

REVIEW ARTICLE

ENSURING PHYSICAL AND MENTAL HEALTH OF ATHLETES BY THE LABOR LAW

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ABSTRACT

The aim: To identify the problems of exclusion of athletes from the sphere of labor law; characterize the main precarious practices in sports that are contrary to labor law, that lead to injury of athletes.

Materials and methods: The research materials cover the analysis of scientific literature, legal acts and jurisprudence; comparison; synthesis; generalization. Empirical methods related to the statistics processing of reports of international and regional organizations (ILO, EU Athletes, European Commission, FICA, FIFPro, United Nations) serve to combine and graphically display information in the field of sports.

Conclusions: Precarious practices in sports are widespread; cover all athletes (from elite to non-professional); constitute a threat to the health and working capacity of athletes. A direct relationship has been revealed between the regulation of the labor of athletes and their physical and mental health. Failure to protect labor rights increases the risks of disability for athletes. The international community and national states should reduce the inclusion of the so-called "sports exemption" and create legal mechanisms for transferring the labor of athletes to the scope of labor law.

KEY WORDS: athletes, health, precarious, labor law, medical law

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INTRODUCTION

Since the mid-twentieth century, professional sports have become an area of employment for millions of people. In one recent market study, the value of the global sports market is estimated at 614 billion dollars [1]. In 2016, only 70 different international competitions were attended by 386,000 professional athletes and the dynamics of the number of competitions is increasing from year to year [2]. The load on athletes is increasing; the consequences of these loads are intensified and aggravated. On average, athletes receive 8.6 million injuries annually; about half of these injuries involve a doctor's intervention [3]. Most of all injuries occur in football, including injuries associated with physical and mental stress. In 2020, Manchester United player Marcus Rashford suffered a double stress fracture of his back due to excessive exertion. On June 12, 2021, during the Euro 2020 match against Finland, Denmark's player Christian Eriksen suffered a cardiac arrest. Scientists have repeatedly observed in recent years an increase in sudden deaths in athletes [4]. Besides, psychosocial factors and issues are present in athletic injuries and illnesses and their recovery. The load or stress that athletes experience during training can have psychosocial and physical

components. In both cases, a load can result in positive adaptations and/or maladaptations [5]. These tendencies indicate unfavorable phenomena in the professional activity of athletes and require study from the point of view of improving their health by regulatory legal methods. To do this study, we have to research the problematic practices of legal regulation of the labor of athletes, which form risks for the violation of their physical and mental health.

THE AIM

We assume that the negative trends in the health status of athletes are a consequence of the excessive flexibility of the regulation of the labor of athletes, the weakness of the coverage of the professional activity of athletes by labor law. In this study, we will try to establish the relationship between the impact on the physical and mental health of athletes and their coverage of the protective instruments of labor law. So the article aims to identify the problems of exclusion of athletes from the sphere of labor law; characterize the main precarious practices in sports that are contrary to labor law, that lead to injury of athletes.

MATERIALS AND METHODS

The research materials cover the reports of the main international and regional organizations (ILO, EU Athletes, European Commission, FICA, FIFPro, United Nations) on the health status of athletes and their working conditions. The study includes theoretical and empirical methods. Theoretical methods cover the analysis of scientific literature, legal acts, and jurisprudence; comparison; synthesis; generalization; legal forecasting. The comparative method was used to highlight the general and different characteristics of the working conditions of athletes in different countries. The method of synthesis and generalization was used to depict the fact that excessive loads and difficult working conditions negatively affect the health of athletes, regardless of the type of sport. The method of legal forecasting is used to identify possible legal ways to solve the problem of increasing injuries and diseases among athletes. Empirical methods related to the statistics processing of reports of international and regional organizations serve to combine and graphically display information in the field of sports.

REVIEW AND DISCUSSION

Such a developed industry as a sport should be subject to legal regulation, especially concerning the employment of persons engaged in professional sports.

The International Labor Organization defines a professional athlete as an athlete who receives income from competitive sports and whose activities are controlled by a sports organization, such as a club or federation. This definition includes a) athletes whose only professional activity is sports; and b) athletes who may have other jobs but spend considerable time in training and competitions from which they earn income (athletes in some Olympic disciplines) [6]. Many issues related to athletes, starting from contracts and ending with the rules of sports competitions, are governed by the rules of sports federations, which are often seen as organizations operating separately from labor law and other national laws under the concept of the so-called “sports exemption”.

However, more and more often athletes challenge this exception and strive to resolve sports issues according to labor laws, whereas courts have to differentiate the question of purely sporting in nature and those that apply this branch of law. In the practice of the European Court of human rights (such cases as Walgrave, Dona, Bosman, Meca-Medina) existing cases of application of the European labor legislation in respect of sporting rules, in accordance with the principle that sport is also a labor activity in which the athletes are complete subjects. However, the practice of the European Court of human rights has been undergoing a systematic circumvention, which puts athletes in a vulnerable, dependent, unstable, and precarious position [7]. The danger of precarious employment began to spread to other sectors of society, namely sport. Short-term and informal contracts, relationships of loan labor, the risks of retirement with significantly

reduced working capacity and no social security prospects, flexible working conditions without any guarantees, were first appeared in this area. Discrimination, violence, and limited protection are the constant companions of athletes. In this sense, the most important thing is that, due to the abuse of sports clubs and associations, athletes remain outside the scope of labor law – the branch of law, directed to the embodiment of the rights and interests of employees and guaranteeing their implementation through the international norms and national labor law.

Among precarious practices which are most involved in sports, the most defining are informal and unstable contracts, violations of the right to work and restrictions on labor mobility, unfavorable working conditions, discrimination and violence, restrictions on the right to protection.

1. Informal and unstable contracts

Precarity in the field of sports is manifested in instability and sometimes informality, of employment. Sports have term or unstable contracts that are a source of risk for athletes [8]. In professional football, the average duration of an employment contract is 23 months, with a contractual age decreasing to a maximum of 1 year [9]. According to FIFPro, football players in Eastern Europe, Africa, and Latin America often faced problems because of their contract term, and 8 percent of players did not have a written contract with their club. In Ukraine, 22 percent of football players do not have a written employment contract, and 35 percent have a civil contract [9]. About 25 percent of professional football players at the age of 18 do not have formal written contracts [10]. In cricket, according to the Federation of International Associations, most male players feel uncertain about their contract term [11], while a quarter of female players do not even have contracts [12].

Unstable contracts provoke athletes' dual employment [13]. Especially in seasonal sports, many athletes work full-time or part-time along with their sports careers. In women's rugby, 60 percent of surveyed women who earn their wages for competing still feel the need to balance sports with other work to earn extra income [14]. The importance of stable contracts is also because the professional career of an athlete is mostly 12-15 years, without considering the risk of injury. According to the International Labor Organization, more than 50 percent of surveyed athletes by experts have experienced financial difficulties within five years of completing their careers, leading to some mental health problems [6]. Reducing this risk without improving the situation with a stable labor relationship with athletes can be pursued through higher education.

2. Violation of the right to work and labor mobility restrictions

One of the most common precarious practices in the field of professional sports is the so-called “transfer” of the athlete. For a club, the athlete in relation to other clubs is not an employee, but a certain asset that can sometimes be disposed of without the athlete's consent. In South

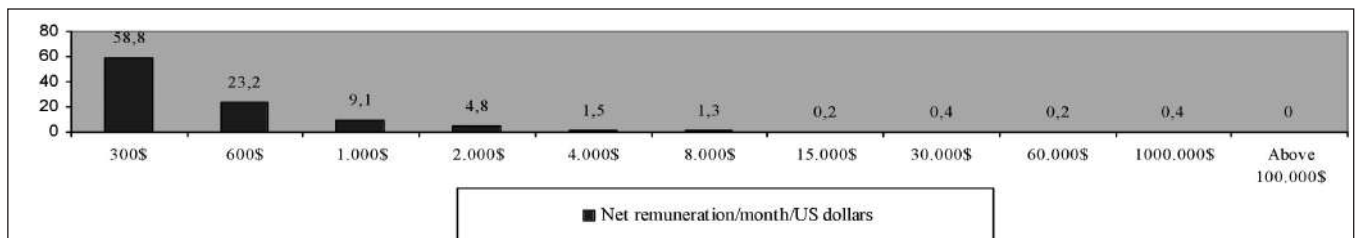


Fig. 1. Payment data for Ukrainian players (Data collection from FIFPro global employment report in collaboration with Working Conditions in Professional Football)

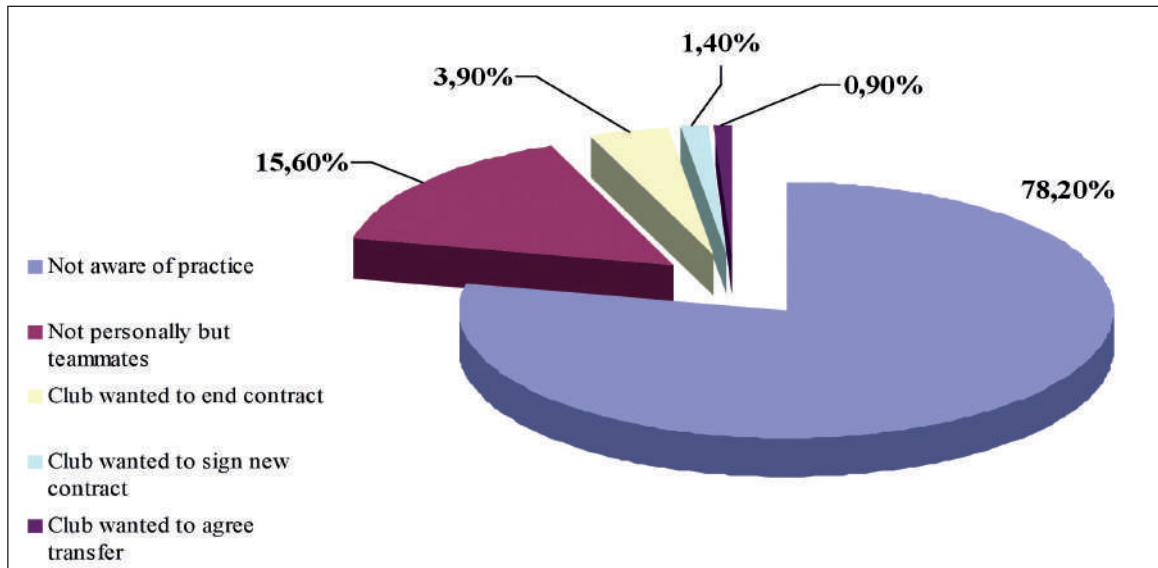


Fig. 2. Football players practices of isolated training (Data collection from FIFPro global employment report in collaboration with Working Conditions in Professional Football)

America, football players' contracts are bought and sold between clubs without the player's will [15]. A similar practice in the exchange of player contracts is available in the American Professional Basketball League (NBA). In Europe the situation of transfers is different. Legally, a player whose contract has expired with his current club may have contracts with other football clubs [16]. However, the transfer of contracted players must be agreed upon by the respective clubs and a transfer fee is set to compensate for the termination of the valid contract [17]. The transfer takes place by transferring the sports registration of a player from a holding club to a debtor club [18]. In European professional football, the player transferring system usually takes place during a "transfer window" or registration periods during which player registration can take place. Moreover, the arrangement of the place of new employment is primarily between the clubs, and the football player and his agent can influence the salary amount and various bonus payments. It is worth noting that, for transfers, football clubs spend around 3 billion dollars a year on player transfers [19].

Limited athletes have the right to terminate an employment contract on their own initiative. In most contracts, athletes who wish to terminate the contract early should, as a rule, find a breach of their contract [20]. Otherwise, for anticipatory termination of the contract, they have to pay the employer the amount marked in the contract.

After the termination of the contract, restrictions in certain sports continue to apply. In Europe, especially in football, transfer systems determine whether to pay a transfer fee between clubs to allow a player to contract with a new club. In the early 2000s, FIFA developed additional transfer rules to increase the labor mobility of football players. However, specific rules, such as the mid-season ban to terminate the contract, continue to restrict the right to work [20]. This is because the rules governing the employment of athletes (in particular, football players) are formulated by international sports governing bodies that do not respect the labor laws of national states or European Union regulations on the free movement of employees.

3. Unfavorable working conditions

The precarious state is caused by unfavorable working conditions, which include wages, working hours, and rest periods, which, due to their limitations or instability, do not allow them to maintain a decent standard of living.

Salary is a reward for the athletes' work, which should facilitate the reproduction of their strength and guarantee a fair distribution of profits from their performances in competitions. Instead, sports practice demonstrates the efforts of clubs and associations to manipulate athletes' earnings. In the United States, collective agreements can guarantee players a minimum wage or allow players to enter into contracts that mix a fixed amount of guaranteed

pay with performance-related bonuses, such as in the National Football League [20]. The FIFPro report indicates that 21 percent of interviewed football players by experts earn less than 300 dollars a month [9]. It should be noted that, first of all, in professional football, there is a violation of the principle of equal pay for equal labor. In Ukraine, 58 percent of football players receive 300 dollars a month, while 1.3 percent claims to earn between 4,000 dollars and 8,000 dollars a month [9] as described in Figure 1.

90 percent of African football players face a delay in wages. In cricket, 35 percent of male players are under-paid [8].

The working hours of athletes are mostly irregular. After all, in addition to the time spent on the competition, athletes must consider training time, travel time, and other obligations, such as promotional tours. Because of this, the working hours of athletes often exceed 40 hours per week, and, for example, 12 percent of football players do not receive even one day off [9]. Similarly, the minimum international standards for the duration of paid annual vacation have not been adhered to in the sports field. In women's rugby, many athletes devote their annual vacation to training [14]. In some sports, such as football, long seasons of competition reduce the annual vacation of players and jeopardize the required periods of training and health [21]. On average, only 30 percent of football players in America and 27.5 percent in Africa receive at least the minimum labor law vacation. In Ukraine, 14 percent of football players have an annual paid vacation of fewer than 24 days [9]. The increasing popularity of European football around the world has led to an increase in international tours of teams in Asia and the US, which are often used as a way to increase club profits. These tours tend to take place between game seasons, at a time previously set aside for annual player vacation [22].

4. Discrimination and violence

Sport has a precarious shade and because of the significant presence of discrimination and violence in it. First of all, women are discriminated against. In some countries, women may be prohibited from playing sports, while the overall lack of safe sports facilities around the world significantly impedes women's ability to play sports [23]. It should be noted that women achieved almost parity with male Olympians in representation at the Olympic Games: they accounted for 45 percent at the 2016 Summer Olympics and 41 percent at the 2018 Winter Olympics [24]. At the same time, many positions in the sports industry, such as coaches, assistant coaches, and heads of sports information services, are still under-represented [25]. When looking at all teams, both male and female, women have only 23 percent in coaching positions [26].

There is a significant gender pay gap in gender. This aspect is especially illustrative of the example when the US Women's Football Team, which won the World Cup in 2015, was paid a quarter of what was earned by men who had failed in a similar competition and the coach of the women's winning team was paid less than men's U-20 team [27]. In addition to the pay gap, female athletes have

less access to quality treatment and injury recovery [6]. Discrimination in sport can also have a racial shade. There have been several high-profile racist incidents against African or Afro-Caribbean football players in recent years in European football [10]. In England and Wales, the Professional Footballers' Association has organized a 24/7 social media boycott through the #Enough campaign to protest against racist abuse by social media fans. In football, it is common practice to discriminate against players who refuse to continue their contract with the club. For such players the so-called "isolation from the team" is used – exclusively one-off training and exclusion from participation in the matches of the team as shown in Figure 2. 22 percent of football players are under pressure to sign a new contract [9].

Women report a high level of sexual abuse in sport [13], but it is known that men report cases of such violence. A European Commission's report indicates that 2 to 8 percent of young athletes have been sexually abused [28]. There is a known case of a US Gymnastics team physician who has faced hundreds of allegations of sexual abuse by current or former gymnasts [10].

5. Restrictions on the right to protection

The application of law in sport is carried out through independent sports institutions. Most national sports governing bodies have their own rules-making and dispute settlement structures for internal regulation and enforcement. Some countries, such as Germany and New Zealand, have a specialized national sports tribunal that independently identifies specific sports disputes. There are international sports tribunals, such as the Football International Federation Association (FIFA) Dispute Resolution Chamber, the Court of Arbitration for Basketball, and the Court of Arbitration for Sport (CAS) based in Lausanne. Such a lack of access to a settlement of disputes on a general basis is an obstacle to protecting the athletes' rights. Many sports contracts contain "compulsory arbitration" clauses, which provide for the submission of complaints only to specific arbitration bodies [29].

The precarious practices in sports discussed in this article break international and national labor law and disregard European Court of Human Rights regulations. Transfer rules restrict the right to work; break the principle of "labor is not goods" as established in the Statute of the International Labor Organization; do not correspond to the conclusions of the European Court of Human Rights in Bosman, Meca-Medina cases. The practice of conclusion and termination contracts, working conditions, and the existence of discrimination and violence in sport are contrary to International Labor Organization's Convention № 29, 47, 87, 98, 100, 105, 111, 132, 182, as well as national labor law.

The use of sports arbitration bodies to resolve disputes deprives athletes guaranteed by the Universal Declaration of Human Rights and the Convention on the Protection of Human Rights and Fundamental Freedoms, the right to judicial protection, and nullifies the autonomy of the judiciary in the administration of justice.

CONCLUSIONS

1. Precarious practices in sports are widespread; cover all athletes (from elite to non-professional); constitute a threat to the health and working capacity of athletes.
2. Precarious practices in sports contradict international and national labor laws nullify the activities of the judiciary, whose decisions are not accepted by sports clubs and associations. A direct relationship has been revealed between the regulation of the labor of athletes and their physical and mental health. Failure to protect labor rights increases the risks of disability for athletes.
3. Taking into account the complexity and intensity of training, the risk of injury, the need for a high level of physical and mental attention, the short term of a professional career, the labor of athletes to maintain their health and working capacity should be governed by labor law. The international community and national states should reduce the inclusion of the so-called "sports exemption" and create legal mechanisms for transferring the labor of athletes to the scope of labor law.

REFERENCES

1. Business Wire. Sports: \$614 billion global market opportunities & strategies to 2022. 2019. Available from: <https://www.businesswire.com/news/home/20190514005472/en/Sports---614-Billion-Global-Market-Opportunities> [reviewed 2021.06.23].
2. The Global Sports Impact Report. 2017. Available from: https://www.sportcal.com/PDF/GSI/Report/GSI_Report_2017_Sample_Pack_v1.pdf [reviewed 2021.06.23].
3. Sheu Y, Chen L, Hedegaard H. Sports and Recreation-related Injury Episodes in the United States, 2011-2014. National Health Statistics Reports. 2016; 99. Available from: <https://www.cdc.gov/nchs/data/nhsr/nhsr099.pdf> [reviewed 2021.06.23].
4. Wasfy M, Hutter A, Weiner R. Sudden Cardiac Death in Athletes. Methodist Debakey Cardiovasc Journal. 2016; 12 (2): 76-80.
5. Load, Overload, and Recovery in the Athlete: Select Issues for the Team Physician – A Consensus Statement, Current. Sports Medicine Reports. 2019; 18 (4): 141-148.
6. Decent work in the world of sport. Issues paper for discussion at the Global Dialogue Forum on Decent Work in the World of Sport (Geneva, 20-22 January 2020). ILO. 2020. 32.
7. Standing G. The Precariat: The New Dangerous Class. Bloomsbury Academic. 2011. 209.
8. An analysis of the working conditions of professional sports players. 2017. Available from: <https://www.euathletes.org/wp-content/uploads/2017/06/2013-UNI-An-Analysis-of-Working-Conditions-of-Professional-Sports-Plyers-ilovepdf-compressed-1.pdf> [reviewed 2021.06.23].
9. FIFPro global employment report: Working conditions in professional football. 2016. 268.
10. Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material. United Nation. 2019.
11. FICA men's professional cricket global employment report. 2017. Available from: <http://www.thefica.com/wp-content/uploads/2018/04/FICA-Mens-Employment-Report-2017-dp.pdf> [reviewed 2021.06.23].
12. FICA women's global employment market report and survey. 2018. Available from: <http://www.thefica.com/wp-content/uploads/2018/10/FICA-Womens-Global-Employment-Report-Survey-2018-final.pdf> [reviewed 2021.06.23].
13. EU Guidelines on Dual Careers of Athletes: Recommended policy actions in support of dual careers in high-performance sport. European Commission. 2012. 40.
14. International Rugby Players: Women's survey: Who's playing the game? Available from: <https://www.rugbyplayers.org/womens-survey-whos-playing-the-game/> [reviewed 2021.06.23].
15. Lawrence I. The Legal Context of a Player Transfer in Professional Football: A Case Study of David Beckham. 2013. Available from: <https://www.entsportslawjournal.com/articles/10.16997/eslj.16/> [reviewed 2021.06.23].
16. Binder J, Findlay M. The Effects of the Bosman Ruling on National and Club Teams in Europe. Journal of Sports Economics. 2011; 13 (2): 17-29.
17. Chetwynd J. Labor and Employment Law Issues in Sports: Play Ball? An Analysis of Final-Offer Arbitration, its Use in Major League Baseball and its Potential Applicability to European Soccer Wage and Transfer Disputes. Marquette Sports Law Review. 2009; 20: 109.
18. Feess E, Muehlheusser G. The Impact of Transfer Fees on Professional Sports: An Analysis of the New Transfer System for European Soccer. Scandinavian Journal Of Economics. 2003; 105 (1): 139-154.
19. Odogwu I. Player Contracts: Football transfers v European Union law: analysis. World Sports Law Report. 2014; 12 (2). Available from: <https://gclaw.wordpress.com/2014/05/13/player-contracts-football-transfers-v-european-union-law-analysis/> [reviewed 2021.06.23].
20. Barry M. Research Handbook of Employment Relations in Sport. Edward Elgar Publishing. 2016. 424.
21. FIFPro: At the limit: Player workload in elite professional men's football. Available from: <https://synafoc.divisionafrica.org/en/health/limit-player-workload-elite-mens-football-470> [reviewed 2021.06.23].
22. Revealed: The heavy price Premier League clubs pay for lucrative pre-season globetrotting. The Telegraph, 1 Aug. 2016. Available from: <https://www.telegraph.co.uk/football/2016/08/01/premier-league-clubs-pay-heavy-price-for-lucrative-pre-season-gl/> [reviewed 2021.06.23].
23. European Institute for Gender Equality. Gender in sport. 2017. 28.
24. Nunes R.A. Women athletes in the Olympic Games. Journal of Human Sport and Exercise. 2019; 14 (3): 674-683.
25. Lapchick, R. The 2017 Racial and Gender Report Card: College Sport. University of Central Florida. 2018. 89.
26. Acosta V, Carpenter L. Women in Intercollegiate Sport. 2014. Available from: <http://www.acostacarpenter.org/2014%20Status%20of%20Women%20in%20Intercollegiate%20Sport%20-37%20Year%20Update%20-%201977-2014%20.pdf> [reviewed 2021.06.23].
27. Alvarez A. I thought the main issue in women's sports was equal pay. I was wrong. 2019. Available from: <https://www.theguardian.com/sport/2019/may/09/i-thought-the-main-issue-in-womens-sports-was-equal-pay-i-was-wrong> [reviewed 2021.06.23].
28. Expert Group on Good Governance: Recommendations on the protection of young athletes and safeguarding children's rights in sport: Final document. European Commission. 2016. 25.
29. Geisinger E, Trabaldo-de Mestral E. Sports Arbitration: A Coach for Other Players? Huntington. 2015. 372.

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Conflict of interest

The Authors declare no conflict of interest.

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