

## THE PROBLEM OF THE SPORTS LAW BRANCH DISSOCIATION IN UKRAINE

by *Tihonova M.A.* \*

SUMMARY: 1. Sports Law in Ukraine – 2. Branches of Law in USSR – 3. Methods Legal Regulation – 4. Sports Law As An Independent Branch of Law

The author notes that the theory of law provides two kinds of system formation: the system of law and the law branch. The author substantiates sports law as a complex area of the legislation.

KEY WORDS: system of law, law branch, complex area of law, sports law.

### *1. Sports Law in Ukraine*

Nowadays, there is a very fashionable concept of “Sports Law” both in Russian and Ukrainian literature. Textbooks on sports law,<sup>1</sup> on international sports law<sup>2</sup> are published, people work in the field of sports law, there is a vocabulary of sports law terms,<sup>3</sup> the forms of sports disputes consideration are researched<sup>4</sup> etc. This movement has not gained such a revolution in Ukraine, but the closer we are to 2012, the more and more we will face this new and not quite clear term “sports law”.

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<sup>1</sup> Alekseev S.V. Sports Law in Russia. Legal Basis of Physical Culture and Sports: A textbook for university students studying in the field 021,100 “Law” and 022,300 “Physical Culture and Sports” / Editor by Prof. P.V. Krashennikov. - M.: UNITY-DANA, Law and Order, 2005 - 671 p.

<sup>2</sup> Alekseev S.V. International sports law. Textbook / S.V. Alekseev - M.: Law and Order, UNITY-DANA, 2008. - 895 p.

<sup>3</sup> Bordyuhova A. Glossary for sports rights / [Compiled by Anna Y. Bordyuhova] K.: Justinian, 2007. 144 p.

<sup>4</sup> Pogosyan E.V. Forms of the resolution of sports disputes: monograph / E.V. Pogosyan, Preface V. Yarkov. - M.: Wolters Kluwer, 2011. – 160 p. - (Series “The Civil and the arbitration process: a modern view”).

The purpose of this article is an attempt to understand whether it is necessary and possible to dissociate sports law as a separate branch of law or a complex law branch or a complex legislation branch.

## 2. *Branches of Law in USSR*

There are two kinds of system formations in the theory of law: law branch and legislation branch.

S.S. Alekseev defined law branch as: “the main branch of law system which is characterized by a specific regime of legal regulation, affecting entire areas of similar public relations”.<sup>5</sup> “...Law as a unified legal system of the USSR (which includes the legal subsystems of Republics) composed of this kind of large, isolated from each other parts, which are called law branches”.<sup>6</sup> Skakun O.F. defines the law branch as a relatively independent set of legal norms regulating the quality of similar sphere of social relations by specific method of legal regulation.<sup>7</sup>

Each law branch has several features that distinguish one from another. Each branch has a subject, i.e. a special sphere of social life, a special kind of similar social relations (constitutional, labor, land, relations of social guaranteeing, etc.). Each branch has “its legislation” – generally independent codes, and other codified statutes. Thus, the criminal law branch corresponds to criminal legislation with the Criminal Code; the civil law branch to civil legislation with the Civil Code, etc.

The main feature of each law branch is the existence of a special legal regime (“the method of regulation”), which characterizes how (by permissions, prohibitions, and obligations) legal regulation is realized. For example, civil law, labor law regulates permission, criminal law regulates prohibitions, and administrative law regulates obligations. A qualified legal practitioner knows that the designation of legal, criminal, labor, family affairs suggests that in this case there is a special legal order, which is typical for the branch with a “name” which denotes the case.<sup>8</sup>

Thus, the presence of its subject and its own method allows us to assert that this system of legal norms, institutions regulating similar social relations, constitute separate law branch. This is the classic formula of law branch.

## 3. *Methods Legal Regulation*

Under the subject of legal regulation we understand actual relations of people, which objectively need legal mediation. Their range is wide enough and various –

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<sup>5</sup> Alekseyev S.S. Right. Alphabet. Theory. Philosophy. Experience of complex research. - M.: Norma Publishing Group - INFRA M, 1998, p. 48.

<sup>6</sup> Alekseyev S.S. The structure of Soviet law / Alekseyev S.S. M. Law Literature, 1975, p. 161.

<sup>7</sup> Skakun O.F. Theory of State and Law: A Textbook. Kharkov: Konsum, University of internal affairs, 2000, p. 266.

<sup>8</sup> Alekseyev S.S. Right. Alphabet. Theory. Philosophy. Experience of complex research. - M.: Norma Publishing Group - INFRA M, 1998, p. 48.

labour, administrative, property, land, family and some other relations. The following features are inherent to them: 1) vital relations for the person and his/her associations, 2) strong-willed, purposeful (reasonable) relations, 3) steady, repeating and typical relations; 4) behavioral relations, which can be supervised (for example, by jurisdiction departments).<sup>9</sup>

Under the method of legal regulation we understand a set of legal techniques that influence people behavior developed as a result of prolonged human relationship. Regulating public relations various methods are used: imperative and permission, alternative and recommendatory, encouragements and punishments. Their use depends on the contents of relations, the discretion of the legislator, the developed legal practice, a level of legal culture of the population. The named methods can operate independently and in aggregate, in interaction with each other.

The most widespread and polar under their characteristics are imperative and permission methods. The imperative method is constructed on relations of a subordination of some legal subjects to others. It is typical to administrative, criminal and executive law. The permission method assumes equality of the parties and is applied in branches of private law (civil, labour, family).<sup>10</sup>

#### *4. Sports Law As An Independent Branch of Law*

Certainly, we cannot allocate either a separate subject or a separate method in sports law. Serdjukov O.V., correctly has noted in this occasion that weakness of the approach to the sports law as to independent law branch is found out because of impossibility to allocate special methods of the legal regulation inherent in the sports law. And absence of a special branch mode which assumes, that the norms behind its limits are inapplicable to the relations adjustable by law branch.<sup>11</sup>

Generally the problem of allocation of separate law branches exists for a long time. Nowadays, there are much more separate law branches than methods of legal regulation (economic law, medical law, tax law, budget law, information law, land law, environmental law, maritime law, commercial law, etc.).

V.G.Beljaev suggested accepting an independent kind of the legal responsibility as a criterion of allocation of law branch. In his opinion "...it is possible to allocate law branch by the most strong attribute - the presence or absence of institute of own branch responsibility".<sup>12</sup> This criterion could promote to allocate new law branches. It is possible to allocate such kind of the responsibility as sports disqualification - disqualifying a sportsman from participation in sports

<sup>9</sup> Alekseyev S.S., Arkhipov S.I., Korelsky V.M. and others. Theory of law. Textbook / Editer by S.S. Alekseev. – M. 1998, - p. 270.

<sup>10</sup> Alekseyev S.S., Arkhipov S.I., Korelsky V.M. and others. Theory of law. Textbook / Editer by S.S. Alekseev. – M. 1998, - p. 270.

<sup>11</sup> A.V. Serdyukov. Sports law as a complex branch of legislation. Abstract of dissertation for the degree of Candidate of Legal Sciences. - Moscow, 2000. -p. 18.

<sup>12</sup> I.A Ivannikov. Actual problems of development of branches of Russian law // [www.journal-nio.com/index.php?option=com\\_content&view=article&id=149%3Apubl&catid=38&Itemid=77](http://www.journal-nio.com/index.php?option=com_content&view=article&id=149%3Apubl&catid=38&Itemid=77).

competitions carried out by the sports organization for infringement of rules of a kind of sports, regulations (rules) of sports competitions, for use of the means (dope) forbidden in sports and (or) methods, infringement of the norms approved by the international sports organizations. V.A. Tarhov said: «... Law branches and branch of the legislation should coincide».<sup>13</sup>

The branch of the legislation is big associations of legal acts, laws of the certain spheres of legal regulation of public relations which are characterized by unity of the contents, the form and have system communications among them... In some cases the branch of the legislation coincides with law branch (criminal, civil), in others with law subbranches (the author's, water legislation). Even law institutes (for example: inheritance in civil law) have the legislation. There is also a complex legislation (economic, transport, military, etc.), containing norms of several law branches regulating various kinds of public relations and consequently has no own subject and method.<sup>14</sup> Legal features of the social norms entering into a complex branch are divided into two locations. By the main parameters (method and the mechanism of legal regulation) they belong to this or that basic branch, are submitted to its common norms, principles, positions. Their structural attributes, features of a method and mechanism of regulation are expressed in these common norms, principles and positions. Hence, it is possible to define absolutely precisely in each concrete case, which basic branch this special norm concerns to.<sup>15</sup>

S.V.Alekseev defines the sports law as a specialized complex law branch which represents the system connected by internal unity interconnected legal and also corporate norms which fix the main principles, forms and the order of sports activity.<sup>16</sup>

The problem of legal existence of complex law branches and complex branches of the legislation is rather old. Many scientists support the first thesis, but there are many of those who consider impossible the existence of complex law branch and consider that the complex branch can be only a branch of the legislation [16]. We support S.S. Alekseev's point of view which in 1961 wrote, that all those sets of norms which are concerned to complex branches in the literature (the law of shipping, maritime law, insurance law, banking law, etc.), actually are not divisions of objectively existing law systems. All of them can be concerned as to branches of the legislation or to branches of a legal science<sup>17</sup> (though S.S. Alekseev has changed

<sup>13</sup> I.A Ivannikov. Actual problems of development of branches of Russian law // [www.journal-nio.com/index.php?option=com\\_content&view=article&id=149%3Apubl&catid=38&Itemid=77](http://www.journal-nio.com/index.php?option=com_content&view=article&id=149%3Apubl&catid=38&Itemid=77).

<sup>14</sup> Skakun O.F. Theory of State and Law: A Textbook. Kharkov: Konsum, University of internal affairs, 2000, p. 273.

<sup>15</sup> Bratanovsky S.N. Sports Law as a branch of the Russian Law // [www.justicemaker.ru/view-article.php?id=26&art=1164](http://www.justicemaker.ru/view-article.php?id=26&art=1164)

<sup>16</sup> Alekseev S.V. Sports Law in Russia. Legal Basis of Physical Culture and Sports: A textbook for university students studying in the field 021,100 "Law" and 022,300 "Physical Culture and Sports" / Editor by Prof. P.V. Krashennikov. - M.: UNITY-DANA, Law and Order, 2005 - p. 133

<sup>17</sup> Polenina S.V. Complex legal institutions and the establishment of new branches of the right // Legal - 1975. - N° 3. - p. 73.

his opinion during the last years<sup>18</sup>).

The complex branch of the legislation is characterized that it includes norms of several law branches regulating various rules under the specific contents of public relations, making rather independent the sphere of a public life. A subject of regulation of complex branches of the legislation unlike law branches is not the kind, but the sphere of public relations uniting their various kinds. Being a subject of regulation of norms of several law branches, they at the same time have the unity caused by a generality of circuits and tasks of human activity. The unity and interosculation of branch groups of public relations define a generality and interrelation of law norms regulating them.

E.V. Pogosjan correctly adds that we should talk about complex character of the legal norms regulating sports relations.<sup>19</sup> Alongside with norms of the civil law, defining a legal status and activity of the organizations in the sphere of professional and amateur (it is added by me - M.A.Tihonova) sports, the norms of the labour law fixing a legal status of the sportsman, the trainer, the attendants and other participants of relations in the sphere of physical culture and sports (is added by me - M.A.Tihonova), norms of the administrative, tax law, concern the state management in the field of sports... However, on the other hand, sports relations are regulated also by the internal rules established within the limits of the sports organizations, both on national, and on international levels. First of all, these rules concern the order of carrying out sports competitions, i.e. the norms regulating sports relations are dispersed under various legal acts.<sup>20</sup>

S.V. Alekseev understands an organic complex of the public relations arising in the sphere of physical training and sports as a subject of the sports law - labour and social guaranteeing, state and administrative, financial and resource maintenance, economic (enterprise), criminal and legal, in the field of sports traumatology and counteraction to dope abuse, international, and also remedial (concerning settlement of sports disputes).<sup>21</sup> But S.V. Alekseev has not allocated also property and personal non-property relations of subjects of the sports law, and organizational relations about which O.A. Krasavchikov has mentioned.<sup>22</sup> Participants of sports relations can also be subjects of intellectual property law. So, we consider that a subject of the sports law is the actual relations of people developed in the sphere of physical training and sports.

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<sup>18</sup> Alekseyev S.S. Problems of the theory of law. A course of lectures in two volumes. Volume 1. - Sverdlovsk, 1972. - p. 143-152.

<sup>19</sup> Pogosyan E.V. Forms of the resolution of sports disputes: monograph / E.V. Pogosyan, Preface V. Yarkov. - M.: Wolters Kluwer, 2011. -p. 3 - (Series "The Civil and the arbitration process: a modern view").

<sup>20</sup> Pogosyan E.V. Forms of the resolution of sports disputes: monograph / E.V. Pogosyan, Preface V. Yarkov. - M.: Wolters Kluwer, 2011. -p. 3 - (Series "The Civil and the arbitration process: a modern view").

<sup>21</sup> Alekseev S.V. Sports Law in Russia. Legal Basis of Physical Culture and Sports: A textbook for university students studying in the field 021,100 "Law" and 022,300 "Physical Culture and Sports" / Editer by Prof. P.V. Krashennikov. - M.: UNITY-DANA, Law and Order, 2005 - p. 131

<sup>22</sup> Krasavchikov O.A Civil legal organizational relations // Soviet State and Law, 1966,<sup>1</sup> 10, - p.53-57.

Besides the proof of validity that the sports law should be considered as a complex branch of the legislation is the fact that it has all necessary attributes:

- Presence of a single subject of legal regulation - specific relations in sports;
- Presence of a basic document - the Law of Ukraine “On Physical Culture and Sport”;
- Presence of a large number of sources of sports law at various levels, their consistency with each other and their continuous development;
- Presence of the special representative of executive power that carries out the function of normative regulation of the Physical Culture and Sport - Ministry of Ukraine for Family, Youth and Sports;
- Presence of institutes of the sports law which are not characteristic for other structural parts of systems of law and legislation (for example, Institute of the International Olympic Law);
- The modern state policy and regulation in the field of physical training and sports, provides reduction of all files of “sports” normative legal acts harmonious system in view of understanding of the sports law as a complex branch of the legislation.

As to the foreign states in the light of a problem of allocation of the sports law as a separate law branch is not present unequivocal opinion and among the western scientists. Though under the legislation of the majority of European states the sports law represents a special complex branch of universal and obligatory norms, which are formed by the state and a civil society, which covers applications of law norms in the sports environment and legal regulation of relations between participants of sports movement and sports activity (spectators, sportsmen, trainers, the sports organizations, etc.).<sup>23</sup>

In Wikipedia sports law is defined in the following way sports law is an umbrella term used to describe the legal issues at work in the world of both amateur and professional sports. Sports law overlaps substantially with labor law, contract law, antitrust law, and tort law. Issues like defamation and privacy rights are also an integral aspect of sports law. The area of law was established as a separate and important entity only a few decades ago, coinciding with the rise of player-agents and increased media scrutiny of sports law topics.<sup>24</sup> A similar definition was given by lawyers from Cornell University - the sports law in the unique image combines antimonopoly, contractual, the law of torts, that show a variety of the relations developing in sphere of sports.<sup>25</sup>

On site T.M.C. Asser Institute it is said that sports law is a fast expanding and developing area of legal debate and inquiry. It is both an area of significant

<sup>23</sup> Pogosyan E.V. Forms of the resolution of sports disputes: monograph / E.V. Pogosyan, Preface V. Yarkov. - M.: Wolters Kluwer, 2011. – p. 4 - (Series “The Civil and the arbitration process: a modern view”).

<sup>24</sup> Sports law [http://en.wikipedia.org/wiki/Sports\\_law](http://en.wikipedia.org/wiki/Sports_law).

<sup>25</sup> Pogosyan E.V. Forms of the resolution of sports disputes: monograph / E.V. Pogosyan, Preface V. Yarkov. - M.: Wolters Kluwer, 2011. – p. 4-5 - (Series “The Civil and the arbitration process: a modern view”).

practitioner activity and of increasing academic analysis. Of course, the private rules of the national and international sports world itself form the backbone of sports law. However, sports activities are as much influenced by ordinary rules of public law. These can even be rules of public international law as the famous Bosman verdict of the European Court of Justice, leading to the reform of the transfer system in professional football, made very dear. Sports law is essentially an applied area of law, with sport the context within which the law operates, and it potentially includes the whole spectrum of traditional legal scholarship.<sup>26</sup>

Edward Grejson (one of the first-ever experts under the relations arising in the sphere of sports<sup>27</sup>) considers, that there is no such legal discipline as the sports law, at it is not present a legal ground as either the common law or equity have not created the concept of the legal discipline concerning the sphere of sports. Each law branch anyhow regulates sports-legal questions, but it does not create new branch of the law.<sup>28</sup>

And it is possible to agree with this opinion. It is impossible to allocate the sports law in a complex branch of the law.<sup>29</sup> But a complex branch of the legislation the sports law has already occurred. So, the sports law is a complex branch of the legislation which has the developed structure of the statutory acts regulating public relations, developing between participants in the sphere of physical training and sports.

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<sup>26</sup> The International Sports Law Centre at the T.M.C. Asser Institute: from National Project to International Centre [www.asser.nl/default.aspx?site\\_id=11&level1=13906&level2=13943](http://www.asser.nl/default.aspx?site_id=11&level1=13906&level2=13943).

<sup>27</sup> Edward Grayson: barrister and specialist on sport and the law // [www.timesonline.co.uk/tol/comment/obituaries/article4855567.ece](http://www.timesonline.co.uk/tol/comment/obituaries/article4855567.ece).

<sup>28</sup> Pogosyan E.V. Forms of the resolution of sports disputes: monograph / E.V. Pogosyan, Preface V. Yarkov. - M.: Wolters Kluwer, 2011. – p. 5 - (Series “The Civil and the arbitration process: a modern view”).

<sup>29</sup> SS Alekseev said: “In most cases, when the branch of the legislation is historically formed, it simultaneously means, that there is a formation of a special law branch... It is connected by the fact that isolation of this or that area of the legislation already means transformation in the legal matter [19, 148-149].