

THE SPORTS LAW REVIEW

The Sports Law Review
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THE
SPORTS LAW
REVIEW

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EDITOR'S PREFACE

In line with the increasing commercialisation of sports events, sports-related legal issues have become a matter of growing interest in the academic field, in the practice of state courts and specialised courts of arbitration, as well as in the daily operations of sports clubs and sports businesses. The number of specialised advisers is growing to keep pace with the increasing need for support in the area of sports and pertaining legal issues.

Sports law is not a single legal topic, but rather a field of law that includes a wide variety of legal areas, such as contract, corporate, intellectual property, civil procedure, arbitration and criminal law. Because of the specificity of the sports sector, where private organisations govern many important aspects of the relevant sports issues, the sports law practitioner has to be familiar not only with the pertaining statutory laws, but also with the set of private rules enacted by the sports governing bodies. While the statutory laws of a particular jurisdiction apply, as a rule, only within the borders of that particular jurisdiction, the private sets of rules of international sports federations such as FIFA, UEFA, FIS, IIHF and IAAF have worldwide reach. The profession of the sports lawyers who are familiar with these international private norms and apply them in their daily practice may, therefore, have a strong international dimension. This notwithstanding, local laws remain relevant in respect of all matters not covered by these private sets of rules, as well as in respect of local mandatory provisions that may prevail or invalidate certain provisions of regulations set forth by sports governing bodies. This was one of the principal reasons behind the launch of the present publication. Its goal is to provide a practical, business-focused analysis of recent developments and their effects on the sports law sector; it will serve as a guidebook for practitioners as to how a selected range of legal topics is dealt with under various national laws. The guidance given herein will, of course, not substitute for any particular local law advice that a party may have to seek in connection with sports-related operations and activities.

Because of certain limitations in terms of the length and complexity of the country-specific chapters, this book can only cover a selection of sports law issues, which the reader will, hopefully, find helpful. Each chapter will start by discussing the legal framework of the relevant jurisdiction permitting sports organisations, such as sports

clubs and sports governing bodies (e.g., national and international sports federations), to establish themselves and determine their organisational structure, as well as their disciplinary and other internal proceedings. The section detailing the competence and organisation of sports governing bodies will explain the degree of autonomy that sports governing bodies enjoy in the jurisdiction, particularly in terms of organisational freedoms and the right to establish an internal judiciary system to regulate a particular sport in the relevant country. The purpose of the dispute resolution system section is to outline the judiciary system for sports matters in general, including those that have been dealt with at first instance by sports governing bodies. An overview of the most relevant issues in the context of the organisation of a sports event is provided in the next section and, subsequent to that, a discussion on the commercialisation of such events and sports rights will cover the kinds of event- or sports-related rights that can be exploited, including rights relating to sponsorship, broadcasting and merchandising. This section will further analyse ownership of the relevant rights and how these rights can be transferred.

Our authors then provide sections detailing the relationships between professional sports and labour law, antitrust law and taxation in their own countries. The section devoted to specific sports issues will discuss certain acts that may qualify not only as breaches of the rules and regulations of the sports governing bodies, but also as criminal offences under local law, such as doping, betting and match fixing.

In the final sections of each chapter the authors provide a review of the year, outlining recent decisions of courts or arbitral tribunals in their respective jurisdictions that are of interest and relevance to practitioners and sports organisations in an international context, before they summarise their conclusions and the outlook for the coming period.

This first edition of *The Sports Law Review* covers 16 jurisdictions. Each chapter has been provided by renowned sports law practitioners in the relevant jurisdiction and as editor of this publication I would like to express my greatest respect for the skilful contributions of my esteemed colleagues. I trust also that each reader will find the work of these authors informative and will avail themselves at every opportunity of the valuable insights contained in these chapters.

András Gurovits

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Chapter 15

UKRAINE

*Anton Sotir*¹

I ORGANISATION OF SPORTS CLUBS AND SPORTS GOVERNING BODIES

i Organisational form

The corporate regulation of sports clubs and sports governing bodies is not governed separately by Ukrainian legislation. The functioning of clubs and sporting bodies as legal entities is regulated by general provisions applicable to all corporate entities, notably the Civil Code of Ukraine, the Law on ‘Business Entities’² and the Law on Civil Associations.³ Certain matters are regulated more specifically by the Law on Physical Culture and Sport,⁴ and indirectly by additional acts.

There are no limitations as to the organisational form of non-professional or professional clubs in Ukraine. Owners are free to determine a suitable organisational form according to the aims of the club, and the appropriate financing or taxation regime peculiar to that certain form.

As a result, among amateur clubs of all sports the most, if not the only, frequent organisational form is the non-governmental organisation (NGO) or non-profit association, which is ‘a voluntary association of natural persons or privately owned legal entities to exercise and protect the rights and freedoms, and satisfy community interests’.⁵ The reason for the popularity of this form among amateur clubs is explained by the simplicity of its creation and of its bookkeeping, as an NGO is not aimed at making

1 Anton Sotir is managing partner at GoldenGate Law Firm.

2 <http://zakon4.rada.gov.ua/laws/not/en/1576-12>.

3 <http://zakon4.rada.gov.ua/laws/not/en/4572-17>.

4 <http://zakon5.rada.gov.ua/laws/not/en/3808-12>.

5 Article 1 of the Law of Ukraine on Civil Associations (<http://zakon4.rada.gov.ua/laws/not/en/4572-17>).

a profit per se. The taxation of NGOs is simplified,⁶ while possibilities for third parties to finance NGOs are flexible and confer benefits. Therefore, municipal governments, private persons or even professional clubs may create an amateur club with private financing, attracting young athletes and contributing to the development of the sport.

Because of the more complex structures involved, and their different aims (most of the professional clubs aim to profit from their sports activity, participation in tournaments or engagement of sponsors), professional sports bodies are incorporated as commercial entities. Taking football as an example of the most legally developed sport in Ukraine, of 34 professional football clubs, the majority are established in the form of a limited liability company (similar to the limited liability company (LLC) in the United States, a private company limited by shares (Ltd) in the United Kingdom and a company with limited liability (GmbH) in Germany). This form provides privately held legal entities with flexibility in conducting business, while enabling receipt of income and external investments. Two of the professional clubs constitute private joint-stock companies, with a more complex corporate regulatory regime (neither club is listed). The rest of the clubs are organised as NGOs largely because their financing is held by municipal governments. The majority of the professional ice hockey and basketball clubs are established as LLCs, while one-third take the form of NGOs.

The Law on Physical Culture and Sport⁷ requires that sports governing bodies must be established in the form of NGOs. The aim of a sports organisation is to promote and develop a certain type of sport without earning profit, or, at least, not seeking to make profit as a principal activity. Therefore, all sports organisations are incorporated as non-profit associations.

ii Corporate governance

Ukrainian legislation does not provide any specific regulations on the corporate governance of sports legal entities. Some mandatory rules regarding sports organisations are contained in the Law on Physical Culture and Sport:⁸ the name of each particular organisation must indicate the type of sport it is connected with; also an organisation may have the status of a national organisation, provided that it is the only such organisation for that type of sport. Such national status confers additional benefits and possibilities for state financing.

For a long time there have been public discussions about the working draft of the new Law on Physical Education and Sport (Draft), which was prepared by the Ministry of Youth and Sports and may be adopted in the very near future.⁹ In the Draft, regulation of corporate issues is subject to a slightly increased level of detail; for example, the status of athletes, coaches, clubs and sports organisations, and their registration, are better defined in the Draft.

6 For more detailed information, see Section VI, *infra*.

7 Article 20 of the Law
(<http://zakon5.rada.gov.ua/laws/show/3808-12/print1443796940928362>).

8 *Ibid*.

9 http://dmsu.gov.ua/media/2014/10/16/1/Proekt_Zakony_FKS.pdf (in Ukrainian).

Because of the specificity of the sphere and the fact that most national sports organisations incorporate as internal rules and regulations those adopted by international sports bodies, sports organisations and their members are largely self-regulated. Ukrainian law on associations enables this.

iii Corporate liability

There are no specific provisions in Ukrainian legislation regarding the corporate liability of the managers and officers of sports organisation. All issues in this regard are regulated by general provisions common to ordinary entities. Thereby, the managers and officers of any sports corporate entity may be liable for the breach or excess of its duties through administrative or criminal sanctions. By way of example, such persons may be held liable for bribery, appropriation of assets or engaging in illegal schemes aimed at earning personal profit, etc.

II THE DISPUTE RESOLUTION SYSTEM

i Access to courts

According to the Constitution of Ukraine,¹⁰ any person is free to seek from the Ukrainian courts the protection of his or her rights, without any limitation. This implies that any internal procedure to resolve disputes within a corporation or organisation is not binding and the person may refer directly to the courts. This rule applies to sport.

However, the recourse to national courts will have an impact on the relations between person and sports organisation: while the case may be successful in the courts, and the organisation or other entity (club) will be obliged to comply with the court decision, the person may be subject to disciplinary sanctions or even exclusion from the organisation because of the fact of taking recourse to the courts instead of following the sports body's internal dispute resolution procedure. In such a situation the absolute right to go to the courts and the obligation to comply with the regulations of the sports organisation will apply to the person simultaneously.

Nevertheless, most sports organisations have implemented effective mechanisms for resolving disputes and provide the possibility of appeal to the independent international tribunals. While the structure varies from organisation to organisation, most of them have national dispute-resolution bodies empowered to resolve internal sports disputes (employment-related, disciplinary matters, eligibility) and an appeal arbitration clause in favour of the Court of Arbitration in Sport (CAS) in Lausanne (or, for basketball, the Basketball Arbitral Tribunal (BAT) in Geneva).

Recourse to the courts in many cases would not be efficient and would not produce the same result as referral to the sports judicial bodies. Foremost, Ukrainian judges are not familiar with specific sports issues and would be very unlikely to apply the relevant sport's internal rules and regulations. Moreover, enforcement of court decisions

10 www.justice.gov/sites/default/files/eoir/legacy/2013/11/08/constitution_14.pdf.

may be more problematic than going through an internal sports system. In any case, under the disciplinary rules of many sports organisations, recourse to the courts would lead to imposition of a disciplinary sanction.

The option for an athlete or a club to challenge a governing body's decision in the national courts arises only when all legal remedies are exhausted, including an appeal to the international arbitral tribunals. As a rule, such recourse after the final arbitral award has been rendered is meritless, or, at least, the respondent may recognise an award in Ukraine and object to any litigation on the basis of the principle of *res judicata*.

ii Sports arbitration

So far no specialised sports arbitration tribunal has been created in Ukraine for the resolution of sports-related disputes. Although the creation of such a tribunal is constantly discussed among lawyers, at the very least the relevant legislation would have to be amended to enable the tribunal's effective functioning. Foremost, it is important to understand what disputes would be resolved by such a tribunal and in what types of sport. The majority of disputes concern employment-related disputes and disciplinary matters, while the most frequent 'clients' of such a tribunal could be football, basketball and other athletes on doping-related matters. Football and basketball in Ukraine have their own effective internal systems for resolving all types of dispute, with established jurisprudence and independent appeals procedures. Furthermore, arbitrability of employment-related disputes is excluded by Ukrainian law. Consequently, the creation of a separate sports arbitration tribunal in Ukraine would require amendments to many laws and may not find support from major sports organisations. In any event, some of the latter have created their own quasi-arbitration venues to resolve all types of dispute.

In general, Ukraine is considered an arbitration-friendly country and awards rendered by CAS or BAT are subject to recognition and enforcement in Ukraine.¹¹ The requirements for arbitration agreements, contained in the Law on International Commercial Arbitration,¹² are similar to those of the UNCITRAL Model Law¹³ and the New York Convention.¹⁴

One of the examples of an effective quasi-arbitration tribunal in Ukraine is the Dispute Resolution Chamber (DRC) of the Football Federation of Ukraine (FFU).¹⁵ It may not be considered a pure arbitration venue as it resolves disputes only in football and on the basis of the FFU statutes and regulations rather than an arbitration agreement. Moreover, arbitrators are not chosen by the parties but appointed by the DRC. It functions by analogy with the FIFA Dispute Resolution Chamber. Since its creation in September 2012 the DRC has resolved over 200 disputes between football clubs, players

11 For more detailed information about international arbitration in Ukraine, see the Ukraine chapter written by GoldenGate Law Firm in *International Arbitration* (2015) Global Legal Group Ltd (http://goldengate-law.com/documents/GLI_Arbitration_in_Ukraine.pdf).

12 www.ucci.org.ua/en/legalbase/zua944002.html.

13 www.uncitral.org/pdf/english/texts/arbitration/ml-arb/06-54671_Ebook.pdf.

14 www.uncitral.org/pdf/english/texts/arbitration/NY-conv/XXII_1_e.pdf.

15 The author of this chapter is a member of this Chamber.

and coaches. Most of the cases concern employment-related disputes, while 20 per cent refer to disputes over training compensation and transfer disputes between football clubs. The DRC's internal rules constitute its 'procedural law', while the 'substantive law' is composed primarily of the contract in dispute, the internal football regulations and, subsidiarily, Ukrainian law. Any DRC decision is subject to direct appeal to CAS, providing an effective and independent control. DRC was initially created following the model recommended by FIFA and is composed of equal numbers of representatives from the clubs or leagues and the players. Such a quasi-arbitration body is an excellent example of how sports organisations may resolve internal disputes at national level, without the involvement of the national courts but simultaneously securing the principles of the right to be heard, fair proceedings and effective control through appeal.

iii Enforceability

The decisions of sports organisations are subject to internal enforcement proceedings, which vary according to the respective regulations. As a rule, sports organisations adopt a set of sanctions that may apply to persons (athlete, coach or club) for non-compliance with their final decisions or CAS or BAT awards. Such a mechanism is implemented on the basis of the international regulations of the relevant sports body. As a rule, the final decision of the sports judicial body may not be set aside or challenged.

The situation may be different when the party is seeking to enforce an arbitral award through the national courts of Ukraine on the basis of the New York Convention, which establishes general grounds for setting aside such awards.¹⁶

III ORGANISATION OF SPORTS EVENTS

i Relationship between organiser and spectator

It is important to note that there is an absence of any specific legislation regulating the sphere of sports events or relations between the organiser and spectators in Ukraine. All sports events are organised and conducted on the basis of private contracts and regulations. In other words, such matters are regulated *ad hoc*. The only exception was the hosting by Ukraine of the 2012 UEFA European Championship, or Euro 2012, in football, which led to the adoption of specific laws and regulations exclusively for the event.

ii Relationship between organiser and athletes or clubs

Any relations between the organiser and spectators, athlete, club, municipal government or sponsors are subject to a private agreement between them. Ukrainian law on contracts does not provide any specific provisions that regulate the organisation of

16 For more detailed information please see Article V of the New York Convention and the relevant section of *International Arbitration* (2015) Global Legal Group Ltd (http://goldengate-law.com/documents/GLI_Arbitration_in_Ukraine.pdf).

sports events, leaving room for the contractors themselves to define all main terms and conditions. In such circumstances, we may assume the dominant role of the principle of contractual freedom.

In contrast to privately held sports events, the government may also be an organiser and sponsor of sports events, adopting the rules and other internal provisions at a governmental level.¹⁷ In such a situation, sports organisations or governmental bodies are free to determine the rules of the competition, entrance requirements, timing, venue, awards and other important issues.

Any specific mandatory rules in this regard are absent. The main requirement is that any activity, arrangement or contract must comply with the general provisions of Ukrainian legislation and should not violate basic human rights and freedoms. When a sports event is taking place in a venue not specifically equipped or designed for it (for instance, racing on the streets), special approval from the police and the relevant municipal body is required. Another example of particular regulation in this sphere is the special measure adopted by the Cabinet of Ministers of Ukraine, the Order on the Organisation of Public Order and Public Security during Football Matches,¹⁸ whereby special provisions on the conduct of spectators, the organisation of security and cooperation with police or internal military forces are set forth to provide greater security. Obviously, such specific mandatory provisions must be taken into account by the organisers of sports events.

iii Liability of the organiser

The issue of the liability of the organiser is not a legally developed area, nor is it supported by any jurisprudence. In practice, it is very difficult to find an organiser liable for any misconduct or breach; this applies in relation to spectators or other third parties. When an event organiser has entered into a commercial agreement with someone (sponsor, building company, goods supplier, etc.) any civil liability will derive from such an agreement. Meanwhile, spectators (even those bearing a ticket) claiming damages from an organiser are unlikely to succeed. First, it is difficult to prove any damage and that the damage was caused by the actions of the organiser and to that particular person. Moreover, the person who has suffered damage may also face challenges in identifying the person against whom to bring the claim: usually several companies are involved in organising an event and it may be difficult to find the proper one; furthermore, such companies are usually established only for the event, and while the person is preparing the claim, the respondent may cease to exist or will have no assets to pay out as damages, making such a claim useless.

Criminal liability in Ukraine is applicable to natural persons only (with certain exceptions not applicable to sports events). Therefore, only persons personally responsible for an incident may be found guilty of a criminal offence and bear criminal responsibility.

17 See, for example, the Procedure for Conducting the All-Ukrainian Skydiving Competition for 2015 (www.dsmsu.gov.ua/media/2015/05/26/28/polojenja.pdf, in Ukrainian).

18 <http://zakon5.rada.gov.ua/laws/show/341-2012-%D0%BF>, Order No. 341 of 25 April 2012 (in Ukrainian).

Criminal proceedings may be initiated by the victim or *ex officio*. Nevertheless, in the hypothetical situation of any incident resulting in the serious harm or death of a spectator, it is unlikely that the organiser would be found guilty, unless their direct negligence caused such consequences.

iv Liability of the athletes

Liability of athletes during sports events is not specifically regulated and is governed by general principles of civil and criminal liability in Ukraine. Apart from disciplinary sanctions provided under internal sports rules, any misconduct that causes harm or damage to spectators or other third parties will be subject to general tort or criminal litigation in courts. Importantly, for obvious reasons, any incident on the pitch (in boxing, other martial arts, punches during basketball, football) is not investigated *ex officio* in Ukraine, and in the majority of such cases the offenders face disciplinary liability only, unless the circumstances are extraordinary and the harm is very significant.

v Liability of the spectators

Liability of spectators is subject to general regulations, in the absence of any specific regulations. Any claim, particularly civil, places a heavy burden of proof on the aggrieved party, although in the context of sports events this is sometimes easier to achieve because of the presence of video recording. As regards civil liability, there was a case in which a football club obliged by the UEFA Control, Ethics and Disciplinary Body to pay a fine for a firework having been thrown on to the pitch filed a claim against the spectator who threw it, and the Ukrainian court awarded damages to the club, obliging the person to repay the fine.¹⁹ In such circumstances, it is important to prove that the damage was caused by a particular person (here using video recordings) and the nature of the damage caused by that person's actions (in this case a fine imposed by UEFA). When any of these elements is missing, chances of success are significantly lower. Regarding criminal or administrative liability of spectators, if their actions cause harm or general disturbances in the course of the event, it is possible to make them criminally or administratively responsible on the basis of general provisions of criminal or administrative law (sanctions usually vary from fines to imprisonment) for hooliganism or other disturbances. In any event, such jurisprudence is a positive step by Ukrainian courts towards effective regulation of legal issues within sports events, and a good example of how to bring liable persons to book.

vi Riot prevention

The prevention of riots during sports events is regulated in football only by the above-mentioned Order on the Organisation of Public Order and Public Security during Football Matches.²⁰ It defines the set of organisational measures that must be taken by the organiser (stadium owner or hosting club) and local police services to organise security at

19 <http://football.ua/ukraine/248417-chernomorec-otsudil-u-bolelshhika-25-tysjach-evro.html> (in Russian).

20 See footnote 18, *supra*.

the stadium during the match. In particular, the organiser or football club is responsible for stewarding, which must be provided at the stadium, while the police should control the territory outside the stadium. A financial contribution for measures taken by police to prevent riots at sports events is not required in Ukraine.

IV COMMERCIALISATION OF SPORTS EVENTS

i Types of and ownership in rights

There are no specific laws that regulate exploitation of sports-related rights in Ukraine. Any matters in this sphere are regulated by general provisions of the Civil Code of Ukraine and specific intellectual property laws, notably the Law on Copyright and Related Rights.²¹ There is an absence of any restrictions on the kinds of sports-related right that may be exploited, hence any kind of right, including sponsorship, broadcasting, merchandising, endorsement and image rights, may be exploited.

As a rule, the initial owner of the relevant right is the creator or author of a particular right. In the case of sponsorship, merchandising or endorsement of any brand, the initial owner is the holder of a brand title. In the case of broadcasting, authors or operators of particular video recordings are considered as the initial owners of the rights, while the company that organises the broadcast or produces the TV show will be the final owner (usually on the basis of assignment contracts). Moreover, given that broadcasting assumes the participation of athletes or clubs, they also bear rights over such broadcasts and, according to the Law on Copyright and Related Rights, are entitled to a reasonable compensation. However, participation in sports events involving broadcasting per se requires assignment of the rights to the broadcaster (in the case of inter-club competitions, the clubs may negotiate the deal themselves or through a league, while in single-athlete competitions athletes, in signing the participation form, usually renounce their right to claim any compensation). Image rights that are inherent to athletes only may also be assigned to the club or a third-party user of such rights; income or other financial benefits from image-rights exploitation is subject to *ad hoc* deals between the athlete (or the athlete's club) and a commercial entity.

ii Rights protection

Ukrainian legislation on protection of IP rights is highly developed, following international standards and principles (Ukraine is a signatory to many international conventions),²²

21 <http://zakon5.rada.gov.ua/laws/annot/en/3792-12>.

22 Paris Convention for the Protection of Industrial Property (1883); Berne Convention for the Protection of Literary and Artistic Works (1886); Madrid Agreement Concerning the International Registration of Marks (1891); The Hague Agreement Concerning the International Deposit of Industrial Designs (1925) (Hague Act of 1960 and Geneva Act of 1999); Universal Convention on Copyright (1952); Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (1957); International Convention for the Protection of New Varieties of Plants (1961); International Convention for the Protection of Performers, Producers of Phonograms

providing means for effective legal protection. Although there is nothing in this sphere exclusively in relation to sports-related rights, any infringement of trademarks (in the case of sponsorship, merchandising, endorsement of particular brand) or other rights, Ukraine is IP rights owners-friendly, providing, *inter alia*, such remedies as cessation of any illegal use of the right, payment of damages arising from infringement, removal of the trademark or confusingly similar designation from the goods or destruction of counterfeit goods.

The most problematic practical issue is in relation to evidence production within court proceedings and the absence of any means of stopping the infringement immediately. The special regime adopted for Euro 2012 is, however, a good example of the potential flexibility of Ukrainian legislation for a particular sports event, notably in the context of IP rights protection.

iii Contractual provisions for exploitation of rights

As was mentioned above, absence of any specific regulations provides for a degree of discretion and contractual freedom. Flexibility of the contract is preserved and parties are free to determine any provisions they deem appropriate. The option to assign sports-related rights is prescribed by the Law.

V PROFESSIONAL SPORTS AND LABOUR LAW

i Mandatory provisions

Labour law in Ukraine desperately requires amendments. The Labour Code of Ukraine currently in force was adopted in 1972,²³ and there is an absence of any provisions on sports matters. Although there are some mandatory provisions (salary must be paid twice per month, right for holidays, double compensation for work completed during non-working hours), in the sports sphere such provisions are not effective and do not work in practice given that they do not consider the particularities of sports (the very fact that an athlete's working day is different, and that weekend working is an integral part of sports activity).

and Broadcasting Organizations (1961); Convention Establishing the World Intellectual Property Organization (WIPO) (1967); Locarno Agreement Establishing an International Classification for Industrial Designs (1968); Patent Cooperation Treaty (1970); Strasbourg Agreement Concerning the International Patent Classification (1971); Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of Their Phonograms (1971); Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks (1973); Budapest Treaty on the International Recognition of Deposits of Microorganisms for the Purposes of Patent Protection (1977); Nairobi Treaty on the Protection of the Olympic Symbol (1981); Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (1989); Trademark Law Treaty (1994); WIPO Copyright Treaty (1996); WIPO Performances and Phonograms Treaty (1996); Patent Law Treaty (2000); and Singapore Treaty on the Law of Trademarks (2006).

23 <http://zakon5.rada.gov.ua/laws/annot/en/322-08>.

Because of the absence of specific regulations, many sports are self-regulated, implementing international standards and minimum requirements from international sports bodies. An excellent example of self-regulation is football: the FFU and the Football Labour Union have for a long time implemented minimum requirements for players contracts, which all clubs must comply with. Such an initiative was also confirmed at international level, leading to the adoption of minimum standards within UEFA territory.²⁴

ii Free movement of athletes

Sports governing bodies in Ukraine bear a wide freedom to decide on internal matters, including limiting the number of foreign athletes allowed to compete in a championship. Nowadays, such limitations are established in football, basketball and ice hockey. Although these limits have never been considered by the courts or formalised on a national level, they are unlikely to be abolished. Employment relations between athlete and club are regulated by the employment contract, providing for the payment of a salary in exchange for professional services, not for participation in sports events. The limits discussed apply only to the number of foreigners who can simultaneously play on the pitch; the clubs are not limited in the number of such players to whom they can pay a salary, to attend training, or even to keep on the bench. Such a limitation does not infringe or restrict any of the player's employment rights but rather constrains the club in its use of its players, making the limitation legal in Ukraine.

iii Application of employment rules of sports governing bodies

The laws of Ukraine are silent on any objection to incorporating employment-related provisions of international bodies into employment agreements. Employment law is based on the principle of discretion: anything that is not directly forbidden by law is allowed. Therefore, sports organisations in Ukraine are vested with broad powers to regulate such issues themselves, and to draw on the developments and practice of their international governing bodies. The implementation of minimum requirements in players' contracts in football is a good example of this flexibility.

VI SPORTS AND ANTITRUST LAW

Ukrainian legislation on antitrust law is silent on any matters relating to sports. It applies generally to any sphere of commercial life in Ukraine. Antitrust law does not play as dominant a role (if any) in Ukrainian sports law as it does, for instance, in the United States.²⁵

24 Mostly because of the initiative of the International Federation of Professional Footballers. www.fifpro.org/attachments/article/5292/Autonomous%20Agreement%20on%20Minimum%20Requirements%20for%20Standard%20Player%20Contracts.pdf.

25 Limitations may apply in the sports sphere, on the basis of the Sherman Antitrust Act, to relations between professional leagues and athletes, amateur sports, etc.

Hypothetically, antitrust law may apply to sports if there were to be any violation of unfair competition law or antitrust law in general (coordinated anti-monopoly actions, abuse of monopoly status, concentration). However, in practice it is difficult to imagine a situation in which clubs or organisations would act in violation of antitrust law, given that most issues relate to price fixing of goods for third parties or unfair competition between clubs in a commercial sense. So far, there have been no cases or disputes publicly known in Ukraine in this regard. In theory, there might be a violation if clubs were to collectively and secretly agree to establish the maximum salary rate for players or coaches (which is very unlikely because of the competition between clubs and their unwillingness to cooperate), to set the minimum, and unfair, price for stadium tickets, or to adopt unfair and unreasonable sports organisation regulations (abuse of monopoly status).

VII SPORTS AND TAXATION

All issues regarding taxation in Ukraine, including sports-related matters, are regulated by the Tax Code of Ukraine.²⁶ Taxation regime of athletes, clubs and sport organisations varies depending on their corporate status.

Sports organisations are established as NGOs, which are per se non-profit entities, and as such exempt from taxation. Only the profit made as a result of conducting business activity for third parties (not its members) is subject to taxation (e.g., selling of goods, provision of services).²⁷ If a sports organisation is fully financed by the government, it is also exempt from taxation, including land tax.

The taxation of sports clubs directly depends on their corporate form. If a club is incorporated as a limited liability company or public joint-stock company, both profit-making structures, it is subject to a general tax regime (as is the case for the majority of professional football and ice hockey clubs in Ukraine). In such a situation, it is irrelevant that a company is acting in the sports sphere. Currently the corporate tax rate is 18 per cent. Where the clubs are structured as NGOs, their main activity is exempt from income tax, with the reservations mentioned above. Persons from Ukraine who make earmarked donations to amateur clubs or organisations are exempt from income tax on the amount donated, which in some way encourages the development of sports in Ukraine.

Athletes are responsible for their own taxation matters. The general rate of 15 per cent is payable on any income from sports activity unless it is a monetary award for a Ukraine national champion or international competition medallist (any such award is exempt from income status).

The Tax Code also provides for taxation of foreign athletes who earn monetary awards as a result of their sporting activity in Ukraine. The rate of 15 per cent shall be withdrawn upon payment, unless otherwise mentioned in double taxation treaties.

26 <http://zakon4.rada.gov.ua/laws/show/2755-17/print1433888202399515> (in Ukrainian).

27 Letter of the State Fiscal Service of Ukraine No. 55/6/99-99-19-03-02-15 from 8 January 2014.

Taxation for participation in international events for clubs or athletes is not explicitly provided for in the Tax Code, and should be regulated by the laws of the country where the event takes place, unless otherwise mentioned in double taxation treaties.

At present, Ukraine has signed treaties with 73 countries on avoidance of double taxation.²⁸

VIII SPECIFIC SPORTS ISSUES

i Doping

Issues relating to doping violations in Ukraine are regulated by a separate Law on 'Anti-doping Control in Sports'²⁹ and additional acts signed and ratified by Ukraine.³⁰ Adoption of recently updated regulations is currently pending. Established in 2002, the National Anti-Doping Centre is authorised by the Cabinet of Ministers of Ukraine to conduct any activity in this sphere.

General principles and disciplinary sanctions for anti-doping violations are identical to international ones. In addition to disciplinary sanctions, inducement of minors to practise doping is considered a criminal offence and subject to sanctions ranging from a fine and prohibition against undertaking certain activity to imprisonment of up to eight years if the offence were to cause serious harm to a minor's health. Doping is defined as substances and methods prohibited by the former Olympic Movement Anti-Doping Code, though courts use the definition provided by more up-to-date regulations.

Although the Ukrainian legislation still requires amendments, this area of sports law is probably the most regulated in Ukraine because of the seriousness of anti-doping violations and the importance of its regulation at the national level.

ii Betting

Currently betting is prohibited in Ukraine. The main legislation is the Law on the Prohibition of Gambling Business, defining gambling business as any activity related to, *inter alia*, the organisation of gambling in betting offices. However, this Law has a number of loopholes due to which the betting business is rapidly developing in Ukraine in circumvention of the legislation. In particular, some betting offices are registered abroad and online betting is considered as taking place outside Ukraine. Moreover, the

28 http://search.ligazakon.ua/l_doc2.nsf/link1/SH000087.html.

29 <http://zakon2.rada.gov.ua/laws/show/2353-14/print1444043643292131> (in Ukrainian), adopted on 5 April 2001.

30 World Anti-Doping Code edition 2009 (https://wada-main-prod.s3.amazonaws.com/resources/files/wada_anti-doping_code_2009_en_0.pdf); Anti-Doping Convention of 1989 (<http://conventions.coe.int/Treaty/en/Treaties/Html/135.htm>); UNESCO International Convention against Doping in Sport of 2005 (http://portal.unesco.org/en/ev.php-URL_ID=31037&URL_DO=DO_TOPIC&URL_SECTION=201.html); and Prohibited List of 2014.

term 'lottery' is not clearly defined, and as this activity is excluded from the prohibited list of activities, betting companies are free to name their activity as being a 'lottery', thereby enabling such business.

As has been noted by the Ministry of Finance,³¹ loopholes in the gambling legislation mean that it is possible to conduct activities that are actually betting, and the economy of Ukraine is thus deprived of potential income.

One example of this paradoxical situation is the fact that the current main sponsor of Ukrainian Premier League football is betting company Pari-Match.

Over the past two years the draft of the new Law on Betting Activities in Ukraine has been constantly discussed and developed, with a view to allowing betting in Ukraine with some restrictions. This in turn would enable the government both to control such activity by issuing licences and to collect taxes. This Law is expected to be adopted very soon.

At present, taking part in any unsolicited gambling activity is an administrative offence leading to sanctions ranging from a warning to a small fine and confiscation of the gambling equipment. Conducting a prohibited gambling business is considered a criminal offence, although, as mentioned above, betting companies avoid such responsibility.

iii Manipulation

Manipulation of sports results (or match fixing) is not regulated in Ukraine. There is no administrative or criminal offence for such actions. Persons may be indirectly liable for match fixing by committing bribery.

Match fixing is only regulated internally. The FFU in its disciplinary rules³² stipulates that any person who, by his or her actions, influences the outcome of a match shall be sanctioned by suspension from matches or a ban on any football-related activity with the imposition of a fine of up to US\$3,500.

Currently the draft Law on the Prevention of Corruption Offences in Relation to the Results of Official Sports Events³³ is before the Ukrainian parliament with a view to making match fixing a criminal and administrative offence. In particular, a new article in the Criminal Code would provide the sanction of a fine or imprisonment of up to five years for influencing the results of official sports events through bribery, duress or conspiracy aimed at obtaining illegal benefits for person or third parties.

iv Grey market sales

The sale of tickets on the 'grey market' is not regulated in Ukraine. Theoretically any person may buy tickets through the official channels and resell them to third persons. Because of the difficulties in controlling such activity, preventive measures are taken by event organisers. For instance, the stadiums (e.g., Donbass Arena, Olimpiyskiy Stadium

31 www.minfin.gov.ua/control/uk/publish/printable_article?art_id=402478 (in Ukrainian).

32 www.ffu.org.ua/files/ndocs_601.pdf (in Ukrainian).

33 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=55842.

or Arena Lviv) in their internal rules prohibit the resale of tickets, violation of which may lead to cancellation of season tickets or other benefits for the offenders. Also, as a rule, the number of tickets that can be bought by one person is usually limited.

In general terms, any illegal sale on the streets of any goods (including tickets) is considered an administrative offence and subject to the sanction of a small fine.

IX THE YEAR IN REVIEW

From a legal point of view this year was not significant as regards Ukrainian sports law. Legislative initiatives are still pending and the adoption of particular laws and amendments is necessary.

The adoption of the 2015 World Anti-Doping Code and an updated prohibitions list added to the workload of the National Anti-Doping Centre, while athletes and clubs were required to familiarise themselves with new rules and to understand new risks of possible breach.

In football, great changes will follow the implementation of the Regulations on Working with Intermediaries,³⁴ which have triggered the complete change of the system of intermediary services in football. The FFU adopted its own rules with a number of particularities. The changes also affect foreign intermediaries who are willing to conduct their business in Ukraine. Besides that, an interesting dispute arose in July 2015 regarding a club's eligibility for the football Premier League 2015/2016, when the rules were interpreted differently by the FFU and by the Premier League; in the end the club that was deprived of its position in the top-tier championship decided not to appeal this rather ambiguous and questionable decision.

Because of the difficult financial situation facing many sports (e.g., football and basketball) the number of employment-related disputes regarding non-payment of salaries by clubs continues to increase.

X OUTLOOK AND CONCLUSIONS

Sports law is only developing in Ukraine. Although many important issues are constantly under public discussion, the adoption of new regulations on a national level, particularly by the parliament, requires considerable time and effort. Adoption of the Law on Physical Education and Sport will not drastically change the situation, as its current draft requires serious amendments and modifications.

The situation in the sphere of betting and match fixing is expected to change soon with the adoption of new laws. The same relates to labour law, though the adoption of a new code may take another few years. The positive trend is that the current government is making a lot of reforms and national sports development may also be influenced by these changes in general.

34 GoldenGate Law Firm was directly involved in drafting the regulations. For detailed information about this topic please see http://goldengate-law.com/pdf/qa/qa_regulations_on_working_with_intermediaries_in_ukraine.pdf.

The significant interference by state bodies in all sports-related issues may, however, impede rather than assist progress. As is evident in practice, many sports organisations in Ukraine are successfully dealing with all legal matters by themselves through internal self-regulatory instruments. Nevertheless, special laws adopted at a national level and applicable to all kinds of sport may facilitate and develop certain issues in the sports sphere (i.e., anti-doping, organisation of events, specific IP rights protection, match fixing, betting, grey market ticket sales, protection of professional athletes, etc.). The attraction for Ukraine of international top-level events (EuroBasket 2017, Euro 2020, Winter Olympic Games 2022, UEFA Champions League 2018/2019) will have only a positive impact on the development and implementation of new regulations at a national level, as was seen with Euro 2012.

Appendix 1

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Anton Sotir is a managing partner at GoldenGate Law Firm. He regularly represents his clients in various international disputes, commercial arbitration and sports law cases. His experience includes handling arbitration proceedings at many institutions, including CAS, FIFA, LCIA and SCC, and before *ad hoc* tribunals. Recently his work has centred largely on sports law and sports arbitration, with football issues being the main focus.

He also serves as an arbitrator adjudicating commercial disputes, and acts as permanent arbitrator in the Dispute Resolution Chamber of the Football Federation of Ukraine. In addition, he has wide experience in enforcing arbitral awards and foreign court decisions in Ukraine. Besides his private practice, he acts as a consultant at Lombardi Associates, with a special focus on the Central and Eastern European region.

As well as holding a bachelor's degree (*summa cum laude*) from the Yaroslav Mudryi National Law University, Anton has earned an LLM degree in international commercial arbitration law from Stockholm University, an LLM in international sports law from ISDE, Madrid (from which he graduated top of the class) and obtained a certificate of advanced studies of the University of Cambridge in the field of international sports law.

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