

Regulation and management of professional sport in Portugal

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Introduction

Sport has traditionally been an arena of self-regulation in which the courts and the legislature have respected the autonomy of the governing bodies of sport. (Foster, 2000, p.43).

This was the situation in Portugal up to the beginning of the 1940's.

The first non profit sport association appeared in 1856 and since then the sport system structured itself in sport clubs, regional associations and sport federations according to a pyramidal model similar to the other European countries, without any governmental intervention. In 1942 a decree will impose the ruling and controlling action of the State upon sport entities, athletes, coaches, officials and referees. This law did not provide any specific measure on professional sport, which was still considered by public authorities as an evil agent to the sport itself.

In 1960, the publication of a decree classifying athletes in three categories, professional, non-amateur and amateur, meant the public acknowledgement of professionalism in sport and determined the sports where they were entitled to perform their activity.

The Revolution of April 1974 changed the political regime from dictatorship to democracy. Sport becomes a different target to the Government. Since then, it was included in the 1976 Constitution of the Portuguese Republic with its own space (article 79) as an individual right of every citizen and assigning to the State, together with schools and sport associations, the promotion and diffusion of sport practice. The constitutional law used a plural concept of sport where professional sport is naturally included.

1990 represents the beginning of a new stage for the regulation of professional sport through the Framework Law of Sport System, Law 1/90, from the 13th of January. This law provides for the general principles of sport system and it will introduce changes in the status of the professional athlete, in the legal regime of sport clubs and in the organic structure of sport federations. Therefore, further laws were published developing the principles of the Framework Law in several areas of professional sport.

This paper aims at outlining the legal framework of professional sport in Portugal and establishing the effects for its management at the level of sport organisations.

Method

The positioning of professional sport in the legal Portuguese framework will be shown through the research of the main legislative documents published in the country since 1940 up to our days. For this study, we used three different interpretations: literal, historical and teleological, as well as investigation of existing elements of doctrine and jurisprudence.

Our work will be developed in two stages: firstly, we will draw the historical way followed by the legislator since professional sport was acknowledged until its current legal status. Afterwards, we will select three categories for analysis: athletes, sport clubs and sport federations, and we will analyse each of them considering what was legislated for the professional sector.

Results

The results of this research show that, although some authors have mentioned that professional sport exists in Portugal since the 40's and 50's of the 20th century, it was acknowledged by the public authorities only in 1960, when professional athletes were defined as those who earned a salary for their sport activity, non-amateur athletes were those for whom sport activity was not a profession, earning just small material compensations and amateurs were those who earned neither a salary nor any material compensation for the sport activity they performed. Professional and non-amateur athletes were allowed to compete only in football, cycling and boxing.

The new 1976 Constitution of the Portuguese Republic, the outcome of the political regime upheaval that occurred two years before, embodied sport as an individual right, assigning it a significant normative value.

Therefore, the publication of a specific law, called Framework Law of Sport System, aiming at the regulation of national sport, Law 1/90, from 13 of January, was quite natural, although somehow late. This law introduced a number of innovations concerning professional sport.

As a consequence of this law, several other laws were published regulating different aspects of professional sport. Considering the above-mentioned categories for analysis, we had the following results:

- The professional athlete is entitled to special regimes concerning labour contract, social security, labour accidents and taxation;
- Sport clubs are allowed to join professional competitions only as sport limited companies; otherwise they are entitled to remain as sport associations under a special management regime;
- Sport federations organising professional competitions must integrate the implementation of a body responsible for the organisation, regulation and discipline of professional competitions.

Discussion

Sports law is an area on the periphery of the legal domain and as such, the law's role in regulating sport is open to continual analysis, debate and evaluation (Caiger and Gardiner, 2000). Effectively, the evolution of professional sport regulation provides an excellent field for analysis and discussion, mainly in Portugal, a country Chaker (1999) characterised by its interventionist sports legislation.

Among us, sport professionalism, namely in football and cycling, appeared in the middle of the 20th century and this reality was soon acknowledged by the legislation (Law 2104, from 30 of May 1960). However, in spite of this official acknowledgement of professional sport, this law did not provide for structural changes in the professional sport. The legislator classified the athletes according to three different categories, professional, non-amateur and amateur, being authorised only the participation of professionals and non-amateur athletes in football, cycling and boxing. The legislator also established that the contracts of professional athletes would compulsorily be in writing and registered by the relevant sport federations.

A long period of time followed during which the organisation and regulation of professional sport was left to the responsibility of sport federations, in terms of organising competitions, and sport clubs, in terms of labour relations between themselves and the athletes.

This reality meant that, in a number of sports and even within the same sport, there were well established cases of professionalism where the clubs and the athletes fully assumed their rights and responsibilities in terms of social security and tax authorities, and other cases allegedly classified as amateurs just to avoid those requirements.

The transition from dictatorship to democracy in 1974 also reflected on sport, once this activity was enshrined in a number of articles of the 1976 Constitution of the Portuguese Republic. Sport became a right of every Portuguese citizen and was viewed as an area to be taken into account by the policies of housing, youth and health, among others.

However, in 1990, with the publication of the first Framework Law of Sport System the regulation of professional sport evolved significantly. This law establishes the general principles of the sport system and one of its purposes was the autonomous building and regulation of professional sport towards non-professional sport. This autonomy was represented in three areas: the athlete, the club and the federation.

As for the athlete, the Framework Law introduced the obligation of specific legal provisions to regulate the professional sport relationship between the athletes and their employers. Thus, in 1995 the government published Decree-law 305/95, from 18 of November, on the legal status of the sport labour contract, as amended by Decree-law 28/98 from 26 of June, as a consequence of the well-known Bosman judgement of the European Court of Justice. In fact, the professional athlete became an employee like many others in different areas, although with some particularities concerning labour contracts, social security system, workmen's compensation insurance and fiscal framework.

As for the sport club, the Framework Law, for the first time, clears the way for corporation-type organisations, meaning that the traditional sport associations, which are non-profit private legal persons, must assume the status of sport business corporations in order to be allowed to join professional competitions. Thus, Decree-law 146/95 from 21 of June established the legal status of sport corporation and imposed an alternative special model of management for the clubs that would remain as non-profit

associations. However, due to a number of negative points of this law, the currently in force Decree-law 67/97 from 3 of April revoked it.

Finally, as for the sport federation, the Framework Law as amended by Decree-law 19/96, from 25 of June, established an entity for professional sport with specific powers. The sport federations were forced to adapt their organisational structure to meet the new demands in terms of organisation, regulations and discipline of professional competitions creating a new entity: the professional league of clubs (Decree-law 144/93, from 26 of April as amended by Decree-law 111/97, from 9 of May).

In Portugal, there are two leagues of professional football, one league of professional basketball and one league of professional handball, all masculine. So far, these were the sports that targeted the official acknowledgement of their competitions as professionals and therefore had to comply with the requirements on the status of professional athletes, to change the legal status and to introduce deep changes in the human resources and management procedures of the clubs and their federations.

References

- Caiger A. ; Gardiner S.** (2000). Re-regulating Professional Sport in the European Union. In Caiger, A. Caiger and S. Gardiner (eds.), *Professional Sport in the EU : Regulation and Re-regulation*, pp. 1-11. T.M.C. Asser Press.
- Chaker, A.** (1999). *Study on national sports legislation in Europe*. Council of Europe Publishing.
- Foster, K.** (2000). Can sport be regulated by Europe?: An analysis of alternative models. In Caiger, A. Caiger and S. Gardiner (eds.), *Professional Sport in the EU : Regulation and Re-regulation*, pp. 43-64. T.M.C. Asser Press, The Hague.
- Gardiner, S.;** Felix, A.; James, M.; Welch, R.; O'Leary, J. (1998). *Sports Law*. Cavendish Publishing. London.
- Meirim, J.M.** (1997). *A Lei de Bases do Sistema Desportivo e o Desporto Profissional* [The framework law of the Sport System and the Professional Sport]. Separata do Boletim do Ministério da Justiça, n.º 469.
- Silance, L.** (1998): *Les sports et le droit*. Editions De Boeck & Larcier S.A.

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