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Sports employment contract
SUMMARY

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The subject of this doctoral dissertation are issues related to the legal possibilities of employing athletes in Poland under an employment contract. The research shows that sports clubs usually do not employ athletes under an employment contract, preferring civil law contracts. To the most frequently indicated reasons for this state of affairs are: firstly, issues of tax optimization, and secondly, the failure to adapt labor law provisions to the challenges of modern sport.

This paper presents in particular the answers to two fundamental questions: (i) whether in the realities of the 21st century an athlete can effectively perform his work under an employment contract in its current wording, and (ii) whether it is justified to introduce a new type of contract, i.e. sports work contract that would be dedicated to professional athletes. The main thesis of this paper is the existence of a justified need to introduce into the labor law a sports employment contract, which will be dedicated to the needs of professional athletes.

In this dissertation, the following research methods were primarily used: dogmatic and legal (analysis of the literature on the subject, analysis of normative acts and jurisprudence) and legal-comparative by comparing the selected elements of the legal system of Great Britain and the United States of America. As part of the research, a survey was also prepared for active professional athletes, letters to Polish sports associations and selected ministries in the mode of access to public information.

The first chapter presents the introductory issues for further consideration, concerning among others the characteristics of sport law as a separate branch of law and processes within sport, the catalogue of sources of sport law, the characteristics of professional sports and the specific features of sports work. All considerations have been supplemented with the case law of the Court of Justice of the European Union regarding the free movement of athletes within the community and the essence of the autonomy of sports law, i.e. rulings on *Walrave & Koch*, *Donà* or *Bosman*.

The second chapter deals with the selected issues regarding the employment of athletes in a legal and comparative approach on the example of American and British solutions. This chapter presents a detailed analysis of the status of an athlete as an employee, the list of employment basics or possibility for athletes to use collective labor law tools.

The third chapter focuses on the basics of athletes' employment catalogue in Poland. The athlete's possibilities of providing his services on the basis of:

employment contract, commission contract, specific task contract or as part of his own business were presented comprehensively. The considerations have been supplemented with the issues of sports scholarships and the athlete's obligations as a party to a sports contract. The analysis of the occurrence of elements characteristic for the employment relationship in sport contracts is of a key importance, including: voluntary, continuous performance of personal work, availability and subordination of the employer, employment risk and paid nature of employment.

The next chapter is a natural continuation of the previous one and it concerns strictly the contract for professional sports practice. In this chapter, much focus has been given on all parties involved in sport that have a direct impact on the rights and obligations of the athlete as an employee, i.e. the sports federation, sports club (employer) and athlete (employee). As a result of a thorough analysis of the internal regulations of Polish sports associations, I also presented the elements of these regulations (and the draft sports contract) with the provisions of the Labor Code, including employee's obligation to submit labor disputes to arbitration, use of contractual penalties, contractual stability, working time of athletes, disciplinary penalties or institution of deduction.

The fifth chapter is a kind of a punchline of the previous chapters presenting the author's conclusions regarding the legal situation of athletes in Poland and the possible list of the basics for their employment. This chapter presents the research part devoted to the validity of introducing a new type of employment contract from both (i) the perspective of players (individual surveys) and (ii) from the perspective of sports associations and state bodies (access to public information and directed correspondence). Then, the main assumptions of the new regulation were presented and possible threats related to the change of the current legal status were presented.

The following are attached to this paper: attachments, a list of abbreviations, a list of charts and tables, bibliography that complement this paper and are its natural complement.

It should be noted that scientific papers on the border of labor law and sport law were created in Poland in the past, including "Legal Situation of a Competitive Athlete" (Andrzej Kijowski, 1984), "Legal problems of Professional Sport" (Andrzej Kijowski, 1995) or "Legal Basis for the Employment of Professional Players" (Wiktor Cajsel, 2004). In the opinion of the author of this paper, the period of over fifteen years since the last significant publication in this respect fully justifies the discussion of this topic.

The nature of this paper should be described as interdisciplinary - just like sport law is an interdisciplinary field of law. The main axis of this paper are reflections on labor law, but there are also numerous elements of other areas of law: civil law, European law, international law, tax law, and even other fields of science: political science, sociology or international relations. A broader approach to the subject matter is necessary to present sport as a dynamic phenomenon and, consequently, to enable a more accurate analysis of the law in relation to it.

The research and analysis in this paper shows that there is a real need to introduce a new way of employment under an employment relationship. This has also been confirmed in surveys of professional players' preferences, as well as in responses sent by selected ministries and Polish sports associations.

A sports employment contract should be introduced by a separate act or added to the sport act. However, it seems unfounded to introduce regulations regarding a sports employment contract directly into the Labor Code.

The above main assumptions can be implemented using a narrower or broader concept. The narrower concept would provide for the creation of separate regulations regarding the establishment and termination of the employment contract in sport and the content of the employment relationship itself. It could draw on similar solutions already existing in the Polish legal order, i.e. solutions provided for in the Civil Service Act. On the other hand, a broader concept would provide for the introduction of the discussed contract for sports work, which would comprehensively regulate the relationship between the player and the sports club and would adapt in a systemic manner the wording of labor law to the realities of modern sport, while taking into account the essence of sport autonomy. A broader concept could draw on similar solutions already existing in the Polish legal order, i.e. solutions provided for in the Act on Maritime Labor and legal regulations regarding the employment of young people provided for in Article 190 - 206 of the Labor Code.

The main assumptions of the new employment contract include introduction of the definition of sports work to the act, introduction of a list of obligations of the parties to a sports contract, covering also the e-sportsmen with those changes, target introduction of the obligation to provide sports work under an employment contract, introduction of the obligation to submit each contract to the ministry responsible for sport, crediting the sports employment contract as an exception referred to in art. 25¹ § 4 par. 4 of the Labor Code, exclusion of the possibility of applying contracts for an

indefinite period in sport, introduction of different notice periods by limiting the possibility of expiration of the notice period when terminating the contract with observance of the notice period during the sports season, introduction of a ban on signing a new employment contract during the period in which the athlete is already bound by another contract, providing the possibility of introducing individual working time referred to in art. 142 of the Labor Code, by each party to the employment relationship, allowing disciplinary penalties to be applied in addition to the procedural liability arising from the Labor Code.

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