions the activities of athlete can be represented in the form of work at a certain post. Thus, an athlete fulfills a certain work function, and does not transmit the result of his work» [11, p. 45]. Thus, according to A.F. Antipov, it is obvious that the legislature unreasonably complicates the contractual relations. Because the current civil legislation allows you to adjust them quite clearly, we just have to recognize a civil legal nature of this relations, and attributing of legal relations of the parties during a professional sports activity to the employment relations creates a number of problems that can not be resolved. What is the position in the staffing professional athletes occupy? What kind of records must the employer make in the employment record of athlete? How does an athlete must fulfill the work rules in the organization? Who can calculate the time he has worked [12, p. 19]?

The third part of the legal status of an athlete is his special status, i.e. the rights and duties established by sports legislation and acts of sports organizations. The peculiarity of this kind of status of athlete is that it is formed under the influence of national legislation, acts of national sports organizations and acts of international sports organizations. Thus, according to Art. 36 of the Regulations of national football competition among the teams of clubs of Union of Professional Football Clubs of Ukraine «Premier League» season 2011-2012 [13], activity of a professional football player is governed by the laws of Ukraine, by the Regulations of the Football Federation of Ukraine with the status and transfer of football players, by other statutory and regulatory documents of FIFA, UEFA, Football Federation of Ukraine and PL.

According to part 3 Art. 38 of the Law an athlete acquires the status of professional athlete since the conclusion of the contract with the relevant actors in a sphere of physical culture and sports on participation in the competition among professional athletes. Since then, the athlete has the right to participate in competitions, to receive a reward for participating in the competitions, to change the sports club, to protect his rights and interests through special competent authorities etc. Acts of national or international sports organizations can include additional mandatory requirements for athletes. Thus, Art. 5 of the Regulations of FIFA on the status and transition of football players includes the following requirement. A player must be registered in the national association, so that he gets a passport of a player [14].

Thus, the legal status of athletes is a system of enshrined in the legal acts and state-guaranteed rights, freedoms, duties and responsibility and it mediates the constitutional and legal, branch, the special status of the individual and concrete legal connections between the participants of relations in the sphere of sports.

Currently, the legislation does not allow to define uniquely the legal status of athletes because of the lack of common understanding of the nature of sports law and because of a reluctance to recognize a civil legal nature of a large array of relations in the sphere of sports.

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ЗАГАЛЬНА ХАРАКТЕРИСТИКА ПРАВОВОГО СТАТУСУ МИТНОГО БРОКЕРА В СУЧАСНОМУ МИТНОМУ ЗАКОНОДАВСТВІ

GENERAL DESCRIPTION OF LEGAL STATUS OF CUSTOMS BROKER IN MODERN CUSTOMS LEGISLATION

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У статті розглядаються питання загальної характеристики сучасного митного законодавства, що визначає правовий статус та діяльність митного брокера. Автор аналізує норми Митного кодексу України, визначає новачки в правовому забезпеченні діяльності митного брокера.

Ключові слова: митний брокер, митні правовідносини, правовий статус.

В статье рассматриваются вопросы общей характеристики современного таможенного законодательства, которое определяет правовой статус и деятельность таможенного брокера. Автор анализирует нормы Таможенного кодекса Украины, определяет новации в правовом обеспечении деятельности таможенного брокера.

Ключевые слова: таможенный брокер, таможенные правоотношения, правовой статус.

The article deals with the general characteristics of a modern customs law, which defines the legal status and a customs broker. The author analyzes the rules of the Customs Code, defines innovation in the legal support of a customs broker.

Key words: customs broker, customs legal, legal status.

Постановка проблеми. Вступ у чинність 1 червня 2012 року нової редакції Митного кодексу України (далі – МКУ) запровадив нові правила для діяльності митних посередників. Митний брокер, як особливий учасник митних правовідносин, який забезпечує здійснення митних формальностей, має особливий інтерес у належному правовому регулюванні відносин за його участю. Крім того, запровадження інформаційних технологій, нових стандартів митної діяльності, швидке та зручне проходження митних формальностей переважно залежить від митного брокера.

Тому визначення правового статусу митного брокера, правове забезпечення його діяльності є актуальними та потребують подальшого дослідження.

Аналіз останніх досліджень і публікацій. Питання правового забезпечення діяльності митного брокера у свій час досліджувалися в працях Є.В. Додіна, І.В. Безкоровайної, А.В. Мазура, Д.В. Приймаченка, В.В.Прокопенко та інших вчених. Проте оновлення митного законодавства, потреба в подальших дослідженнях ролі митного брокера у галузі митної справи, характеристики правовідносин за участю митного брокера вимагає проведення подальшої наукової роботи.

Метою статті є визначення правового статусу митного брокера. З цією метою необхідно вирішити наступні завдання: 1) аналіз митного законодавства з метою визна-

чення правового статусу митного брокера; 2) встановлення правового забезпечення діяльності митного брокера; 3) визначення новачки та проблемних аспектів діяльності митного брокера за новим митним законодавством.

Виклад основного матеріалу. У процесі здійснення митних процедур митний брокер є посередницькою структурою, яка допомагає суб'єкту зовнішньої діяльності пройти всі митні формальності та успішно провести митне очищення товару.

Митна брокерська діяльність – це підприємницька посередницька діяльність, метою якої є декларування товарів і транспортних засобів та забезпечення процесу проходження митних формальностей від імені та за дорученням власника товару або уповноваженої нею особи.

Митний брокер – це підприємство, що надає послуги з декларування товарів, транспортних засобів комерційного призначення, які переміщуються через митний кордон України, діє на підставі ліцензії та внесене до реєстру митних брокерів, який ведеться центральним органом виконавчої влади, що забезпечує реалізацію державної політики у сфері державної митної справи.

Стаття 404 МКУ визначає митну брокерську діяльність як таку, що проводиться на підставі дозвільних документів центрального органу виконавчої влади, що забезпечує