

ANALYSIS OF THE REGULATION OF SPORT AS ACTIVITY OF PUBLIC INTEREST IN THE EUROPEAN UNION AND IN THE MACEDONIAN LEGISLATION

(Original scientific paper)

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Abstract

A study of the concept of public services or services of general interest is presented, with particular reference to sport as an activity of public interest. A review of the European Union sports legislation and jurisprudence, with reference to the crucial judgments is also included. Analysis on the approach of the Law on Sports in concerning sports organization and organizations of sport activities is also conducted. Relevant conclusions are presented regarding the appropriate measures for improvement of the regulations.

Keywords: *EU sport policy, law on sports, european court of justice*

INTRODUCTION

Performance of the administrative activities primarily involves the performance of public services, as activities that create and provide conditions necessary for citizens and that contribute to the general development and progress of society as a whole, which is in line with the concept of the social function of the state and the administration (Lilić, Dimitrijević & Marković, 2006). Hence, the interest for studying public services has been significant from long ago, with the aim of organizing them better, so that they could satisfy as many citizens as possible. In terms of the apprehension of the legal theory on public services, a theoretical concept of public services may be determined, according to which they represent activities performed by the state in order to satisfy certain needs of the citizens (education, science, culture, social care, health care, etc.) that are not characterized by giving orders, while in case of their interruption it would come to serious problems during the normal functioning of the society. Principles that characterize public service are: the principle of continuity, the principle of adaptation and the principle of non-mercantilism. (Akimovska Maletic, 2009).

The social, economic and cultural impact of sport, require a specific interdisciplinary scientific approach from international, European and national perspective. Hence, the regulation of sport as activity of public interest is an additional challenge in terms of effective and efficient implementation of the regulations.

METHODS

The historical method is applied during collection of data concerning the advance of sports activities regulations and case law of the EU. Primary and secondary legal EU sources (written material) are predominantly examined. Internal and external critics and evaluation of the data in the sources have been conducted. Furthermore, the study of the

research subject was realized by application of the descriptive method, i.e. its minor methods: analytical, synthetic, comparative and normative. The obtained data are treated with inductive and deductive method of interpretation of facts relevant to sports regulation in contemporary EU and Macedonian law.

The interpretation of the empirical data collected is realized by speculative and logical approach of the essence on contemporary sports law solutions.

RESULTS AND DISCUSSION

Regulation of sports activities-the model of the European Union

U legislation, public services or services of general interest, as a term accepted in the EU, have not been a subject of interest for a long time. Namely, the Treaty establishing the European Community (Nice Treaty), explicitly mentions only public services of general economic interest while services of general non-economic interest are left to be regulated by the EU Member States. However, although the term 'services of general economic interest' is used in Article 16 and 86 (2) of the Treaty, it is defined neither in it nor in the secondary legislation, i.e. regulations and directives. Considering that the term 'public service' does not exist in all legal systems or does not always include the same positions (Recommendation No. R (84) 15), the importance given by the European citizens and companies to operating and development of such services or service providing, derives from the policy of the European Union.

In the EU, there is a view that the general legal framework of the services of general interest should be based on the Union's level, while the detailed definition of the services, which should be provided and offered by these institutions, to be left as a responsibility of the Member States. It is believed that it is either not possible or relevant to have joint definitions on services of general interest or

duties originating thereof, but that the European Union must determine joint principles, such as universality and equality of access, continuity, safety, adaptability, quality, efficiency, availability, transparency, protection of users, consumers and the environment and participation of citizens, taking into consideration the specifics for each individual sector.

Within the frames of the recent reinforced interest on more specific regulation and definition of the services of general interest in the EU, the Commission has established principles and goals of its policies in the area, through the Communication on a Quality Framework for Services of General Interest (SGI) in the EU, manifested through the Communication on Services of general interest in Europe of 1996; the Communication on Services of General Interest in Europe of 2000; the Communication on A Quality Framework for Services of General Interest in Europe of 2011; the Commission Green Paper of 21 May 2003 on services of general interest ; and the White Paper on services of general interest from 2004.

The EU approach on the Services of General Economic Interest (SGEI) is mainly included in the: Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest Commission Decision of 20 December on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest; Communication from the Commission, European Union framework for State aid in the form of public service compensation and in the Commission Regulation on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest.

The increased activity of the Union contributes to seeing the need and pointing to the necessity of passing a Framework Directive for the Services of General Interest, but also to the given definition of the terms pertaining to this issue. It should be highlighted that the Directive for the services on the internal market mentions only the services that suit the economic activities, but it also implies to the non-economic activities. An intention is being noticed in Europe to consider as many services as "economic" as possible and accordingly, if the public authorities provide these services guided by social motives and not by profit, it is left to be defined as services of general economic interest, and not as services of general interest. It should still be pointed out that although public services mostly become "economic", it is not understood as "commercial" or "doing business on the market". In this aspect, the Court of Justice has determined that "any activity comprised of supply of goods and services on their market is an economic activity". (Court of Justice Decision C – 180-184/98 Pavel Pavlov and Others v Stichting Pensioenfonds Medische Specialisten (2000) ECR I – 6451). So, it can be said that the concept of universal service enables for joint principles to be defined on the Community's level, while their application to be left to the Member States, which makes possible for taking into consideration the specific situations in each country, according to the principle of subsidiarity. (Akimovska Maletić, 2006).

The Protocol on services of public interest emphasizes their value and potentially establishing a basis for a new

legal framework. The Protocol affirmed that the EU treaty provisions do not affect member states' control over their non-economic SGIs "in any way". The Commission has since stated that no new legislative frameworks for SGIs are in the pipeline (Protocol on Services of General Interest). Article 14 of the EU Treaty and the Lisbon Treaty Protocol therefore provide the legal basis for SGIs in the EU, while a series of non-legislative measures are currently being planned – such as a 'tool-kit' for public authorities and a voluntary EU-wide quality framework for social services.

Starting from the contribution of the sport towards the achievement of the intercultural dialogue in the EU, a Declaration has been adopted as an Annex to the Treaty of Amsterdam (1997), which "emphasises the social significance of sport, in particular its role in forging identity and bringing people together". In addition, politicians and sports stakeholders agree that sport can act as a tool for social integration. (Treaty of Amsterdam, 1997) According to Constantino (1999), sport appears as a new right available to all, independently of age, sex or performance. It is different concept of sport, a sport that therefore reflects the direction of the time we are living: it is volatile, it is ephemeral, it is instantaneous and it is characterized by consumption. These characteristics of the practices request new forms of organization more adequate to citizens' life styles and their personal wishes and needs in both private and public sector, especially when both sectors are competing for the same customers (Oliveira & Nancy, 2003).

A step forward in sports activities regulation was the 2007 White Paper on Sport (2007) , a primary text in which the European Union addressed sport-related issues in a extensive and inclusive mode with several aims: strategic orientation on the role of sport in Europe, encouragement of the debate on specific problems, enhancement of the visibility of sport in EU policy-making and to raise public awareness of the needs and specificities of the sport sector. The EU Commission has also issued the "Action Plan Pierre de Coubertin", the Commission with direct suggestions for additional EU actions related to sports, such as athletes' health issues, volunteering, players' agents and media rights.

The Approach of the Lisbon Treaty

The Lisbon Treaty (TFEU) has introduced a new milestone in EU sport regulation, mainly through its Article 165 (1) which reads " The Union shall contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action, while fully respecting the responsibility of the Member States for the content of teaching and the organization of education systems and their cultural and linguistic diversity. The Union shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function.

Article 165 (2) furthermore provides that "developing the European dimension in education, particularly through the teaching and dissemination of the languages of the Member States; encouraging mobility of students and teachers, by encouraging inter alia, the academic recognition of diplomas and periods of study; promoting cooperation between educational establishments; developing exchanges of information and experience on issues common to the education systems of the Member

States; encouraging the development of youth exchanges and of exchanges of socioeducational instructors, and encouraging the participation of young people in democratic life in Europe; encouraging the development of distance education; and developing the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially the youngest sportsmen and sportswomen.” Article 165 (3) provides that the Union and the Member States shall foster cooperation with third countries and the competent international organizations in the field of education and sport, in particular the Council of Europe. Article 165 (4) regulates that "the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, after consulting the Economic and Social Committee and the Committee of the Regions, shall adopt incentive measures, excluding any harmonization of the laws and regulations of

the Member States, the Council, on a proposal from the Commission, shall adopt recommendations.

Several studies (Parrish, García, Miettinen & Siekmann, 2010) suggest that the approach of article 165 introduces two main consequences in the area: application of EU free movement and competition laws and the status and coherence of EU sports policy.

The most concrete documents in the newly established competence by article 165 were the “Developing the European Dimension in Sport” and the “EU Work Plan on Sport”, adopted by the EU Ministers of Sport, both in 2011.

ECJ Jurisprudence

The case law of the European Court of Justice (ECJ) has played an extremely important role for more consistent efforts towards a common EU sports policy. Based on the Guide to EU sport policy, the following ECJ cases (Presented at table 1) have had a significant impact in this manner.

Table 1: Most important sports related ECJ Cases
(Source: Guide to EU Sport Policy)

Case:	Year	Issue:	Ruling:	Impact:
WALRAVE AND KOCH ECLI:EU:C:1974:140	1974	Nationality in Sports	Prohibition of discrimination on grounds of nationality applies as well to rules of sports federations	Sports falls within the scope of EU law as far as it constitutes an economic activity.
BOSMAN ECLI:EU:C:1995:463	1995	Transfer rules of football leagues within the EU	Allows professional EU football players movement to another club without a transfer fee at the end of their term of contract with their present team	Freedom of movement for sports people
DELIÈGE ECLI:EU:C:2000:199	2000	Selection of athletes who participate in international sport events lies within the responsibility of national sport federations since such a limitation is inherent to the organisation of sport	Selection rules for international tournaments are not contrary to EU law	Supports the specificity of sport structures and strengthens the autonomy of sport
MECA-MEDINA ECLI:EU:C:2006:492	2006	Approval of the anti-doping jurisdiction	The Court checks if the restrictions are inherent to the objectives pursued by the contested regulation and if they are “proportionate” and “limited to what is necessary to ensure the proper conduct of competitive sport”.	Assessment whether a sporting rule is compatible with EU law can only be made on a case-by-case basis.
BERNARD/OLYMPIQUE LYONNAIS CASE ECLI:EU:C:2010:143	2010	Compensation for the training of young players	Compensation fee should be based on the costs borne by the clubs in training both future professional players and those who will never play professionally.	Restriction on freedom of movement for workers.

Pursuant to the Law on Sports, a public interest in the field of sports which is under the authority of the Republic of Macedonia means: encouraging sports activities of children and youth within the national sports federations; organizing and conducting sports training and competitions for enabling athletes to achieve top sports results; encourage the realization of the programs of the sports federations of the country; encouraging and helping organizing sports events; maintenance and operation of existing and construction of sports facilities in the public interest for the country; health care, pension and disability insurance, compensation for insurance from the consequences of an accident and risks for the categorized athletes in accordance with this Law and other laws; promotion and support of the publishing activity in sport and construction and main-

tenance of the sports information network. (Law on Sports, Article 22).

In order to fulfil the public interest in the field of sports, the Government of RM brings an Annual Programme, proposed by the state administration body responsible for the affairs of the sport. The state administration body in charge of the sports determines criteria for the allocation of the Programme funds and allocates the funds to the beneficiaries. Also, this body controls the earmarked use of the funds and may stop or reclaim the allocated funds, if it determines that they are used inappropriately.

In accordance with the Law on Sports, the municipalities, the municipalities within the City of Skopje and the City of Skopje also have authority in the field of sports. When it comes to the state administration body responsible

for the affairs of the sport, in accordance with the organizational structure of public administration in the RM, it is provided that among other independent state administration bodies, an Agency for Youth and Sport is founded as a legal person. So, the Agency for Youth and Sport was established as a state administration body responsible for monitoring sports and sport and recreational activities in the field of sports; monitoring the development of professional sport and perform other duties specified by law. In accordance with the Law, the Agency establishes a professional advisory body – a Sports Council from among prominent professional, scientific and other pronounced workers in the field of sports. The Sports Council: participates in the preparation of the Programme for the development of the sport; gives opinion on the criteria for the allocation of the funds, the standards and the other acts brought by the head of the state administration body responsible for the affairs of the sport and performs other works set forth in this Law, as delegated by the head of the state administration body responsible for the affairs of the sport at least once a year.

Sports Organizations

The sports activity is performed by the sports associations and other legal persons (in the context of this law, it is the sole proprietor and the trading company registered for performing sports activity, as well as a legal entity which in addition to being registered for activities of another area, has also been registered to perform sports activity) in the field of sport, if they fulfil the conditions laid down by the Law. For the purpose of fulfilling the needs to engage in activities and protecting the rights and interests in the field of sport, citizens may freely and voluntarily associate and establish sporting associations, under the conditions and in the manner prescribed by law. A sports club is a sports association or company performing sports activity. Sports club can organize a sports school in a sport for which it has received a decision for conducting activities in sports, in accordance with the provisions of the Law on Sports. Sports club, registered as an association, may stop working as an association and register as a trading company doing sport business.

In order to be able to perform sports activities, sports clubs must meet certain conditions: to have adequate facilities; to have the proper equipment; adequate professional staff and to participate in an organized system of matches or sport and recreational activities.

The law on Sports specifically addresses the sport facilities, regarded as organized areas and facilities for the purpose of performing sports activities. When designing and constructing sports facilities, in addition to the application of standards, technical regulations, urban and other prescribed conditions, special conditions also apply regarding the functionality, equipping and safety of the facilities. The special conditions relating to functionality, safety equipping of the sports facilities are brought by the head of the state administration body responsible for the affairs of the sport. Pursuant to the Sports Law, in 2005 the Rulebook on the Classification of Sports Facilities Owned by the Republic of Macedonia was passed, which sets out the following criteria which provide conditions: for fulfilment of the public interest; for the realization of the content of the sports activities; quality assurance and capabilities to hold sports competitions for sports and recreational activities, competitions in the first, second and third degree system of matches of the national sports federations; providing opportunities for having international competitions, tourname-

nts, holding European and World Championships; previous management and investment in the facility; achieved results in the facilities and the development of sports in the appropriate environment through the results achieved. (The Law on Sports, Article 63) Management of sports facilities owned by the Republic of Macedonia is conducted by the public enterprise for management of sports facilities owned by the Republic of Macedonia.

The sport facilities owned by the municipalities, the municipalities in the City of Skopje and the City of Skopje are managed by the respective municipalities or the City of Skopje, as stipulated by law. The municipal councils and the Council of the City of Skopje pass a regulation for categorization of the sport facilities they own, based on the following criteria which provide conditions for fulfilment of the local interest: for the realization of the content of the sport activities; quality assurance and ability to hold sport competitions for sport and recreational activities, competitions in the first, second and third degree of the system of competitions of the national sport federations; providing opportunities for holding international competitions, tournaments, European and world championships; previous management and investment in the facility; the results achieved in the facility and the development of the sport in the respective area through the results achieved. The privately owned sport facilities are managed by the owners. (Law on Sports, Article 65).

For the purpose of organized monitoring and improving the status and development of the sport and running a long-term policy in sport, keeping a sports information system for sports clubs and national sports federations is determined; other legal entities; professional athletes and professional coaches; athletes and other members of sports clubs; sports results achieved; professionals; facilities; categorized athletes; awards and prizes; international sports activity; top international sports competitions; scientific and research projects in the field of sport; publishing in the field of sports and other information for the purposes of sport. The organization, leadership and IT management of the sporting system in the Republic of Macedonia is foreseen to be developed with rules adopted by the state administration body responsible for the affairs of the sport.

When it comes to the supervision of the implementation of the provisions of the Law on Sports, it should be noted that it is carried out by the Agency for Youth and Sports as a body of the state administration responsible for the affairs of the sport. Inspection, as a special kind of legal supervision, is envisaged to be performed by inspectors of the state administration body responsible for the affairs of the sport and authorized inspectors of the municipalities, the municipalities in the City of Skopje and the City of Skopje.

Recent amendments of the Law on Sports in Macedonia (adopted in 2016) tend to implement more efficient financing of the sport organizations, as well as more effective administration. These amendments (article 23-a) also refer to the distribution of the income from the special fees (acquired on the bases of the Law on Games of Chance) to the sports federations and sports clubs.

Organization of Sport Activities

According to the Law on Sports, sporting competitions and events are organized and implemented by sports clubs and national sport federations. Sporting events can also be organized by other legal entities performing sport activities, physical and legal persons, institutions and enterprises in the field of education, catering and tourism, under the cond-

itions stipulated by this Law. In doing so, certain obligations are imposed on the organizers, like providing emergency medical aid during the holding of competitions or events, not to exceed the spectators' capacity of the building and to implement the measures for preventing and disabling violent and dishonourable behaviour of the spectators. These measures are prescribed by the head of the state administration body responsible for the affairs of the sport.

When it comes to the realization of sport as an activity of public interest in the Republic of Macedonia, especially at the sports matches more frequent violent behaviour may be seen, which resulted in the adoption of appropriate legal normative (Law on Prevention of Violence and Dishonourable Behaviour at Sport Competitions) in an attempt to regulate issues related to violence and dishonourable behaviour at the sports matches, the prevention measures for the safety of the spectators, competitors and other participants in sporting events, as well as the obligations of the organizers and the powers of the competent authority for the implementation of these measures. Moreover, sports match means any individual competing in an organized system of sporting events, in accordance with the provisions of the Law on Sports. Organizers of sports matches may be sports clubs and national sports federations, as well as other legal and natural persons who organize sports matches in accordance with the provisions of the Law on Sports. Considering the importance of the issue of frequent violent behaviour at the sporting events, the Law on Prevention of Violence and Dishonourable Behaviour at Sport competitions, apart from the misdemeanour provisions for the natural and legal persons, the organizers of sporting events, sports clubs, their responsible persons, a penalty provision is also provided for the violent behaviour at sports matches for the person who enters the sports field with the sole intention to perform violence, or causes violence by entering the sports field, physically attacks the participants of the sporting event, brings in or throws items in the sports facility or sports field or among the spectators, fireworks or other explosive, flammable substances and causes physical injuries and endangers the life or health of the participants of the sport event or participates in a fight at the sport event. Such behaviour may result in imprisonment of three months to one year, while if the offense was committed in a group, a more severe sentence of six months to three years is provided for. If the offense is carried out by the group's organizer, imprisonment of one to five years is provided for. (Law on Prevention of Violence and Dishonourable Behaviour at Sport Competitions, Article 12-a).

CONCLUSION

The process of implementation of the European Sports Policy is mainly characterized by the non-restrictive approach of article 165 TFEU and additionally by the efforts of the sports and academic community towards "facilitating dialogue, sharing best practice and ensuring that sporting autonomy is conditioned on the implementation of good governance in sport", having in mind that "stakeholders favour action in the areas of health enhancing physical education, volunteering and social inclusion" (Parrish, García, Miettinen and Siekmann, 2010). One of the strongest components in just implementation of the legislative approach is the adequate response of the challenges of EU sports law, addressed by the ECJ.

When it comes to the public services in the Republic of Macedonia, it may be concluded that the general normative framework regulating public services as activities of public interest have originally been foreseen in the Constitution of

the Republic of Macedonia from 1991 and relatively later is further regulated with appropriate legislation. In terms of the exercise of sports as a public interest activity, the Law on Sports is especially important as a law generally governing this issue, as well as other legislation that generally governs public interest issues, such as the Law of the Local Self Government, the Law on the Institutions, the Law on Donations and Sponsorships in Public Activities, the Law on the Prevention of Violence and Dishonourable Behaviour at Sport Competitions and other legislation, while the bylaws further regulated the application of the legal framework for the achievement of this public activity. However, a question is raised if the existing legal framework is sufficient or there is a need for its reinforcement. The acts of violence in the fields, which have become frequent, have contributed to bringing more concrete rules for organizing matches, determining responsibility and providing penalty provisions for the perpetrators of crimes related to violent behaviour on the sport fields and competitions.

The Republic of Macedonia, as a candidate country for membership in the European Union (hereinafter EU), in order to harmonize its legislation with the EU legislation has been taking adequate measures to adapt to the European standards in certain areas, including the area of public services.

Sport, as an activity of public interest, is increasingly monitored by other state departments from various aspects, in order to determine gaps and needs for reinforcement in certain areas. Thus, it is pointed out that there is an extremely weak legislation in the field of sports, which influences the possibility for preventing corruption and conflict of interests, expressed in several obvious forms that contribute to creating awareness of powerlessness before the corruption in this sphere. It is noted that there is a lack of an organized and regulated license award system, which would be based on fulfilling previously determined criteria and standards, the lack of which enables large financial gain to individuals who have acquired positions to organize and manage sport activities in an extremely doubtful way. Also, the lack of transparency in the financing of sports clubs is also noticeable, as well as in the "purchase" of athletes, which allows the existence of corruption in the transfer of athletes without any insight and necessary control in respect to the origin, amount and spending of the funds that the clubs have available from public, private or international sources.

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