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ABSTRACT
In article brought to your attention the perspective of contractual regulation of the relations arising concerning participation of athletes in professional sports activity is considered. In it is proved that contracts in the field have the system including the civil, labor and mixed contracts. Besides, the carried-out analysis of changes of the legislation allowed authors to speak about existence of atypical contracts in the explored area.

Authors pay attention that the legal definition of professional sport enshrined in the current legislation raises, at least, several questions. First, whether the professional sport is at the present stage of development business activity? Secondly, which of subjects of the professional sports relations has the right to carry out this activity? Summing up the result of the put perspective, authors also come to a conclusion that contractual regulation (self-regulation) and corporate (local) regulation of participants of the professional sports relations at the present stage of development of professional sport has to take the main, main place.

In general, it is summarized that the relations in the field of professional sport and remain extremely poorly settled at the legislative level.

Introduction
The sport is one of popular areas of human activity. Today sport, actively developing, takes the important place both in physical, and in spiritual culture of society, and also gains universal world character. In process of development of sport as social phenomenon need for effective legal regulation of the relations for this for the sphere appears.

The attention is paid a little more than ten years to questions of contractual regulation of the relations in the field of professional sport in civil science. Despite it is obviously necessary to note that the scientists investigating this perspective cannot come to the uniform point of view so far in a question of by what branch of the right the sports relations have to be governed. It is necessary to specify that in this work in the field of professional sport we understand the relations with participation of athletes arising concerning their participation in professional sports activity as the relations. Here the relations which are closely connected with the specified activity of athletes (for example, the relations concerning their participation in the advertising companies, the sponsor's relations, the agency relations, etc.), and also other relations in the explored area are not mentioned.

Methods
The main methods which were used during writing of the real work are: comparative and legal method, method of the complex analysis, method of interindustry approach, interpretation method, right sociological method and method of the system analysis.
Results

The Federal law existing before recent time of April 29, 1999 No. 80-FZ "About physical culture and sport in the Russian Federation" [1] (further - the Law on physical culture and sport), the theory and practice of its application, allowed us to say that the contracts signed with athletes concerning their participation in professional sports activity had the complete system including the civil, labor and mixed contracts.

At the same time, the legislation in the field of professional sport underwent cardinal changes. Here it is important to emphasize that the state, at last, began to pay closer attention to physical culture and sport in general, including, and to professional sport. The last changes of the current legislation in the explored area testify to it. In particular, since March 30, 2008 the new Federal law "About physical culture and sport in the Russian Federation [2] came into force (further - the Law on sport). That circumstance that with adoption of this Law on sport legal regulation of the relations in the sphere of physical culture and sport in general, including, and professional sport significantly changed does not raise doubts.

It is necessary to refer to the positive moments which found the legislative fixing, in our opinion, legal determination of such legal category as disqualification of the athlete. Here it is obviously necessary to note that the discussion concerning disqualification of athletes was conducted in legal literature [3] for a long time.

At the same time, the analysis of standards of the specified Law on sport demonstrates that the relations in the field of professional sport and remain, in our opinion, extremely poorly settled at the legislative level.

For example, in Art. 2 of the Law on sport it is enshrined that the professional sport is the part of sport directed to the organization and holding sports competitions for participation in which and preparation for which as the primary activity athletes earn reward from organizers of such competitions and (or) the salary. In turn the sport is a sphere of welfare activity as the set of sports which developed in the form of competitions and special practice of training of the person to them.

In earlier existing Law on physical culture and sport the professional sport was understood as business activity which purpose is the satisfaction of interests of the professional sports organizations, the athletes who chose sport the profession and the audience.

Proceeding from the analysis of the specified provisions of the law, it is possible to conclude that the legal definition of professional sport enshrined in the current law about sport raises, at least, several questions. First, whether the professional sport is at the present stage of development business activity? Secondly, which of subjects of the professional sports relations has the right to carry out this activity?

As data, at the same time, it should be noted that in the Anglo-American doctrine sport, not to mention the sports right, have no legal definition [4] at all. As it was noticed by one of the American philosophers, - "sport as religion, and does not accept definition" [5].

From our point of view, the professional sport, first of all, is business activity. This conclusion follows from the legal definition of professional sport given above. In particular, the organization and holding sports competitions in the field of professional sport is carried out for the purpose of generation of profit. Besides, athletes earn reward from their organizers for preparation for such sports competitions and participation in them as the primary activity and (or) the salary. Therefore, it is possible to conclude that business activity in the field of professional sport can be carried out both organizers of sports competitions, and their participating athletes, trainers, professional sports clubs, etc.

Framework of this work does not allow carrying out deeper and detailed analysis of provisions of Art. 2 of the Law on sport. We, first of all, are interested in the existing rules of the legislation governing the relations in the field of professional sport with participation of athletes.

So, according to Art. 24 of the Law on sport athletes have the rights on: (1) choice of sports; (2) participation in sports competitions in the chosen sports in the order established by rules of these sports and regulations (regulations)
on sports competitions; (3) the conclusion of employment contracts in the order established by the labor legislation, etc.

Besides, according to the specified provision of the law athletes regulations (regulations) on sports actions and sports competitions in which they participate are obliged to observe requirements of organizers of such actions and competitions, etc.

It is known that in connection with adoption of law on sport to the Labor Code of the Russian Federation [6] (further - the Labor Code of the Russian Federation) made also changes. In particular, the Labor Code of the Russian Federation included new chapter 54.1 "Feature of regulation of work of athletes and trainers". At first sight everything is quite logical and justified. At last, the relations with participation of athletes are settled at the legislative level. However the analysis of the specified standards of the Labor Code of the Russian Federation allows asking a question of how or how they are settled?

We find the answer to the question posed in contents of this chapter. So, in Art. 348.2 of the Labor Code of the Russian Federation it is enshrined that in the employment contract with the athlete, besides the additional conditions which are not worsening the worker's situation in comparison with the established labor legislation and other regulations containing standards of the labor law, the collective agreement, agreements, local regulations additional conditions about a procedure by the athlete of monetary payment in favor of the employer can be provided at cancellation of the employment contract in the cases provided by Art. 348.12 of the Labor Code of the Russian Federation and about the amount of the specified payment.

Further it is even more interesting. In the p. 2 of Art. 348.12 of the Labor Code of the Russian Federation it is enshrined that the condition about a duty of the athlete to make in favor of the employer monetary payment in case of cancellation of the employment contract at the initiative of the athlete (at own will) without valid excuse, and also in case of cancellation of the employment contract at the initiative of the employer on the bases which belong to disciplinary punishments can be provided in the employment contract with the athlete. Besides, the amount of such monetary payment is defined by the employment contract (the p. 3 of Art. 348.12 of the Labor Code of the Russian Federation).

Within this work it is not possible to analyze in more detail the specified standards now of the law regarding their compliance to the Constitution of the Russian Federation and the general beginnings and the principles of the labor legislation as such scientific analysis will demand much bigger volume, than this work in general. At the same time, we will not be able to do without the general analysis of some (corporate) local acts of subjects of the professional sports relations, competent to adopt similar acts, on the example of professional hockey.

In particular, we will address "Constitution" of hockey - to Legal Regulations [7] (further Legal Regulations) the Continental Hockey League (further - KHL, League). Chapter 4 of the specified Legal Regulations is called "Contracts". According to item 1 of Art. 16 of Legal Regulations the contract is the bilateral agreement about establishment of the labor relations between the club and the hockey player defining belonging of the athlete (hockey player) to the sports organization (club) according to the legislation of the Russian Federation. Proceeding from the content of the specified norm, there is a question of how to understand that circumstance that the employment contract (the contract in this case) defines "the athlete's accessory" (hockey player), to club (the sports organization)? Moreover this "the athlete's accessory" is defined by the federal law.

In item 2 of the specified article of Legal Regulations it is enshrined that the contract has to be concluded only according to the Standard forms approved by KHL. The standard forms of standard contracts of the hockey player of KHL included in Legal Regulations get force of local regulations of KHL. The contracts other than the Standard form, to registration in League are not accepted and the complaints on them are not reviewed.

The further analysis only of this article of Legal Regulations of KHL raises a set of questions, answers to which still should be given to both the legal doctrine, and practice. So, for example, in items 11 and 12 of Art. 16 it is enshrined that the contract is the full agreement between the parties. Oral arrangements are not valid. All changes in the
standard contract of the hockey player of KHL after his registration in CIB KHL are strictly forbidden. Any hockey player has no right to participate in the competitions held by KHL without existence of the contract with club registered in CIB KHL.

The contract contains exhaustive provisions of all mutual arrangements between the hockey player and club. The conclusion of confidential annexes to the standard contract of the hockey player of League is not allowed. Adjustment or change of any sections, articles, provisions of the contract is not allowed.

Considering the specified provisions, existence and contents of item 8 of Art. 16 of Legal Regulations in which it is recorded that before signing of the contract the hockey player and club have to study attentively its text to be sure that all conditions and obligations stipulated earlier are included in the contract, both its contents, and treatment is not absolutely clear are clear to the parties. First, all conditions and obligations of the parties are already included by League in the contract and offered the parties. Secondly, adjustment or change of any sections, articles, provisions of such contract are not allowed as the contract contains exhaustive provisions of all mutual arrangements of the parties (item 10 of Art. 16). Thirdly, all other forms and types of contracts are considered as inadmissible, are not accepted and are not considered by League (item 9 of Art. 16). Fourthly, the conclusion of confidential annexes to such contract is not allowed.

Besides, owing to item 14 of the analyzed article of Legal Regulations the contract concluded between the hockey player and club comes into force from the moment of its signing by the parties, but only regarding regulation of the labor relations. Regarding regulation of other relations following from local regulations of League, the contract comes into force from the moment of his statement and registration in League. At the same time any hockey player has no right to participate in the competitions held by League without existence of the contract with club approved and registered by League (item 12 of Art. 16).

Thus, the conclusion of the contract a boundary the hockey player and club actually does not generate any legal consequences as if such contract does not undergo the procedure of the statement and registration in League, then the athlete will not be able to perform the main labor function - participation in sports competitions.

From the carried-out analysis only of one article 16 of Legal Regulations it is possible to conclude that the standard contract of the hockey player of League cannot be carried neither to the employment contract, nor to civil, nor to the mixed or not named contract. Obviously, it is necessary recognize the similar contract as the atypical contract, however, not has to break such contract the fundamental principles and standards of both the civil, and labor law, and also the subjective rights of its parties, first of all, athletes.

From the point of view of the right, regulations on the bases of cancellation of such contract are even more interesting. In particular, according to Art. 31 of Legal Regulations in case of early cancellation of the contract at the initiative of the hockey player (at own will) the hockey player is obliged to make in favor of club with which the contract, monetary payment in the following order and the sizes was terminated: (1) if the hockey player did not reach by the time of cancellation of the contract of age of 29 years, it pays to club 2/3 from the sum of the salary unpaid for the period which remained before the contract expiration; (2) if the hockey player reached by the time of cancellation of the contract of age of 29 years, it pays to club 1/3 from the sum of the salary unpaid for the period which remained before the contract expiration. To be fair it should be noted that under the agreement between club and the hockey player the contract can be also terminated without payment of compensation from the hockey player. That circumstance that the basis for monetary payment is now, first of all, the Labor Code of the Russian Federation (Art. 348.12), the agreement on cancellation of the contract, the contract and Legal Regulations is interesting.

Besides, that it was untempting to athlete to address to judicial authorities of judicial system behind protection of the violated subjective rights, all disputes, disagreements or requirements which arose from the contract relations between club and the hockey player are subject to consideration by Disciplinary committee according to Disciplinary regulations of KHL. At the same time, Decisions of Disciplinary committee can be appealed in Sports Arbitration Court.
Discussion

It is known that before recent time the different opinions existed in view of existence of collisions between the separate provisions of the law about physical culture and sport, in particular, of Art. 2 and Art. 24 of this law. Proceeding from provisions of the specified provisions of the law about physical culture and sport, one scientist believed that activity of professional athletes could be regulated by standards of both the civil, and labor law [8], others, on the contrary, adhered to the point of view that such activity could be regulated only by standards of the labor law [9].

Some foreign researchers pay attention to the multilateral nature of accession when the athlete at the time of application about participation in a sporting event actually expresses consent to distribution on it of the norms and regulations on this competition established by his organizers. As participants of sports competitions also various sports organizations which submit applications for participation in competitions often act, agreeing with action of norms on competitions. Distribution of such norms concerning athletes is made out by the employment and civil contracts signed between athletes and the sports organizations [10].

Our point of view in the matter is wider. It should be noted that in the sports right such interindustry principles as freedom of the contract, inevitability of legal responsibility for commission of an offense, etc. find the application. Thus, in general the analysis of the legislation on professional sport and practice of its application, is allowed to claim that the relations between the main subjects of the professional sports relations (athletes and professional sports clubs) could be regulated with the help of the either the civil, or labor, or mixed contracts [11].

Existence of the mixed contracts containing various industries’ conditions, for example, civil and labor law is recognized also by the civil doctrine [12]. Besides, and legal practice does not deny existence of the similar mixed contracts containing such various industries’ conditions (labor and civil) [13].

From our point of view, at development of conditions of the similar mixed contracts, first of all, and in the field of professional sport, it is important not to allow attempts of substitution of norms of one branch of the right another. If the employment contract is the basic, then conditions of civil character can be applied as additional. In turn, in the civil contract as additional conditions of the employment contract can be applied. At the same time the main terms of the contract is applied depending on that what means of branch of the right governing such relations (civil or labor). Here, in our opinion, it should be noted that the main conditions differ from additional conditions not only on branch accessory, but also on their volume and value in the concrete contract.

Summary

Summing up the result of the put perspective, it is represented proved to draw the following conclusions:

Speaking about contractual regulation of professional sports activity at the present stage of its development, we have to talk, first of all, about self-regulation of participants of the economic relations as the most effective way of the organization of economic activity including professional sports activity. It is obvious that participation in professional sports activity by the legal nature means implementation of the rights and fulfillment of duties following from the contracts signed between athletes and their contractors (first of all, clubs). As E. A. Sukhanov fairly notes, the civil contract gives the chance to participants freely to align the interests and the purposes, to define necessary actions for their achievement and gives to results of such coordination the validity, obligatory for the parties, providing it compulsory realization if necessary [14].

Foreign researchers specify that autonomy of sport is defined not by model of intervention of the state to the sphere of sport in general, and extent of coexistence of the legislation and a special sports standard array [15].
If to consider that at the legislative level of the relation in the field of professional sport concerning participation of athletes in professional sports activity are settled rather poorly, then contractual regulation (self-regulation) and corporate (local) regulation of participants of the professional sports relations at the present stage of development of professional sport has to occupy, in our opinion, the main, main place [16].

The carried-out analysis of standards of Legal Regulations of KHL shows that the majority of these norms inevitably lead to violation of the subjective rights of athletes. Moreover, as not paradoxically it looks, but such violations are authorized by the legislator.

Conclusions

Considering the above, we will note that the perspective of contractual regulation of the relations arising concerning participation of athletes in professional sports activity today is urgent and demands more detailed, in-depth study. The legislation in the field of regulation of professional sport demands further improvement. In this regard we will devote our following publications without fail to a research of questions of protection and protection of the subjective rights of athletes.

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References


