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LEGAL REGULATION OF SPORTS AGENTS' ACTIVITY IN THE RUSSIAN FEDERATION

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I. INTRODUCTION

Nowadays, at an international level in the field of sports, it is possible to speak about the practically generated market of the services provided by sports lawyers, managers, and promoters. The significant increase of athletes' salaries is one of the major factors that has increased not only the interest, but also the financial possibility of athletes to entrust management of their business to people who specialize in sports law and sports marketing. The development of the profession of the sports agent, whose functions include solving many problems arising during representation of their clients besides providing legal services to athletes, has raised the urgent question about legal regulation of this activity, first of all, by corporate acts of sports federations and other sports associations. In the present report, I will examine the legal problems of sports agents' activity in the Russian Federation based on the analysis of offering and supplying the present services in the field of sports.

II. GENERAL ASPECTS OF LEGAL REGULATION OF SPORTS AGENTS' ACTIVITY IN THE RUSSIAN FEDERATION

General aspects of agents' business in the Russian Federation are regulated by federal legislation. According to provisions of the Civil Code of the Russian Federation, an agency contract is an agreement under which "one party (agent) commits itself with execution of legal and other actions by order of the other party (principal) for a fee, as well as other actions on its own behalf, but at the expense of the principal or on behalf and at the expense of the principal."¹

The basic legislative act that regulates relations in the sports sphere in Russia, the Federal Law on Physical Culture and Sports in the Russian

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1. See GRAZHDANSKII KODEKS RF (CIVIL CODE) [GK RF] art. 1005 (Russ.).

Federation of 1999,² (as well as the Federal Law on the Fundamentals of the Legislation on Physical Culture and Sports in the Russian Federation of 1993,³ which was previously in force) does not contain any provisions regarding sports agents. Thus, the legal status of sports agents in Russia is defined by corporate acts of national and international sports associations.

A. Sports Agents' Regulations in Professional Football

The Federation Internationale de Football Association (FIFA) *Players' Agents Regulations* of 2000 have become the basis for development of corresponding rules by the Russian Football Union (RFU).⁴ The purpose of these rules is to regulate professional responsibilities of sports agents who represent football players and clubs within the Russian Federation. The national football agents' regulations developed by the RFU do not contain any essential differences that distinguish it from the FIFA corporate act mentioned above. That is why the RFU agents' regulations will undoubtedly be amended by some provisions with more detailed regulation of the legal status of football agents in the Russian Federation. The present documents are aimed at maintenance of FIFA and RFU rules for the status and transfer of players.

In accordance with Article 5, Paragraph 2 of the FIFA *Players' Agents Regulations*,⁵ the RFU's Commission on Attestation of Football Players' Agents held its first examinations on receiving of the appropriate legal status by applicants in March and September 2002. Examination questions, except those set by FIFA, were developed by the RFU lawyers.⁶ These specialists considered it necessary to include questions concerning the legislative demands of conclusion and termination of employment contracts as stipulated by the new Labour Code of the Russian Federation, which has been effective since February 1, 2002, in examination papers.⁷ Such a decision is based on the provision of Article 25 of the Federal Law on Physical Culture and Sports in the Russian Federation that defines a contract on sports activities as an agreement, which is concluded on the basis of the labor legislation of the

2. See *Sobranie Zakonodatel'stva RF* [Sobr. Zakonod. RF], 1999, No. 80-FZ.

3. See *Sobr. Zakonod. RF*, 1993, No. 1973.

4. See generally FED'N INT'L DE FOOTBALL ASS'N, PLAYERS' AGENTS REGULATIONS (2000), available at http://www.fifa.com/organisation/Players_agents_regulations_EFSD_2003.pdf [hereinafter FIFA PLAYERS' AGENTS REGULATIONS].

5. See FIFA PLAYERS' AGENT REGULATIONS § I, art. 5, ¶ 2.

6. According to Annexe A, Section I, Paragraph 4 of the *FIFA Players' Agents Regulations*, "[e]ach national association shall set its own questions on national subjects whereas FIFA will set the questions on its own statutes and regulations and send the examination papers to be used to the national associations." *Id.*

7. See КОДЕКС ЗАКОНОВ О ТРУДЕ РФ (LABOR CODE) [KZOT RF] Ch. 3, art. 25 (Russ.).

Russian Federation.⁸

In fact, despite the adoption of the necessary corporate act governing the activities of players' representatives and the excellent organization of agents' examinations, from the date of examination until now, no person who has successfully passed those procedures has received the agent license. The problem is that the FIFA *Players' Agents Regulations* place an obligation on a candidate, who "scores the minimum amount of marks required to pass the examination . . . to conclude professional liability insurance with an insurance company in his country"⁹ and send the insurance policy to the national football association. However, no Russian-based insurance company provides such service. The FIFA *Players' Agents Regulations* gives a possibility for an agent to represent a football player if the agent "is a parent, a sibling or the spouse of the player in question or if the agent acting on behalf of the player or club is legally authorised to practise as a lawyer in compliance with the rules in force in his country of domicile."¹⁰ Nowadays, federal legislation on the licensing of certain types of activities cancels the obligatory licensing procedure for lawyers in Russia, but there are still laws that establish special requirements for advocates who are members of the state bar. That is why the RFU does not give any definite interpretation of the provisions of the FIFA regulations mentioned above, and these rules are disregarded in the professional football system in the Russian Federation.

Thus, the basic document of the candidate for the FIFA agent's license, who has already passed examinations in the RFU, is a *spravka* (certificate), which confirms that the applicant has passed examinations for acquiring the status of a football players' agent. Moreover, the FIFA *Players' Agents Regulations* provides that "[i]f the players' agent cannot conclude a professional liability insurance policy in compliance with art. 6 above in the country in which he passed the examination, he may deposit a bank guarantee to the amount of CHF 100,000."¹¹ This may not apply due to FIFA instructions that stipulate an obligation of a candidate who applies for agent status in the Russian national football association to conclude professional liability insurance anyway.

The current situation is extremely damaging for the development of legal agents' business in professional football in Russia. Nowadays there is no possibility for an applicant who scored the minimum amount of marks required to pass the appropriate examination to become a FIFA players' agent.

8. *See id.*

9. FIFA PLAYERS' AGENTS REGULATIONS § II, art. 6, ¶ 1.

10. *Id.* § I, art. 1, ¶ 3.

11. *Id.* § II, art. 7, ¶ 1.

Such conditions are ideal only for the so-called "shadow agents" that do not respect any legal rules. Thus, professional football players in the Russian Federation cannot enjoy their right to receive professional assistance of a licensed agent in the negotiation, execution, and enforcement of an employment contract and appropriate representation before the RFU and FIFA bodies.

It is obvious that this problem requires an immediate solution. In my opinion, there are three optimal decisions that should be made by the RFU in this regard:

- 1) to grant the right to all people who possess higher legal education to represent professional football players in the Russian Federation;
- 2) to allow an applicant for an agent's license to deposit a bank guarantee instead of concluding professional liability insurance in the Russian Federation; and
- 3) to work out and adopt a draft of an insurance contract¹² in compliance with the Russian insurance legislation and internal regulations of insurance companies. All concerned insurance companies should be invited to participate in this process.

The third option listed above undoubtedly is preferable. The national legislation regarding sports and insurance should be brought in compliance with the international standards on the basis of legal cooperation between sports federations, state bodies, and insurance companies.

Having studied sports agents' regulations in professional football in the Russian Federation, it is possible to state that the practically generated legal status of commercial representation in this sphere of public relations and existence of the corporate acts governing agents' activity are the guarantee of the further development of the present business in this kind of sport.

B. Sports Agents' Regulations in Professional Hockey

Agents' business in professional sports in the Russian Federation has received the most complete legal regulation in the system of the Russian Professional Hockey League (PHL). The Council of Presidents of the PHL adopted regulations on the licensing of agents' activity in the system of the PHL in 2001.¹³ This corporate act has become the first attempt to regulate activity of hockey players' representatives in Russia that meets both regular

12. The insurance policy shall "be worded in such a way that every possible risk connected with a players' agent's occupation is covered." *Id.* § II, art. 6, ¶ 2.

13. See generally RUSSIAN PROF'L HOCKEY LEAGUE REGULATIONS (2001).

international practice and the general requirements of the Russian legislation.

According to the present regulations, agents' activity in professional hockey in the Russian Federation can be performed both by companies and sole proprietors.¹⁴ When granting companies the right to act as players' agents, the PHL prescribes that the head of the company should appoint "an agent" (i.e., an employee, who is responsible for direct accomplishment of this activity).¹⁵

Article 5.2 of the PHL regulations on the licensing of agents' activity in the system of the PHL provides obligatory requirements for agents of professional hockey players.¹⁶ An agent is required:

- to reach eighteen years of age;
- to possess higher legal education;
- to have no criminal record;
- not to be recognized incapable or of limited capability by the court's decision, which came into force;
- not to have employment relations and not to hold a position with the International Ice Hockey Federation (IIHF), Russian Ice Hockey Federation (FHR), PHL, or any ice hockey club.¹⁷

Having established the possession of higher legal education as an obligatory requirement for hockey agents, the PHL regulations, however, do not define that this education should be earned in the Russian Federation. The PHL issues licenses to foreign agents who possess the required education received in foreign countries. In my opinion, this practice cannot be justified. It is obvious that only an agent who is aware of the national legislation of the country where he performs his activity can provide competent representation to his clients. In order to resolve this problem, the PHL must amend its regulations and provide that the PHL licensed hockey agent should possess higher legal education that was earned in the Russian Federation in a state-accredited institution and confirmed by the appropriate diploma.

The regulations on the licensing of agents' activity in the system of the PHL, alongside the list of requirements for players' agents, also stipulate obligatory provisions of representation contracts.¹⁸ The amount of an agent's compensation and all the necessary conditions for payment of such

14. *See id.*

15. *See id.*

16. *See id.* art. 5.2.

17. *See id.*

18. *See generally id.*

remuneration should be precisely indicated in the contract.¹⁹ The amount of commission due to a hockey agent who has been engaged to act on a player's behalf is calculated on the basis of the player's annual gross compensation that the agent has negotiated for him.²⁰ A hockey agent who has been contracted by a club is remunerated by payment of a lump sum that has been defined in the agent-club agreement.²¹

The agent licensing in professional hockey in the Russian Federation is carried out by the PHL Licensing Commission. This body of the PHL has the authority to grant an agent's license immediately after reviewing the application and all the enclosed documents without any further examination. If the PHL Licensing Commission cannot make its final decision based on the application, the candidate is called for an examination.

Agents' activities in professional hockey in the Russian Federation are supervised by the appropriate bodies of the PHL and the FHR. These bodies are the PHL Licensing Commission and the FHR Interregional Coordination Councils, which also have the authority and responsibility of initiating and then presenting disciplinary cases against players' representatives engaged in prohibited conduct.

The regulations on the licensing of agents' activity in the system of the PHL provide strict sanctions on players and clubs engaging the services of non-licensed agents.²² If the player infringes any of the bans contained in these regulations, he can be punished with a caution, warning, and annulment of the license of the professional hockey player, which means life disqualification (this decision can be subsequently reconsidered).²³ If the hockey club establishes contract relations with a non-licensed agent, it will be liable for sanctions in the form of a censure, warning, ban on any national and/or international players' transfers, and even bans on participation in the competitions conducted by the PHL. All the sanctions are imposed by the PHL Licensing Commission.

The present PHL regulations provide a special procedure to secure the settlement of disputes arising between agents registered in the PHL and players or clubs. All those disputes that were not solved in negotiations are the subject of proceedings before the PHL Arbitration Committee.²⁴ A party may appeal the decision of the PHL Arbitration Committee to the PHL Appeal

19. *See id.*

20. *See id.*

21. *See id.*

22. *See id.*

23. *See id.*

24. *See id.*

Commission, which is the only body of appeal.²⁵ The award of the PHL Appeal Commission constitutes the final decision of the specific dispute in national hockey. However, considering absence of experience of legal regulation of sports agents' activity in the Russian Federation and taking into account a possibility of disputes that cannot be settled on the basis of the regulations on the licensing of agents' activity in the system of the PHL, the PHL refers the decision of such questions to the exclusive competency of the Council of Presidents of the PHL.²⁶

These are the basic issues of legal regulation of sports agents' business in the PHL. It is obvious that nowadays sports clubs have an advantage in the legal field of professional hockey in the Russian Federation. The absence of functioning representative bodies of professional hockey players narrows the possibilities of players to protect their rights because all the disputes between different subjects of professional hockey in the Russian Federation are settled directly by the PHL bodies, which represent employers. That is why it is necessary to utilize the valuable experience of regulation of agents' activity in the system of the National Hockey League (NHL), where the rights of professional hockey players are protected by the athletes' union – the National Hockey League Players' Association (NHLPA). This union has developed a special agent certification program, and without approval of the NHLPA, an individual cannot become a player's representative.²⁷

In Article 2 ("Recognition") of the Collective Bargaining Agreement (CBA) between the NHL and the NHLPA, the parties agreed that "[t]he NHL recognizes the NHLPA as the exclusive bargaining representative of all present and future players employed as such in the League by the Clubs, but not including any other Club employees."²⁸ This provision undoubtedly provides appropriate protection of the rights of professional hockey players because the system allows agent certification to be conducted by a collective representative body of players and allows the union to evaluate competence of the future sports agent more carefully. In order to regulate sports agents' activity, the NHLPA adopted special regulations governing agent certification.²⁹ The objective of agent certification is to establish the highest degree of professional competence, conduct, and integrity in the representation of professional hockey players. Moreover, in establishing a system for regulating agents, the NHLPA also sets forth the arbitration process as the sole

25. *See id.*

26. *Id.* art. 10.1.

27. *See* NAT'L HOCKEY LEAGUE COLLECTIVE BARGAINING AGREEMENT art. 6.1 (1995).

28. *Id.* art. 2.

29. *Id.* art. 6.

and exclusive method for resolving any and all disputes that may arise from the interpretation, application, or enforcement of the regulations mentioned above and the resulting agreements between agents and individual players.³⁰

Unfortunately, the absence of functioning representative bodies of professional hockey players in the Russian Federation does not allow for the implementation of the positive foreign experience of legal regulation of sports agents' business. For this reason, the legal status of sports clubs and athletes' representatives in Russian hockey is defined by the corporate acts accepted by the PHL.

After reviewing the issues mentioned above, it is possible to draw the conclusion that there is a legal basis for the activity of sports agents in professional hockey in the Russian Federation. In order to realize provisions of the internal PHL regulations, there is a necessity for real application of sanctions to subjects of professional hockey that infringe bans contained in the corporate rules of the League. The creation of a collective representative body of professional hockey players and its active participation in protection of athletes' interests are also essential. However, nowadays, in the Russian Federation, no hockey player or hockey club is punished for use of services of a non-licensed agent, and the new union of hockey players consists of few people. It is obvious that the current situation creates ground for the activity of the numerous intermediaries who violate the rights of participants of the ice hockey competitions and damage the development of legal agents' business in Russian hockey.

C. Sports Agents' Regulations in Other Kinds of Sports

Sports agents' business in the Russian Federation has also become an objective reality in other kinds of sports that are not as popular and profitable as football and ice hockey. However, the majority of sports federations have no rules governing the activity of athletes' representatives. Moreover, heads of many Russian sports federations still consider the practice of adoption of the agents' regulations and the agents' activity to be dangerous and harmful by itself, undermining the basis of the functioning of sports organizations. For this reason, the business of "shadow agents" has spread widely in the Russian sports.

However, it is also necessary to note positive tendencies. For example, the All-Russia Athletic Federation (VFLA) successfully implements rules of the International Association of Athletics Federations (IAAF) that define the legal status of athletes' representatives. The Russian Basketball Federation

30. *Id.* art. 17.

(RFB) is developing its own regulations governing agents' activity in professional basketball in the Russian Federation. The recently accepted regulation — *Player's Status in the Russian Basketball Federation* — already obligates any person wishing to act as a player's agent in professional basketball in the Russian Federation to receive the RFB's accreditation;³¹ therefore, it is possible to expect the prompt adoption of the basketball player agents' regulations in the Russian Federation.

The members of other sports federations, such as the Russian Cycling Federation (FVSR) and the Russian Rowing Federation (FGSR), have only started to understand the necessity of legal regulation of activity of athletes' representatives; and nowadays, there are no serious efforts to prepare any appropriate documents.

Thus, the regulation of sports agents' activity in various kinds of sports in the Russian Federation directly depends on the popularity and profitability of certain sports.

III. PERSPECTIVES OF SPORTS AGENTS' BUSINESS DEVELOPMENT IN THE RUSSIAN FEDERATION

The start of agents' activity in the field of sports in the Russian Federation goes back to the period of a legal vacuum in this sphere. In modern conditions, this business is gradually gaining the civilized forms. However, there is still no federal legislation defining the legal status of sports agents. Therefore, an introduction of the appropriate provisions into the Federal Law on Physical Culture and Sports in the Russian Federation is essential. This legal act should not only provide the basic terms such as "sports agent," "professional athlete," and "amateur athlete," but also establish possible legal structures of the agents' business.

Presently, the majority of sports agencies in Russia function as limited liability companies and non-commercial partnerships, and only a few agents work as sole proprietors. Thus, the absence of personal responsibility of the agent to his client has an adverse effect on the quality of services provided to athletes and sports organizations. In my opinion, it is necessary not only to establish general provisions governing sports agents' activity in the Russian Federation, but also to prohibit companies from representing athletes. Certainly, the existence of various associations of sports agents, lawyers, and managers is allowable, but only individuals should have the right to represent

31. See generally Russian Basketball Federation, *Russian Basketball Federation Rules*, INFOBASKET.RU, at <http://www.infobasket.ru/Doc/Rules2004/BasketballRules2004.pdf> (last visited Nov. 9, 2004).

the concrete athlete. A similar requirement is stipulated by various foreign and international rules and regulations concerning sports agents. For example, Article 2 ("Certification Requirements") of the NHLPA regulations governing agent certification provides that only individual persons are eligible for this certification.³² Article 2, Section 3 of the *FIFA Players' Agents Regulations* also states that "only a natural person may apply for [an agent] licence [and] [a]pplications from companies or clubs are not permitted."³³

Moreover, the sports legislation should secure a list of

- obligatory requirements for individuals performing agents' business in the field of sports, such as legal age and higher legal education, as well as the absence of criminal records; and
- mandatory provisions of representation agreements (athlete-agent contracts).

The agent licensing established by rules and regulations of different sports federations and leagues results in another serious legal problem in the Russian Federation because the Federal Law No. 128-FZ of August 8, 2001, on the licensing of certain types of activities, does not provide mandatory licensing of this activity.³⁴ It is obvious that an introduction of obligatory licensing of sports agents' business at a federal level by amending this federal law is essential. As for the licensing itself, it should be realized not by governmental authorities or bodies of local rule, but by professional sports leagues, sports federations, and athletes' unions. The adoption of appropriate legislative amendments is necessary to resolve the existing conflict between an international sports rule and a rule of national law.

There are a lot of problems that damage the perspectives of sports agents' business development in the Russian Federation. However, it is possible to state that activity of athletes' representatives will become an object of legislative regulation in the Russian Federation in the near future. The most important issue in this process is the necessity to reserve the right of sports clubs, leagues, federations, and athletes' unions to adopt their own sports agents' regulations on a basis of federal sports legislation.

IV. CONCLUSION

There is a legal basis for activity of agents of athletes and sports clubs in

32. See NAT'L HOCKEY LEAGUE COLLECTIVE BARGAINING AGREEMENT art 2.1 (1995).

33. See FIFA PLAYERS' AGENTS REGULATIONS § II, art. 2, ¶ 3.

34. *Sobr. Zakonod. RF*, 2001, No. 128-FZ.

several kinds of collective sports in the Russian Federation. In order to create a working system that protects the rights and interests not only of participants of competitions, but also of professional sports agents, the realization of the recently adopted regulations is necessary. This process should be under the strict control of the sports federations and athletes' unions. The real application of sanctions to subjects of legal relations in the field of sports that violate legislative acts and corporate regulations is essential. The federal law on physical culture and sports in the Russian Federation should define the legal status of sports agents and stipulate the autonomy of sports associations to regulate agents' activity on the basis of federal legislation. All these measures will create preconditions for further legal regulation in the construed sphere of public relations and promote development of the market of services in the sports sphere as a whole.

