

CURRENT LEGAL REGULATIONS AS A FACTOR OF MANAGEMENT OF SPORTS ORGANISATION

POZITIVNO PRAVNA REGULATIVA KAO ČINILAC UPRAVLJANJA SPORTSKOM ORGANIZACIJOM

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Abstract: Management of sports organisations, viewed in the context of their legality and legitimacy, predominantly relies on the filed of current legal regulations in sport. This could be, relatively speaking, considered as the existence of the “sports legislation” within a specific social environment, encompassing the set of laws and legal regulations, which govern the relations, procedures and operation of sports organisations. The issues concerning the current legal regulating of the relations in sport call attention to the following legal documents in a state: constitution, laws, subordinate legislation and internal (organisation's) legal documents. From the point of view of sport (as a social phenomenon and practical activity), the concept of the current law must be treated through its determination that relates to all rules of social behaviour accepted and valid in a specific state. All stakeholders and participants in the sport process (stakeholders in the sports system) need to be informed about basic aspects of the legal norms constituting the substance of the current law. This paper, basically, deals with theoretical explication of the relevance of the current legal regulations as an important factor in the management of sports organisations. The context of the respective considerations is oriented towards the sports system environment in the Republic of Serbia.

Keywords: sport, current law, legal regulations.

INTRODUCTION

The conceptual determination of the current law is defined through the context of application within a social environment, and is related to the treatment of the law, which is currently applied. This means the law(s) and subordinate legislation, which are currently in force. Also, it is known in the legal science that almost all legal regulations have their “life cycle”, namely “they are born, live, and die” subject to the volition of their legislators (Kremenović, 2015). Therefore, it is necessary

Apstrakt: Upravljanje sportskim organizacijama, posmatrano kroz kontekst njihovog legaliteta i legitimiteta, dominantno se oslanja na područje pozitivno pravne regulative u sportu, što se uslovno može smatrati egzistencijom „sportskog zakonodavstva“ u određenom društvenom okruženju. Njime je obuhvaćen skup zakona i pravnih regulativa koji upravljaju odnosima, postupcima i funkcionisanju sportskih organizacija. Pitanja pozitivno pravnog regulisanja odnosa u sportu usmeravaju pažnju na sledeće pravne akte u državi: ustav, zakone, podzakonska normativna akta i interna (organizacijska) pravna akta. Posmatrano iz ugla sporta (kao društvene pojave i prakse) pojam pozitivnog prava se mora tretirati kroz njegovu determinisanost koja se odnosi na sva pravila društvenog ponašanja koja su prihvaćena i važe u određenoj državi. Svi akteri i učesnici sportskog procesa (stejkholderi sportskog sistema) neophodno je da budu informisani o osnovnim aspektima pravnih normi koje tvore biće pozitivnog prava. Rad se, u osnovi, bavi teorijskom eksplikacijom značaja pozitivno pravne regulative kao bitnog činioca upravljanja u sportskim organizacijama. Kontekst predmetnog razmatranja usmeren je na okruženje sportskog sistema u Republici Srbiji.

Ključne reči: sport, pozitivno pravo, zakonska regulativa.

Uvod

Pojmovno određenje pozitivnog prava definisano je kroz kontekst primene u okviru društvenog okruženja, a odnosi se na tretman prava koje se trenutno primenjuje. Odnosno, koji zakon(i) i podzakonski propisi su trenutno na snazi. Takođe, u pravnoj nauci je poznato da gotovo svi pravni propisi imaju svoj „životni ciklus“ odnosno „rađaju se, žive i umiru“ voljom njihovih donosilaca (Kremenović, 2015). Zbog toga je neophodno da svi subjekti na koje se odnose aktivnosti obavezne pri-

that all entities, engaged in activities with compulsory application of a particular regulation (or a group of regulations) should know „what is currently in force“ and/or what legal document “expired“. This, certainly, applies also to sports organisations.

From the point of view of sport (as a social phenomenon and practical activity), the concept of the current law must be treated through its determination that relates to all rules of social behaviour, which are accepted and valid in a specific state. All stakeholders and participants in the sport process, i.e., stakeholders in the sports system, need to be informed about basic aspects of legal norms that constitute the substance of current law. Therefore, the legal norm should be understood, through its terminological determination, as a proper behaviour of people, which is protected by the state apparatus by repression (Mitrović, 2007). It is not particularly relevant to the character of the legal norm by whom it is enacted (either by the state or society), since predominant relevance is rather attributed to those that take care of its application (the state). In this regard, a failure to observe the current law and its norms is consequently linked to the application of appropriate sanctions by the state (Kutlešić, 2005).

As far as the application of the current legislation in sport is concerned, it is necessary to bear in mind that in any state exists the application not only of the national (as imperative), but also of international legislation. The international legislation gains its legal force only upon ratification by the government authorities of the specific state (parliament). In this way, it can be said that the legislation is hierarchically organized, regarding both enactment and application of legal documents (Popović, 2010). This has great importance to business activities in the sports industry, in particular with respect to management structures in the sports systems, in view of the fact that the hierarchy in the law implies such a mutual relation between legal documents in which any lower-level document is “subordinated” to the higher-level one, and must be in conformity with the latter (otherwise, it must be repealed). This fully corresponds with the general physiognomy of the structure of the sports system, in which the subordination relation prevails.

The concept of sports law can be considered through two forms: (a) as a separate branch of the law, which encompasses a systematic set of regulations governing the sports system and sport-related business activities, and (b) as a sports law science, oriented towards studying of legal concepts about sport, sports organisations, sport-related business activities, sports activities, athletes, sports infrastructure, and also about legal proceedings connected to exercising rights in sport (Šuput, 2010). Within the legal system of the Republic of Serbia, the sports law has been only recently

мене određenog propisa (ili grupe propisa) znaju „šta je trenutno na snazi“, odnosno kojem zakonskom aktu je prošao „rok trajanja“. To se svakako odnosi i na sportske organizacije.

Posmatrano iz ugla sporta (kao društvene pojave i prakse) pojam pozitivnog prava se mora tretirati kroz njegovu determinisanost koja se odnosi na sva pravila društvenog ponašanja koja su prihvaćena i važe u određenoj državi. Svi akteri i učesnici sportskog procesa, odnosno stejkholderi sportskog sistema, neophodno je da budu informisani o osnovnim aspektima pravnih normi koje tvore biće pozitivnog prava, tako da je neophodno da se pravna norma poima kroz njeno terminološko određenje kao pravilo ponašanja ljudi koje je zaštićeno državnim aparatom prinude (Mitrović, 2007). Za karakter pravne norme nije posebno značajno od strane koga je ona doneta (država ili društvo), već se dominantan značaj pridaje onome ko se stara o njenoj primeni (država). U tom smislu nepoštovanje pozitivnog prava i njegovih normi posledično je povezano sa primenom odgovarajuće državne sankcije (Kutlešić, 2005).

Kada se radi o primeni pozitivno-pravnog zakonodavstva u sportu mora se imati u vidu da u svakoj državi egzistira primena kako domaćeg (kao imperativnog), tako i međunarodnog zakonodavstva. Međunarodno zakonodavstvo postiže svoju pravnu snagu tek nakon ratifikovanja od strane organa vlasti konkretne države (parlamenta). U tom smislu može se govoriti o hijerarhijskoj uređenosti zakonodavstva, kako u pogledu donošenja pravnih akata, tako i u njihovoj primeni (Popović, 2010). Za poslovne aktivnosti u sportskoj delatnosti to je od velike važnosti, posebno kod rukovodnih struktura u sportskim sistemima, obzirom da hijerarhija u pravu podrazumeva takav međusobni odnos pravnih akata gde je niži akt „potčinjen“ višem i mora biti u saglasnosti sa njime (u suprotnom se mora ukinuti). Ovo je sasvim korespondentno sa opštom fizionomijom strukture sportskog sistema u kojem je dominantan odnos subordinacije.

Pojam sportskog prava se može posmatrati kroz dva oblika: (a) kao posebna grana prava kojim je obuhvaćen sistematičan skup propisa o sportskom sistemu i sportskim delatnostima, i (b) kao nauka sportskog prava koja je usmerena ka proučavanju pravnih pojmova o sportu, sportskim organizacijama, sportskim delatnostima, sportskim aktivnostima, sportistima, sportskoj infrastrukturi, kao i pravnim postupcima povezanim sa ostvarivanjem prava u sportu (Šuput, 2010). U okviru pravnog sistema Republike Srbije sportsko pravo se tek u novije vreme profilise kao nova pravna grana. U

profiled as a new branch of law. As related to the respective systematics, it is specific for its mixed features, since it is based on basic principles and specific normative solutions, which are contained in other branches of law (constitutional, civil, criminal, administrative, law of obligations, and so on). Such an approach is conditioned, first of all, upon the needs of the sporting practice, taking into account that the contemporary sport has become a highly profitable business activity (in particular in the sphere of professional sports or high-performance sports). Namely, business activities in sport (carried out mainly by sports organisations) can be freely considered as traditional service industry. Such trends in sport business industry, which predominantly extend into the domain of constitutional law, open a number of practical issues (and require answers thereto) in the fields of relations stemming from contract and torts, of commercial agreements, labour law, specific regulation of criminal liability and liability for damages, etc. What makes sport different from casual physical activities of people (what makes it a socially acceptable type of activity) is the level of legal regulation of relations in sport, which allows exercising and preserving the basic values, upon which sport is based (Šegvić, 2011). These are, in the first instance, reflected in the principles of fair play and free competition (Kačer, 2009), so that this approach takes into account the connection between sport and law. These two phenomena have had separate development pathways, but in recent times, through their interaction, the conditions have been created for laying a foundation for the development of the sports law as a separate law branch.

In order to understand more clearly the context of sports law against the determinants of management of sports organisations, it is necessary to bear in mind the distinction between the concepts of sports activity and sport business industry. The legal terminological determination (The Law on Sports, 2016; Art. 3) of the sport business industry defines it as the industry, which provides conditions for the performance of sports activities and/or enables their performance, in particular: organising of participation and carrying out of sports competitions, including international competitions, training for engaging in sports activities, and planning and managing of sports activities; activities of referees and umpires; organising of training sessions and sporting events; provision and management of sports equipment and facilities; professional education, training, improvement and information in the field of sport; research and study, and research and development activities in sport; advertising and marketing in sport; consulting and professional services in sport; intermediation in sport, organising of business activities of organisations in the field of sport. On the other

odnosu na predmetnu sistematiku karakteristično je po mešovitom obeležju obzirom da se bazira na osnovnim načelima i određenim normativnim rešenjima koja se nalaze u drugim granama prva (ustavnom, građanskom, krivičnom, upravnom, obligacionom, i sl.). Uslovljenost ovakvog pristupa leži, pre svega, u potrebama sportske prakse obzirom da je savremeni sport postao visokoprofitabilna poslovna aktivnost (posebno u sferi profesionlanog, ili sporta visokih performansi). Odnosno, poslovne aktivnosti u sportu (prvenstveno sportskih organizacija) mogu se slobodno smatrati klasičnim uslužnim sektorom. Ovakave tendencije sportske delatnosti, koje dominantno zadiru u domen ustavnog prava, otvaraju brojna praktična pitanja (i traže odgovore) u oblastima obligacionih odnosa, privrednih ugovora, radnog prava, specifično regulisanje krivične i odštetne odgovornosti, itd. Ono što sport razlikuje od stihijskih fizičkih aktivnosti ljudi (što ga čini društveno prihvatljivim vidom delatnosti) jeste nivo pravne uređenosti sportskih odnosa koji omogućavaju ostvarivanje i očuvanje osnovnih vrednosti na kojima se sport zasniva (Šegvić, 2011). One se, pre svega, ogledaju u načelima fer pleja (poštene igre) i slobodnog takmičenja (Kačer, 2009), tako da se u ovom pristupu posmatra povezanost sporta i prava. Razvojni put ova dva fenomena je tekao odvojeno, ali su se njihovom interakcijom u novije vreme stvorili uslovi za uspostavljanje temelja za razvoj sportskog prava kao posebne grana prava.

Da bi se jasnije mogao shvatiti kontekst sportskog prava u odnosu na determinante upravljanja sportskim organizacijama neophodno je imati u vidu distinkciju pojmova sportske aktivnosti i sportske delatnosti. Zakonska terminološka određenost (Zakon o sportu, 2016; čl. 3) sportske delatnosti određuje kao delatnosti kojima se obezbeđuju uslovi za obavljanje sportskih aktivnosti, odnosno omogućava njihovo obavljanje, a naročito: organizovanje učešća i vođenje sportskih takmičenja, uključujući i međunarodna takmičenja, obučavanje za bavljenje sportskim aktivnostima i planiranje i vođenje sportskih aktivnosti; sportsko suđenje; organizovanje sportskih priprema i sportskih priredaba; obezbeđenje i upravljanje sportskom opremom i objektima; stručno obrazovanje, osposobljavanje, usavršavanje i informisanje u oblasti sporta; naučnoistraživački i istraživačko-razvojni rad u sportu; propaganda i marketing u sportu; savetodavne i stručne usluge u sportu; sportsko posredovanje, organizovanje poslovanja organizacija u oblasti sporta. Sa druge strane sportskim aktivnostima se smatraju svi oblici fizičke i umne aktivnosti koji, kroz neorganizovano ili organizovano učešće, imaju za cilj izražavanje ili

hand, sports activities encompass any forms of physical and mental activities which are, through either non-organised or organised participation, aimed to express or improve physical fitness and mental wellness, establish social relations, or achieve results in competitions at all levels.

The current legal regulations in sport, in particular if analysed in the context of management of sports organisations, can be practically considered also as the „sports legislation“. That is, as the existence of the set of laws and legal regulations governing the relations, procedures and operation of sports organisations (as a base for the existence of sport), i.e., the entire sports system (in a specific state). Likewise in other social spheres, in sport this issue also calls attention to the following legal documents of a state: (a) constitution (as the basic law of the state, governing the most important issues concerning the social and political structure, provided that any other regulations enacted by the government authorities must be compliant with it), (b) laws (as written sources having the supreme legal power that must be observed/applied by all legal entities and natural persons), (c) subordinate legislation (legal documents stemming from laws and being a base for full enforcement thereof; such documents are, in addition to the government authorities, also passed by other administrative organisations), and (d) internal bylaws (passed by the head of a relevant administrative body, as well as by managing bodies of business entities; in this context – managing bodies of sports organisations).

SPORT AS AN AREA FOR THE EXISTENCE OF SPORTS LAW

Modern understandings of sport take the view that sport is today a very important public activity (the most widely accepted and also intensively publicly followed in a society), so that the management processes in the sports system require professional knowledge, responsibility and business ethics. Furthermore, it has become an industry in which are engaged numerous organisations, institutions and individuals, a social life sphere having also its own scientific validity. Sport plays a very prominent social role, which arises out of its essentially multidisciplinary nature. Hence, regarding the interpretation of its social dimension, two approaches exist: the first one, attributing to sport mainly the role which to the largest extent corresponds to the interests of a specific society, leading social ideology or political goals (for instance, adherents of existentialism represent sport as a way of self-affirmation of a human personality which, in the global post-industrial society where people are greatly subjected to manipulation, has become one of the main instruments for self-realization of a person) (Tomić, 2007); the other one is based on the compensation theory

poboljšanje fizičke spremnosti i duhovnog blagostanja, stvaranje društvenih odnosa ili postizanje rezultata na takmičenjima svih nivoa.

Pozitivno pravna regulativa u sportu, posebno kada se posmatra kroz kontekst upravljanja sportskim organizacijama, može se aplikativno posmatrati i kao „sportsko zakonodavstvo“. Odnosno kao egzistencija skupa zakona i pravnih regulativa koje upravljaju odnosima, postupcima i funkcionisanju sportskih organizacija (kao osnove egzistencije sporta), odnosno sportskim sistemom u selini (u određenoj državi). Kao i u drugim društvenim sferama, tako i u sportu ovo pitanje usmerava pažnju na sledeće pravne akte u državi: (a) ustav (kao osnovni zakon države kojim se uređuju najvažnija pitanja društveno-političkog uređenja, a svi drugi propisi koje donose državni organi moraju biti usklađeni sa njim), (b) zakoni (kao pisani izvori koji imaju najvišu pravnu snagu i moraju biti poštovani/primenjivani od strane svih pravnih i fizičkih lica), (c) podzakonski normativni akti (pravni akti koji proizilaze iz zakona i osnova su njegovog sadržajnog izvršenja; ove akte, osim državnih organa, donose i druge upravne organizacije), i (d) interna akta (donose ih starešine nadležnog organa uprave, kao i upravni organi poslovnih subjekata; u ovom kontekstu – upravni organi sportskih organizacija).

SPORT KAO PODRUČJE ZA EGZISTENCIJU SPORTSKOG PRAVA

Savremena shvatanja sporta stoje na stanovištu da je on danas vrlo značajna javna delatnost (najšire prihvaćena, ali i intenzivno javno praćena u društvu) tako da upravljački procesi u sistemu sporta zahtevaju stručno znanje, odgovornost i poslovnu etičnost. Takođe, postao je i delatnost kojom se bave brojne organizacije, institucije i pojedinci, oblast socijalnog života koji ima i svoju naučnu zasnovanost. Sport poseduje veoma izraženu socijalnu ulogu koja proizilazi iz njegove suštinske multidisciplinarnosti, tako da u pogledu tumačenja njegove društvene dimenzije egzistiraju dva pristupa: prvi, gde se sportu uglavnom pripisuje uloga koja u najvećoj meri odgovara interesima određenog društva, vodećoj društvenoj ideologiji ili političkim ciljevima (npr. zastupnici egzistencijalizma sport predstavljaju kao način samopotvrđivanja ljudske ličnosti koji u globalnom postindustrijskom društvu, gde se uglavnom manipuliše ljudima, postaje jedno do osnovnih sredstava samorealizacije čoveka) (Tomić, 2007); drugi, koji se zasniva na Teoriji kompenzacije i polazi od poistovećivanja društvenog razvoja sa tehničkim progresom (tumačenje čoveka i njegovog razvoja sa-

and proceeds from equating the social development with technical progress (interpretation of an individual and of his/her development is perceived through absolutisation of his/her natural conditionality/natural substance, while social changes are represented only as a result of the development of natural determinants) (Nešić, 2008a).

With its functions and comprehensiveness, sport is an important factor for shaping and creating of a social ambient. The social character of sport is specifically indicative in the processes which affect the changes in particular human relations, which is specifically reflected in developing of friendship, fellowship, social contacts, business communication, and so forth. Or, to put it another way, the sport industry, as an important factor of the "social superstructure", with its public character, is a significant development factor of every society. In addition to general social values, sport has also become an inevitable factor of the economic ambient over the past decades. Many business arrangements are stipulated within particular sporting events and activities, while entire communication systems operate by way of sport (Nešić, 2018).

Irrespective of various theoretical approaches in interpretation of the concept and essence of sport, in particular within its sociological context, sport must be universally treated through its three basic characteristics (in the context of direct stakeholders in sporting activities): (1) competition, (2) achievement of maximum (sporting) scores, and (3) intense psycho-physical load. The essence of competition is illustrated by efforts made by an individual or group (teams, crews) to achieve better or faster the same goal that the others also strive for. Competition in itself also contains specific formative values, which are reflected in the fact that an individual, over the course of time, becomes better, stronger, more capable, healthier, and constantly tends to exceed his/her level of development achieved. This, further, leads to generating a strong tendency to achieve maximum, measurable sports performance. However, to achieve increasingly higher performance implies that one has to continuously increase one's own physical and mental efforts, which should be adequately dosed and controlled (Nešić & Lolić, 2008).

When considering the topic of sport in a wider sociological context, the attention is, in the first instance, paid to its dimensions of entertainment, recreation, physical achievements of athletes embodied in the sports performance, and so forth. However, the attention of a narrower segment of scientific and practical approach to sport, as a complex phenomenon, is represented with a relatively small circle of researchers (mostly those who "originate" from sports or who have substantially understood latent dimensions of sport). Within this scope, there is a continuous "search" for

gledava se kroz apsolutizovanje njegove prirodne uslovljenosti/prirodne suštine, dok se društvene promene predstavljaju isključivo kao rezultat razvoja prirodnih determinanti) (Nešić, 2008a).

Sport sa svojim funkcijama i obuhvatnošću bitan je faktor oblikovanja i stvaranja socijalnog ambijenta. Društveni karakter sporta naročito je indikativan u procesima koji utiču na promene u pojedinim međuljudskim odnosima, što se naročito ogleda u razvijanju prijateljstva, drugarstva, socijalnih kontakata, poslovne komunikacije i sl. Drugim rečima, sportska delatnost kao bitan činilac „društvene nadgradnje“ svojim javnim karakterom je značajan razvojni faktor svakog društva. Pored opšte društvenih vrednosti sport poslednjih decenija postaje i nezaobilazan činilac ekonomskog ambijenta. Mnogi se poslovni aranžmani sklapaju u uslovima pojedinih sportskih događaja i aktivnosti, a čitavi sistemi komunikacije se ostvaruju posredstvom sporta (Nešić, 2008).

Bez obzira na različite teorijske pristupe u tumačenju pojma i suštine sporta, posebno u njegovom sociološkom kontekstu, sport se mora univerzalno tretirati kroz svoje tri osnovne karakteristike (u kontekstu neporednih aktera sportskih aktivnosti): (1) takmičenje, (2) postizanja maksimalnog (sportskog) rezultata i (3) intenzivno psihofizičko opterećenje. Suštinu takmičenja odslikava nastojanje pojedinca ili grupe (timova, ekipa) da bolje ili brže postignu isti cilj kome teže i drugi. Takmičenje u sebi sadrži i specifične vaspitne vrednosti koje se ogledaju u tome da čovek vremenom postaje bolji, jači, sposobniji, zdraviji i da stalno teži ka prevaziženju dostignutog nivoa svoga razvoja. Ovo, nadalje, dovodi do stvaranja snažne težnje za postizanjem maksimalnog, sportski merljivog rezultata. Međutim, postizanje sve većeg rezultata podrazumeva i stalno povećanje čovekovih telesnih i mentalnih napora, koji bi trebalo da budu adekvatno dozirani i kontrolisani (Nešić & Lolić, 2008).

Kada se tematika sporta razmatra u širem sociološkom kontekstu u prvom redu se usmerava pažnja na njegove dimenzije zabave, razonode, fizičkih postignuća sportista personificiranih u sportskom rezultatu, i sl. Međutim, pažnja užeg segmenta naučno-praktičnog pristupa sportu kao kompleksnom fenomenu zastupljena je u relativno malom krugu istraživača (uglavnom onih koji su "potekli" iz sporta ili su suštinski shvatili latentne dimenzije sporta). U tom obuhvatu egzistira stalna "potraga" za linijom koja deli sport na, uslovno, dva područja: (1) deo koji je krucijalan kulturni element društva, i (2) deo koji obuhvata značajnu ekonomsku aktivnost (Bačić & Bačić, 2011). Bez obzira na to o

a line dividing sport into, conditionally, two sections: (1) a part crucial to the cultural element of a society, and (2) a part encompassing a substantial economic activity (Bačić & Bačić, 2011). Irrespective of which “line” of studying and perceiving of sport is in question, legal determinants are the components binding upon all of its stakeholders. The current legal regulations have equal implications not only for the approach to sport through its socially positive categories (health; achievement; morality; participation in sports performance, resulting from discipline, motivation, team work, etc.; and/or opportunities which sports activities, as a dynamic dimension of sport, open for development of permanent human values), but also, even more, for its negative reflections (emphasizing the significance of victory; absolutisation of money awards as a main purpose for going in for sports; influence of power groups from the world of business, which tend to shape sports in accordance with their own interests and goals; disaffirmation of inherent values of fair-play; abuse of sports for money laundering; use of doping; politicization of sporting events; etc.)

The sports law, as already pointed up, constitutes quite a new branch of the legal system, which is formatted on the respective systematics with mixed features. It includes basic principles, but also specific normative solutions that belong the spheres of certain traditional branches of law (constitutional, civil, criminal, administrative, law of obligation, labour law, etc.). The integration in a separate systemic unit resulted from practical needs identified in recent years in current trends in the development of modern sport. This has been in particular intensified though a clear understanding of sport as a highly profitable business activity. This has opened a number of issues interfering with domains of various types of law. Sporting activities often take place outside state borders, whereby becomes evident also their dimension of international legal responsibility, thus influencing an increasingly fast development of the specific legal regulations which accompany and direct the specific sport-related legal practice. Therefore, the current legal regulations with respect to sport can be considered from the point of view of different areas of the scientific (and also practical) approach, which are encompassed by academic studies¹: (a) constitutional base of sports law, (b) administrative, organisational and financial law in sport; (c) contract law in sport, (d) tort law, (e) criminal liability in sport, (f) international sports law, (g) European Union sports law, (h) labour law, etc.

SPORTS ORGANISATION AS A MANAGED SYSTEM

The sports activities organised in modern days constitute a complex system, which exists in a statutory deter-

kojoj se “liniji” proučavanja i sagladavanja sporta radi, zakonske determinante su obavezujuća komponenta za sve njegove aktere. Pozitivno pravna regulativa je podjednako implicitna kako na pristup sportu kroz njegove društveno pozitivne kategorije (zdravlje; postignuće; moralnost; participacija u sportskim rezultatima koji su posledica discipline, motivisanosti, timskog rada i sl.; odnosno mogućnostima koje sportske aktivnosti, kao dinamička dimenzija sporta, otvaraju za razvoj trajnih ljudskih vrednosti), tako još više na njegove negativne refleksije (naglašavanje značaja pobeđe; apsolutizovanje novčanih nagrada kao dominantnog smisla bavljenja sportom; uticaja moćnih grupa iz sveta biznisa koje sport nastoje da uobliče prema sopstvenim interesima i ciljevima; negacija inherentnih vrednosti fer pleja; zloupotreba sporta u „pranju“ novca; korišćenje dopinga; politizacija sportskih događaja; itd.)

Sportsko pravo, kako je već naglašeno, predstavlja noviju granu pravnog sistema koja je formatirana na predmetnoj sistematici sa mešovitim obeležjima. Obuhvata osnovna načela, ali i konkretna normativna rešenja koja pripadaju sferama pojedinih klasičnih grana prava (ustavno, građansko, krivično, upravno, obligaciono, radno, itd.). Objedinjavanje u zasebnu sistemsku celinu bilo je uslovljeno praktičnim potrebama koje su identifikovane poslednjih godina u aktelnim tendencijama razvoja savremenog sporta. To se naročito intenziviralo kroz jasnu spoznaju današnjeg sporta kao visoko profitabilne poslovne aktivnosti. To je otvorilo brojna pitanja koja zadiru u domene različitih vrsta prava. Sportske aktivnosti se često odvijaju izvan državnih granica, pri čemu dolazi do izražaja i njihova međunarodno pravna dimenzija, što utiče na sve brži razvoj posebne pravne regule koja prati i usmerava specifičnu sportsko-pravnu praksu. Stoga se o pozitivno pravnoj regulativi u sportu može govoriti iz ugla različitih prostora naučnog (ali i praktičnog) pristupa koji su obuhvaćeni akademskim izučavanjem¹: (a) ustavne osnove sportskog prava, (b) administrativno, organizaciono i finansijsko pravo u sportu; (c) ugovorno pravo u sportu, (d) odštetno pravo, (e) krivično pravna odgovornost u sportu, (f) međunarodno sportsko pravo, (g) sportsko pravo Evropske unije, (h) radno pravo, itd.

SPORTSKA ORGANIZACIJA KAO SISTEM KOJIM SE UPRAVLJA

Savremeno organizovane sportske aktivnosti predstavljaju kompleksan sistem koji egzistira u zakonski određenoj i pravno uobličenoj organizacionoj formi.

¹ <https://www.uns.ac.rs/index.php/c-clanice/centri/acimsi>

¹ <https://www.uns.ac.rs/index.php/c-clanice/centri/acimsi>

mined and legally shaped organisational form. The specific sports organisations are, in the broadest term, institutionalized through sports clubs. By its nature, these are in the most number of cases formed as associations (a system of grouping all persons who have organized themselves for the purpose of physical workout, training and competing, as a common purpose and/or goal) (Nešić & Nešić, 2012).

Although regarding the organisational physiognomy and form of the formal and legal determination of sports organisations there is a wide range of various options for their expression, their common characteristic is that the organisation is not a goal in itself, but rather one of the general sporting strategies for reaching the set goal. This means that a sports organisation implies the regulation, co-ordination and direction of all parts of the unit (functions, processes and relations therein) for the purpose of achieving the set athletic goals (Tomić, 2007). Therefore, the system approach to the way of forming a sports organisation provides for a purposeful theoretical framework for solving the issue of selection of the type of organising appropriate for realistic, constantly changing circumstances relevant to sports activities. A well-designed organisational system is the first and most important instrument for successful management of a sports organisation (Raič, 1999).

The existence of several mutually dependent subsystems is typical of the structural functioning of a sports organisation. Taking into account the size, orientation and mission of a specific sports organization, the subsystems can be created as: training process, management, marketing, sporting facilities and infrastructure, finance, etc. Each of the subsystems implies certain characteristics and properties that may characterize it also as a relatively independent part of the sports organisation, separated (conditionally) from other subsystems in it (Nešić, 2014). This can be particularly noticed in the training process, which constitutes the central part of every sports organisation. Therefore, the system approach in structuring a sports organisation is the determinant for an appropriate theoretical, but also a practical framework which solves the issue of selection of the type of organising appropriate for the realistic environment in which sports activities take place. A well-designed organisational system is the first and most important instrument for successful management of a sports organisation (Nešić, 2017).

Any sports organisation is fundamentally based on three "pillars": structure, functions and processes. Although these organisational components are interconnected and interactively determined, from the point of view of internal specificity of sport and its values, the organisational functions must be recognised in the professional scope

Konkretno sportske organizacije su, u najširem obliku, institucionalizovane kroz sportske klubove. Oni su po svom karakteru, u najvećem broju slučajeva, formirani kao udruženja (sistem grupisanja lica koja su se organizovala radi fizičkog vežbanja, treniranja i takmičenja, kao zajedničke svrhe, odnosno cilja) (Nešić & Nešić, 2012).

Mada u pogledu organizacione fizionomije i oblika formalno-pravne determinisanosti kod sportskih organizacija postoji širok spektar različitih mogućnosti njihovog ispoljavanja, zajednička karakteristika im je da organizacija nije sama sebi cilj, već jedna od opštih sportskih strategija dolaženja do postavljenog cilja. To znači da sportska organizacija podrazumeva uređivanje, koordinaciju i vođenje svih delova celine (funkcije, procese i odnose u njima) radi ostvarivanja postavljenih sportskih ciljeva (Tomić, 2007). Stoga sistemski pristup oblikovanja sportske organizacije daje svrsishodan teorijski okvir za rešavanje problema izbora tipa organizovanja primerenog realnim, stalno promenljivim okolnostima sportskih aktivnosti. Dobro projektivani organizacioni sistem je prvi i najvažniji instrument uspešnog menadžmenta sportske organizacije (Raič, 1999).

Strukturno funkcionisanje sportske organizacije karakteristično je po egzistenciji više međusobno zavisnih podсистема. U odnosu na veličinu, usmerenost i misiju konkretne sportske organizacije, podsystemi mogu biti kreirani kao: trenažni proces, upravljanje, marketing, sportski objekti i infrastruktura, finansije, itd. Svaki od podsystema podrazumeva određene karakteristike i svojstva koja ga mogu karakterisati i kao relativno nezavisan deo sportske organizacije, odvojen (uslovno) od drugih podsystema u njoj (Nešić, 2014). To se posebno može uočiti kod trenažnog procesa koji predstavlja centralni deo svake sportske organizacije. Zbog toga je sistemski pristup u strukturiranju sportske organizacije determinanta za odgovarajući teorijski, ali i praktični okvir, kojim se rešava problem izbora tipa organizovanja primerenog realnom okruženju u kojem se odvijaju sportskih aktivnosti. Dobro projektovani organizacioni sistem je prvi i najvažniji instrument uspešnog menadžmenta sportske organizacije (Nešić, 2017).

Sušinski se sportska organizacija temelji na tri "stuba": strukturi, funkcijama i procesima. Mada su ove organizacijske komponente međusobno povezane i interaktivno determinisane, sa aspekta unutrašnje osobenosti sporta i njegovih vrednosti, organizacione funkcije moraju biti prepoznate u stručnom opsegu svih pojedinačnih subjekata sportskog procesa. U sportskoj praksi se najče-

of all individual entities in the sport process. In the sport practice is most commonly used (as a basic model) the functional structuring of club organisation through: 1) sports function (sports-functional subsystem), and 2) business function (business subsystem). Through the sports-functional subsystem of a club are included, according to the principle of interactive relation, the following parts (functions): training, competition, professional and pedagogic work, selection, training technology development, scientific and research activity, and so forth. As business functions of a club (business subsystem), the following may exist: marketing, finance, employment division, facilities and equipment, investment and innovation, division of operations and profit, etc. (Nešić, 2008).

In the sport business industry nowadays prevails an entrepreneurship attitude according to which the competitive advantage of a sports organisation (as a multi-dimensional system) is not primarily based on the fact "what it has" (that others don't have), but rather on "what the organisation can and may do better than others" (Nešić, 2014:105). In the light of sports management, organising refers to the processes, which enable an adequate division of labour at a sports institution into individual tasks and groups of interdependent jobs, to which the managers assign responsibilities within specific groups of activities, including their mutual relations. Any efficient management must take care of the most rational forms of work of the club, which is one of the basic roles of organising as a management function. The organisational structure of a sports institution may significantly affect the ways in which the business processes and operational activities are conducted in it. If anyone wishes to reach as high level of success of a sports organization as possible, and/or upgrade the quality of services provided to the clients, then its structural elements should be created observing, at the same time, the relevance of the organizational design, the task of which is to ensure a smooth generating and use of new knowledge and method of operation within the sports system (Nešić & Fratrić, 2013). Implementation of modern methods for improvement of score performances of a sports organisation has become a synonym for success of its business activity. Constant improvement and innovation in the activities of a sports organisation, in particular in the training process and organisational subsystems associated therewith, which lead to continuous improvements of all business activity segments, constitutes the best and the most efficient way to satisfy the organisation members, as well as related stakeholders (new prospective service clients, spectators and fans, investors, shareholders, sponsors, etc.) (Nešić, 2014).

šće može sresti (kao osnovni model) funkcionalno strukturiranje organizacije kluba kroz: 1) sportsku funkciju (sportsko-funkcionalni podsistem) i 2) poslovnu funkciju (poslovni podsistem). Kroz sportsko-funkcionalni podsistem kluba obuhvaćeni su, po principu interaktivnog odnosa, sledeći delovi (funkcije): trening, takmičenje, stručno-pedagoški rad, selekcija, razvoj trenažne tehnologije, naučno-istraživačka delatnost, i sl. Kao poslovne funkcije kluba (poslovni podsistem) mogu da egzistiraju: marketing, finansije, kadrovska služba, objekti i oprema, investicije i inovacije, poslovno-profitni sektor, itd. (Nešić, 2008).

U sportskoj delatnosti danas postoji dominantan preduzetnički stav da se konkurentska prednost sportske organizacije (kao višedimenzionalnog organizacionog sistema) ne zasniva primarno na činjenici "šta ona ima" (a druga nema), već na osnovu toga "šta organizacija ume i može da uradi bolje od drugih" (Nešić, 2014: 105). U svetlu sportskog menadžmenta, organizovanje se odnosi na procese koji omogućavaju adekvatnu podelu rada u sportskoj instituciji na pojedinačne zadatke i grupe međuzavisnih poslova, kojima menadžeri određuju odgovornosti u okviru pojedinih grupacija aktivnosti, kao i njihove međusobne odnose. Efikasan menadžment mora da vodi računa o najracionalnijim oblicima rada kluba, što je jedna od osnovnih uloga organizovanja kao menadžment funkcije. Organizaciona struktura sportske institucije može bitno da utiče na načine kojima se u njoj odvijaju poslovni procesi i radne aktivnosti. Ukoliko se želi dostići što viši nivo uspešnosti sportske organizacije, odnosno podići kvalitet usluga koje pruža korisnicima, tada bi se njeni strukturni elementi trebali kreirati uz uvažavanje značaja organizacionog dizajna, čiji je zadatak obezbeđivanje nesmetanog generisanja i korišćenja novih znanja i metoda rada u sportskom sistemu (Nešić & Fratrić, 2013). Implementacija savremenih metoda za poboljšanje rezultatskih performansi sportske organizacije postao je sinonim za uspešnost njenog poslovanja. Konstantno usavršavanje i inovativnost u aktivnostima sportske organizacije, posebno u trenažnom procesu i sa njime povezanih organizacionih podsistema, koji dovode do kontinuiranih poboljšanja svih segmenata poslovanja, predstavljaju najbolji i najbrži put do zadovoljnih članova organizacije, kao i povezanih stejkholdera (novih potencijalnih korisnika usluga, sportske publike, ulagača, deoničara, sponzora, itd.) (Nešić, 2014).

Upravljačke performanse sportske organizacije uslovljene su, pre svega, organizacionim modelom koji je koherentan sa njenim ciljevima, misijom i kapaciteti-

The management performances of a sports organisation are conditioned, first of all, upon the organisational model which is coherent to its goals, mission and capacities, as well as upon specific features of the sports branch it belongs to. However, the starting point in all activities lies in the application of the legal regulations, which are oriented not only towards the issues of establishing and commencement of operation of a sports organisation, but also towards the obligations of the management structures during its "life". The legal soundness is defined through the Law on Sports (2016) by an explicit definition of the rights and obligations of all entities within the sports system of the Republic of Serbia, such as: legal status; organisation and registration of organisation in the field of sport; general interest, needs and citizen interests in the field of sport; funding; categorisations in the field of sport; national sports development strategy in the Republic of Serbia; school and university sports and physical education of pre-school children; sporting facilities; organising of sporting events; national recognitions and awards for special contribution to the development and affirmation of sport; record-keeping and supervision of the operations of organisations in the field of sport (Art. 1).

SPORTS ORGANISATIONS AND LEGAL REGULATIONS

The legal systems in the majority of European states recognize and respect the sports law, as well as the regulations complementary thereto, which make it a social reality. The content of the currently existing applicable legal regulations, governing the field of sports in the Republic of Serbia, evidences the efforts made by the state to protect in sport (sports activities and sport business industry) the positive values it holds and promotes. Taking into account that the law constitutes a set of norms of human behaviour (which are prescribed and sanctioned coercively by the sovereign state authorities), it is logical that sports activities (as a type of human activity/behaviour) also fall within the competence of the state and its legal structure. Furthermore, the role of the state is to enable and uphold exercising of social functions of sport, which is possible only if the sports system is operating and if the sports activities are organised and carried out in accordance with the rules prescribed in advance, which rules enjoy the protection of the state apparatus of institutionalized coercion (Šegvić, 2011: 777).

How the state will regulate the relations in sport, i.e., legal protection measures it provides to sports entities, depends on the selection of the model of legal regulation of sport. In practice, two of them prevail: (1) interventionist (when the major part of the sports system is legally regu-

ma, kao i specifičnostima sportske grane kojoj pripada. Međutim, polazište u svim aktivnostima leži u primeni zakonske regulative, koja je usmerena, kako na pitanja osnivanja i početka rada sportske organizacije, tako i na obaveze upravljačkih struktura tokom njenog „života“. Pravna utemeljenost kroz Zakon o sportu (2016) definisana je eksplicitnim određenjem prava i obaveza svih subjekata u sistemu sporta Republike Srbije, kao što su: pravni položaj; organizacija i registracija organizacije u oblasti sporta; opšti interes, potrebe i interesi građana u oblasti sporta; finansiranje; kategorizacije u oblasti sporta; nacionalna strategija razvoja sporta u Republici Srbiji; školski i univerzitetski sport i fizičko vaspitanje dece predškolskog uzrasta; sportski objekti; organizovanje sportskih priredaba; nacionalna priznanja i nagrade za poseban doprinos razvoju i afirmaciji sporta; vođenje evidencija i nadzor nad radom organizacija u oblasti sporta (čl. 1).

SPORTSKE ORGANIZACIJE I PRAVNA REGULATIVA

Pravni sistemi u većini evropskih država prepoznaju i uvažavaju sportsko pravo, kao i njemu kompletarne propise koji ga čine društvenom realnošću. Sadržaj trenutno postojeće pozitivno pravne regulative koja uređuju oblast sporta u Republici Srbiji govori o nastojanjima države da u sportu (sportskim aktivnostima i delatnostima) zaštite pozitivne vrednosti koje on nosi i promoviše. Obzirom da pravo predstavlja skup normi o ljudskom ponašanju (koje propisuje i prinudom sankcioniše suverena državna vlast), logično je da se i sportske aktivnosti (kao vid ljudske delatnosti/ponašanja) nalaze u nadležnosti države i njenog pravnog poretk. Takođe, uloga države je da omogući i podrži ostvarivanje socijalnih funkcija sporta, što je moguće samo ako sportski sistem funkcioniše, a sportske aktivnosti se organizuju i sprovode po unapred propisanim pravilima koja uživaju zaštitu državnog aparata institucionalizovane prinude (Šegvić, 2011: 777).

Kako će država regulisati odnose u sportu, odnosno mere pravne zaštite koje pruža sportskim subjektima, zavisi od izbora modela zakonskog uređenja sporta. U praksi dominiraju dva: (1) intervenistički (kada država najveći deo sportskog sistema pravno reguliše posebnim zakonom/Zakonom o sportu²), i (2) neintervenistički (gde je pravna zaštita sportskih odnosa parcijalna; pravne norme koje se odnose na sport su raspo-

² Na ovaj način se šalje jasna "poruka" građanima da je sport društvena delatnost koja je pod eksplicitnom pravnom zaštitom, čime se afirmišu njegove društvene vrednosti.

lated by the state by a separate law/the Law on Sports²), and (2) non-interventionist (where the legal protection of sports relations is partial; the legal norms relating to sport are distributed in a large number of regulations governing the performance in other areas of human activities – e.g. health and social protection, pensions insurance, culture, education, employment protection, citizen associations, etc.). Irrespective of the theoretical model in question, for practitioners in sport, i.e., persons managing sports organisations, it is of primary importance to be aware of (and to accept) the dictum that “ignorance of the law excuses no one”.

The Law on Sports (2016; Art. 2) defines sport as the activity of special importance to the Republic of Serbia. The legal entities in the sports system are formed as sports organisations, having this status if set up for the purpose of carrying out sports activities and sport-related business activity, pursuant to the law (Art. 3). From the point of view of the existence of sport organisation as a managed system (legal entity) and activities carried out in it, which are relevant to the management structures, the Law (2016) provides for (Art. 33) that for the purpose of carrying out sport-related business activities, a sport organisation can be set up as an association (sport association) or as a company (sport company). To any issues not regulated by this law, the general regulations governing associations and/or companies shall apply. The provision that is essential, which is to be directly implicated and implemented “in consciousness” of people who manage a sports organisation, is related to the basic conditions required regarding the legality of operation. To this end, Article 35 of the Law explicitly determines that a sport organisation may carry out sports activities and be engaged in the sport business industry if, in accordance with this law and sports rules, it has: (1) athletes who are its members or who are hired under contract; (2) engaged sport experts, depending on the type of activity; (3) ensured an appropriate space, i.e., sporting facilities and sporting equipment; (4) appropriate internal organisation and funds, if takes part in sporting competitions; (5) ensured safety of the athletes and other participants in carrying out sports activities and sport-related business activity.

So, this legal solution clearly sets determinants for the rights and obligations of human resources in the management part of a sports organisation, and implicitly directs the areas for legal responsibility in line with the legal regulations of the environment in which the business activity is carried out. This is irrespective of whether a sports organisation in the form of association (voluntary non-profit or-

redene u većem broju propisa koji regulišu obavljanje drugih područja ljudskih delatnosti – npr. zdravstvena i socijalna zaštita, penzijsko osiguranje, kultura, obrazovanje, radnopravna zaštita, udruženja građana, itd.). Bez obzira o kojem je teorijskom modelu reč, za praktičare u sportu, odnosno ljude koji upravljaju sportskim organizacijama, od prvenstvenog je značaja poznavanje (i prihvatanje) sentence da “nepoznavaje zakona ne oslobađa od odgovornosti”.

Zakon o sportu (2016; čl. 2) definisao je da je sport delatnost od posebnog značaja za Republiku Srbiju. Pravna lica u sistemu sporta su uobičajena kroz sportske organizacije koje ovaj status ostvaruju ako su osnovane radi obavljanja sportskih aktivnosti i sportskih delatnosti, u skladu sa zakonom (čl. 3). Posmatrano sa aspekta egzistencije sportske organizacije kao sistema kojim se upravlja (pravnog subjekta) i aktivnostima koje se u njoj odvijaju, a od značaja su za upravljačke strukture, Zakonom (2016) je utvrđeno (čl. 33) da se radi obavljanja sportskih aktivnosti i sportskih delatnosti sportska organizacija može osnovati kao udruženje (sportsko udruženje) ili kao privredno društvo (sportsko privredno društvo). Na pitanja koja nisu uređena ovim zakonom primenjuju se opšti propisi o udruženjima, odnosno privrednim društvima. Ono što je esencijalna odredba koja se direktno implicira i mora biti implementirana „u svest“ ljudi koji upravljaju sportskom organizacijom odnosi se na osnovne uslove koji se postavljaju u pogledu zakonitosti rada. Tako se u članu 35. Zakona eksplicitno određuje da sportska organizacija može obavljati sportske aktivnosti i sportske delatnosti ako, u skladu sa ovim zakonom i sportskim pravilima, ima: (1) učlanjene ili ugovorom angažovane sportiste; (2) angažovane sportske stručnjake u zavisnosti od vrste delatnosti; (3) obezbeđen odgovarajući prostor, odnosno sportske objekte i sportsku opremu; (4) odgovarajuću unutrašnju organizaciju i finansijska sredstva, ako učestvuje u sportskim takmičenjima; (5) osiguranu bezbednost sportista i drugih učesnika pri obavljanju sportskih aktivnosti i delatnosti.

Dakle, ovakvim zakonskim rešenjem se jasno postavljaju determinante prava i obaveza ljudskih resursa u upravljačkom delu sportske organizacije, te implicitno usmeravaju prostori pravne odgovornosti u skladu sa zakonskom regulativom okruženja u kojem se ostvaruje poslovna aktivnost, bez obzira da li se radi o sportskoj organizaciji kao udruženju (dobrovoljnoj nedobitnoj organizaciji zasnovanoj na slobodi udruživanja više fizičkih i/ili pravnih lica) ili sportskom privrednom društvu (d.o.o. ili a.d.).

²In this way, a clear message” is sent to citizens that sport is a social activity, which is under the explicit legal protection, whereby its social values are affirmed.

ganisation based on the freedom of association of several natural persons and/or legal entities), or a sports company (LLC or JSC) is concerned.

The basis of the management responsibility in a sports organisation lies in the quintessence of sport, i.e., in the activities predominantly taking place in it. This is so-called core of the sports system – the training process. Since it takes place under permanent pressures of various kind (predominantly health risks of the basic sports substance – athletes), it is necessary to bear in mind constantly the basic postulates relating to the follows (Art. 4): everyone has the right to go in for sports; going in for sports must be human, free and voluntarily, healthy and safe, in accordance with the natural ambient and social environment, fair, tolerant, ethically acceptable, responsible, independent from any abuse and goals which are in contrast with the spirit of sport, and must be available to all citizens under equal conditions, irrespective of their age, level of physical abilities, degree of possible disability, sex, and any other personal quality.

For this reason has been defined a so-called procedural framework, to determine the basic areas covered by the legal regulations: law(s), sports rules³ and conventions in the field of sport. Organisations in the field of sport accomplish their goals and carry out sporting activities in compliance with the law, sports rules, ratified conventions in the field of sport and principles set forth in the documents of international organisations, the member of which is the Republic of Serbia (Art. 6).

What is typical of the activities of a sports organisation is the specific responsibility of the people who manage the basic process – training. In this regard, it is relevant to all sports organisations to apply the basic rule of legal framework regarding the operation of sports experts. In the sporting practice (domestic and international) this refers to the fact that the applicable laws shall be applied subject to the place of performance of the work activity. In particular, the responsibilities and duties of coaches are directed towards an increased care in application of the legislation and of

³ Sports rules are, in practice, considered as a kind of “sports laws”, taking into account that they are binding upon all the stakeholders in sports activities, in particular within sports competitions. The sports rules are hierarchically arranged. In this regard, the Law on Sports (2016) has recognized and explicitly defined the provisions creating a binding legal framework, stating in Art. 6 paragraph 2 and 3 that: sports rules shall directly apply to all persons falling directly or indirectly within the competence of the relevant national sport association. The relevant national sport associations bring their sports rules in line with the sports rules of the relevant international sport association, and if not brought in line, or if the relevant national sport association has failed to adopt the respective sports rules, the sports rules of the relevant international sport association shall directly apply, unless they are not in compliance with this law.

Osnova upravljačke odgovornosti u sportskoj organizaciji leži u biću sporta, odnosno aktivnostima koje se u njoj dominantno odvijaju, a to je tzv. jezgro sportskog sistema – trenažni proces. Kako se on odvija pod stalnim pritiskom različitih vrsta (prevashodno rizika po zdravlje osnovne sportske supstance – sportista) to se konstantno moraju imati u vidu osnovni postulati koji se odnose na sledeće (čl. 4): svako ima pravo da se bavi sportom; bavljenje sportom mora biti humano, slobodno i dobrovoljno, zdravo i bezbedno, u skladu sa prirodnom sredinom i društvenim okruženjem, fer, tolerantno, etički prihvatljivo, odgovorno, nezavisno od zloupotreba i ciljeva koji su suprotni sportskom duhu i dostupno svim građanima pod jednakim uslovima, bez obzira na uzrast, nivo fizičkih sposobnosti, stepen eventualne invalidnosti, pol i drugo lično svojstvo.

Zbog toga je i definisan tzv. postupajući okvir, kojim su određeni osnovni obuhvatni prostori pravne regulative: zakon(i), sportska pravila³ i konvencije u oblasti sporta. Organizacije u oblasti sporta ostvaruju svoje ciljeve i obavljaju sportske aktivnosti u skladu sa zakonom, sportskim pravilima, potvrđenim konvencijama u oblasti sporta i principima utvrđenim u dokumentima međunarodnih organizacija čija je članica Republika Srbija (čl. 6).

Ono što je karakteristično za aktivnosti sportske organizacije jeste specifičnost odgovornosti ljudi koji upravljaju osnovnim procesom – treningom. U tom pogledu za sve sportske organizacije je od značaja da se u pogledu rada sportskih stručnjaka primenjuje osnovno pravilo o zakonskom okviru. U sportskoj praksi (domaćoj i međunarodnoj) to se odnosi na činjenicu da se primenjuju važeći zakoni prema mestu obavljanja radne aktivnosti. Posebno se odgovornosti i obaveze sportskih trenera usmeravaju na pojačanu pažnju u primeni zakonskih propisa, kao i sportskih pravila, koji su korespondentni sa implikacijama u sledećim aspektima rada: (a) sportski objekti, (b) sportska i trenažna oprema i rekviziti, (c) nadzor nad sportistima tokom treninga, (d) davanje

³ Sportska pravila se u praksi smatraju svojevrsnim „sportskim zakonima“ obzirom da su obavezujuća za sve aktere sportskih aktivnosti, a posebno u okviru sportskih takmičenja. Sportska pravila su hijerarhijski uređena. U tom smislu je Zakon o sportu (2016) prepoznao i eksplicitno definisao odredbe kojima se stvara obavezujući zakonski okvir, gde se u čl. 6. stav 2. i 3. kaže da: sportska pravila se neposredno primenjuju na sva lica koja su, neposredno ili posredno, obuhvaćena nadležnostima nacionalnog sportskog saveza. Nadležni nacionalni sportski savezi usaglašavaju svoja sportska pravila sa sportskim pravilima nadležnog međunarodnog sportskog saveza, a u slučaju da nisu usaglašena ili da nadležni nacionalni sportski savez nije doneo odgovarajuća sportska pravila, neposredno se primenjuju sportska pravila nadležnog međunarodnog sportskog saveza, osim ako nisu u skladu sa ovim zakonom.

sports rules as well, which correspond to implications in the following aspects of work: (a) sporting facilities, (b) sporting and training equipment and requisites, (c) supervision of athletes during training, (d) provision of expert and other instructions, (e) recommending physical exercises, and (f) testing of athletes/those who work out.

The permanent duty of the management of any sport organisation is to take care of application of the current legal regulations in the operation of the sports organisation managed by it. Therefore, the attention of the top management should be in particular oriented towards a certain number of legal regulations. The laws primarily relating to the operation of sports organisations and constituting *jus commune*, and as can be said also *lex communis*, are (1) the Law on Sports, (2) the Law on the Prevention of Violence and Improper Behaviour at Sports Events, and (3) the Law on the Prevention of Doping in Sports.

However, some other laws that, directly or indirectly, can be the basis of procedures of the management in certain situations, are not less important. These include, inter alia: (a) Law on Public Peace and Order, (b) Criminal Code, (c) Labour Law, (d) Law on Personal Income Tax, (e) Accounting Law, (f) Law on Contract and Torts, (g) Law on Copyright and Related Rights, (h) Law on the Public Information and Media, (i) Law on Free Access to Information of Public Importance, (j) Law on Free Access to Information of Public Importance; etc.

In addition to the Law on Sports, it is necessary to know and apply other bylaws that encompass the most important provisions in the field of sports law. Such documents elaborate in more detail particular segments relevant not only to the management of a sports organisation as a whole, but also to the activities of organising of sports competitions (Nešić, 2020). It is necessary to be aware of, and keep a “constant touch” with them, because they directly stem from the Law on Sports and govern in more detail the method of its application in the operation of sports organisations. This specifically refers to the following⁴: a) Rulebook on sports branches and fields in the Republic of Serbia and sports disciplines within the sports branches and fields, b) Rulebook on detailed conditions for the performance of sports activities and sport business industry, c) Rulebook on competent national sports associations for sports branches and fields of sport in the Republic of Serbia, d) Rulebook on the national categorisation of sports, e) Rulebook on the conditions for carrying out sport business industry activities, f) Rulebook on the use of public sporting facilities and performance of sports activities at public sporting facilities, g) Rulebook on the nomenclature of sports professions and

stručnih i drugih uputstava, (e) preporučivanje vežbi i (f) testiranja sportista/vežbača.

Menadžement sportske organizacije ima stalan zadatak da vodi računa o primeni pozitivno pravne regulative u radu sportske organizacije kojom upravlja. Zbog toga se pažnja top menadžmenta treba posebno usmeriti ka jednom broju pravnih propisa. Zakoni koji se prioriteto odnose na rad sportskih organizacija i predstavljaju *jus commune*, a može se reći i *lex communis*, su: (1) Zakon o sportu, (2) Zakon o sprječavanju nasilja i nedoličnog ponašanja na sportskim priredbama, i (3) Zakon o sprečavanju dopinga u sportu.

Međutim nisu ništa manje značajni i neki drugi zakoni koji direktno ili indirektno mogu biti osnov za postupanje menadžmenta u određenim situacijama. To su, između ostalih, i: (a) Zakon o javnom redu i miru, (b) Krivični zakonik, (c) Zakon o radu, (d) Zakon o porezu na dohodak građana, (e) Zakon o računovodstvu, (f) Zakon o obligacionim odnosima, (g) Zakon o autorskim i srodnim pravima, (h) Zakon o javnom informisanju i medijima, (i) Zakon o slobodnom pristupu informacijama od javnog značaja; itd.

Pored Zakona o sportu, potrebno je poznavanje i primena ostalih podzakonskih akata kojima su obuhvaćene najznačajnije odrednice iz oblasti sportskog prava. Ovim dokumentima se detaljnije razrađuju pojedini segmenti koji su od značaja, kako za upravljanje sportskom organizacijom u celini, tako i za aktivnosti organizovanja sportskih takmičenja (Nešić, 2020). Njih je neophodno poznavati i biti „u stalnom kontaktu“ jer direktno proizilaze iz Zakona o sportu i detaljnije uređuju način njegove primene u radu sportskih organizacija. To se posebno odnosi na sledeće⁴: a) Pravilnik o sportskim granama i oblastima sporta u Republici Srbiji i sportskim disciplinama u okviru sportskih grana i oblasti sporta, b) Pravilnik o bližim uslovima za obavljanje sportskih aktivnosti i sportskih delatnosti, c) Pravilnik o nadležnim nacionalnim sportskim savezima za sportske grane i oblasti sporta u Republici Srbiji, d) Pravilnik o nacionalnoj kategorizaciji sportova, e) Pravilnik o uslovima obavljanja sportskih delatnosti, f) Pravilnik o korišćenju javnih sportskih objekata i obavljanju sportskih aktivnosti u javnim sportskim objektima, g) Pravilnik o nomenklaturi sportskih zanimanja i zvanja; h) Pravilnik o sadržini i načinu vođenja Jedinствene evidencije udruženja, organizacija i preduzetnika u oblasti sporta; itd.

⁴In the context of sports in the Republic of Serbia

⁴U kontekstu sporta u Republici Srbiji

titles, h) Rulebook on the contents and methods of keeping the Single Register of associations, organisations and entrepreneurs in the field of sport; etc.

CONCLUSION

The modern sport may be considered from different angles: as a social phenomenon with multiple social benefits and influences; as a kinesiology activity, predominantly aimed to upgrade physical (motoric and functional) performances of athletes; as a bio-psychological phenomenon penetrating the sphere of human cognitive and conative functioning mechanisms; as a field of medical treatment (prevention and therapy); etc. However, in the broadest sense of understating the concept definition, and especially its activation part (sports activities), sport should be treated holistically. To this should be certainly added its institutionalised component. Therefore, it is logical that such contexts of consideration of sport and the role of sports organisations in its vitality should be considered and studied from different angles, including also with respect to legal relations prevailing in it.

The contents of all activities in sport are accompanied by appropriate rules. Some of them are universally applicable to all sports and sports disciplines, while some of them differ, subject to specific features of the specific sports branch. For this reason, the sports law, as a young area of the law science, in everyday practice increasingly gains importance. It is known that various state structures may differently determine the legal relations in sport, so that there is a risk of heterogeneous interpretation and application of the sports legislation, in particular regarding the existence of, and adherence to sports rules. Therefore, it is especially important to emphasize the existence of national and international sports bodies⁵, one of the tasks of which is enactment of legal documents related to the application of international sports rules. As the sports system at the global level⁶ is hierarchically arranged, the international sports rules are applied in a subordinate manner accordingly. On the other hand, the fact is that a number of legal norms, which are applied to sport, exist concurrently in the legal documents of other traditional law branches, so that to the physiognomy of the sports law can be attributed a correlative legal character. Therefore, the sports law (Vuleta, 2015) can be generally defined and treated as a set of legal rules governing the legal relations in sport (the relations in which the sports entities enter, in connection with such rules).

As far as the management of sports organisations is concerned, viewed from the angle of obligation of adhering

⁵ This is predominantly related to international sports federations and associations for every sports branch, including the International Olympic Committee.

⁶ This in the first instance refers to the competition sports, i.e. high-performance sports (certainly including the professional sports).

ZAKLJUČAK

Savremeni sport je moguće sagledavati iz različitih uglova: kao društvenu pojavu sa mnogosturkim socijalnim benefitima i uticajima; kao kineziološku aktivnost koja je dominantno usmerena ka podizanju telesnih (motoričko-funkcionalnih) performansi vežbača; kao bio-psihološku pojavu koja zadire u područja čovekovih kognitivnih i konativnih mehanizama funkcionisanja; kao oblast medicinskog tretmana (u prevenciji i lečenju); itd. Međutim sport u najširem shvatanju pojmovnog određenja, a posebno njegov aktivacioni deo (sportske aktivnosti), neophodno je tretirati holistički. Tome treba svakako dodati njegovu institucionalizovanu komponentu. Zbog toga je logično da se ovakvi konteksti razmatranja sporta i uloge sportskih organizacija u njegovoj životvornosti, treba da sagledavaju i proučavaju iz različitih uglova, pa tako i u pogledu pravnih odnosa koji u njemu vladaju.

Sadržaji svih aktivnosti u sportu prate i odgovarajuća pravila. Neka su univerzalno primenljiva na sve sportove i sportske discipline, a neka se razlikuju u odnosu na specifičnosti konkretne sportske grane. Zbog toga sve veći značaj u svakodnevnoj praksi dobija sportsko pravo kao mlado područje pravne nauke. Poznato je da različita državna uređenja mogu različito da utvrđuju pravne odnose u sportu, tako da postoji opasnost od heterogenosti tumačenja i primene sportskog zakonodavstva. Posebno u pogledu egzistencije i poštovanja sportskih pravila. Zato je od posebnog značaja naglašavanje postojanja nacionalnih i međunarodnih sportskih tela⁵ kojima je jedan od zadataka donošenje pravnih akata koji su vezani za primenu međunarodnih sportskih pravila. Kako je sistem sporta na globalnom nivou⁶ hijerarhijski uređen, tako se i međunarodna sportska pravila primenjuju subordinativno. Sa druge strane činjenica je da veliki broj pravnih normi koje se primenjuju u sportu egzistira u pravnim aktima drugih tradicionalnih grana prava tako da se fizionomiji sportskog prava može opredeliti korelativan pravni karakter. Stoga se sportsko pravo (Vuleta, 2015) uopšteno može definisati i tretirati kao skup pravnih pravila kojima se uređuju pravni odnosi u sportu (oni odnosi u koje sportski subjekti stupaju u vezi s tim pravilima).

Kada je reč o upravljanju sportskim organizacijama, posmatranog iz ugla obaveze poštovanja pozitivno pravne regulative, pažnja se usmerava i ka izvorima

⁵ Dominantno se to odnosi na međunarodne sportske federacije i asocijacije za svaku sportsku granu, kao i Međunarodni olimpijski komitet.

⁶ Ovo se u prvom redu odnosi na takmičarski sport, odnosno sport visokih performansi (gde svakako spada i profesionalni sport).

to the current legal regulations, the attention is also paid to the sources of sports law. The influence of the international law has become extremely prominent in the field of sport, and one of the basic reasons is its internationalisation. Sports organisations (sports clubs) often act in circumstances related to international sports competitions, thus coming in touch, in addition to international sports rules, also with other forms of international legal regulations. Therefore it is necessary to take care of two “existing legal planes”: (1) sources of sports law, which are in the domain of operation of international/inter-state organisations (legislative bodies of specific states) and (2) general legal documents of non-governmental sports organisations and national sports federations/associations in charge of prescribing sports rules.

Therefore, it is advisable to consider the sources of sports law, as factors of management of sports organisations, in the light of observation (Šuput, 2009: 252) that the laws governing the issue of sport in certain states are regarded as the most important source of sports law. In the first instance, due to the fact that regulations in question are enacted by the supreme state legislative authority, and also because such laws legally govern the structure of the sports system of a state (prescribe the basic rights and obligations of the factors of that system). Furthermore, the laws governing sport within national states are the central source of sports law, since their provisions establish the public interest in the field of sport (prescribe the relation between the governmental and non-governmental sectors within the sports system, determine the way in which the exercising of the public interest in the field of sport is funded; etc.).

sportskog prava. Uticaj međunarodnog prava postao je izrazito naglašen u oblasti sporta, a jedan od osnovnih razloga je njegova internacionalizacija. Sportske organizacije (sportski klubovi) se često nalaze u uslovima međunarodnih sportskih takmičenja, čime se, pored internacionalnih sportskih pravila, susreću i sa drugim oblicima međunarodne pravne regulative, tako da se mora voditi računa o dve “pozitivno pravne ravni”: (1) izvori sportskog prava koji su u domenu rada međunarodnih/međudržavnih organizacija (zakonodavnih organa konkretnih država) i (2) opšti pravni akti međunarodnih nevladinih sportskih organizacija i nacionalnih sportskih federacija/saveza u čijoj je ingerenciji propisivanje sportska pravila.

Stoga je uputno da se izvori sportskog prava, kao činioci upravljanja sportskim organizacijama, posmatraju u svetlu konstatacije (Šuput, 2009: 252) da se zakoni koji uređuju materiju sporta u pojedinim državama smatraju najvažnijim izvorom sportskog prava, prvenstveno zbog činjenice da se radi o propisima koje donosi najviši državni zakonodavni organ, ali i zbog toga što se takvim zakonima pravno uređuje struktura sportskog sistema države (propisuju osnovna prava i obaveze činilaca tog sistema). Takođe, zakoni koji uređuju sport u okvirima nacionalnih država jesu centralni izvor sportskog prava obzirom da svojim odredbama utvrđuju javni interes u oblasti sporta (propisuju odnos vladinog i nevladinog sektora u okviru sportskog sistema, određuju načine za finansiranje ostvarivanja javnog interesa u oblasti sporta; itd.).

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