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LEGAL INTERPRETATION OF PROFESSIONAL SPORT AS A PREREQUISITE FOR DEFINING THEORETICAL FOUNDATIONS OF ITS LEGAL REGULATIONS

Abstract

This article focuses on the interpretation of the terms “sport” and “professional sport”. It is emphasized that proper interpretation of such notions is important to promote clarity and precision in delineating the scope of professional sport and analyzing laws and regulations applicable to this sphere. The author's consolidation of the creative interpretations reveals that “professional sport” embodies a complex network of profit-based social relations, intricately tied to a publicly engaging performance executed by paid full-time athletes. This performance is governed by a set of rules, principles, and approaches established and controlled by specialized entities and institutions. The article concludes that this understanding can further serve as the groundwork for further research and analysis aiming to substantiate the underlying theoretical foundations of legal regulation in professional sport.

Key Words

Sport, professional sport, interpretation, definition, theoretical foundations, legal regulation

Introduction

Humanity has known what term “sport” means for thousands of years. During the most of this time, there has been some kind of regulation which has been covering either the external or the internal relations existing in and around this socio-cultural phenomenon. For instance, ancient Olympic Games had their own rules (both for the sport played and for the organizational aspects accompanying them) and involved the officials having the powers and competencies equal to that of modern judges.¹ While it was definitely a predecessor of a widespread legal regulation in sport, the scale of it was quite far in both quality and quantity if compared to the contemporary legal instruments and norms. In addition to this, there is no viable proof that such regulation was based on any kind of understanding of the nature of sport within the realm of social relations taking place at that time or legal interpretation of the latter, but rather on the need to establish “rules of the game” and control their implementation.

To the contrary, nowadays there are drastically different ways of playing, operating, and promoting sport as this was in ancient Greece. All these matters are governed by: (i) if to look from the perspective of regulations – set of rules established and enforced by either states or non-governmental organizations; and (ii) international if to assess from institutional standpoint – non-governmental organizations, ad-hoc tribunals and, to lesser extent, competent state authorities.² With such robust instruments in place, an illusion may form that the real definition and meaning of sport is already well-established and respectively used for the control over sport regulation. However, sport is considered just as a generally understandable phenomenon which has a paramount importance in both social and economic dimension.³ At the same time, no proper attention is given to the definition and interpretation of what stands for sport and the associated social relations which is a kind of simplification of this diverse and complex phenomenon.

¹ James AR Nafziger, “International Sports Law” in *Max Planck Encyclopedia of Public International Law*, accessed January 1, 2024, <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1431>.

² Evgen Kharytonov et al., “To the Peculiarities of Legal and Non-Legal Regulation of Social Relations in the Field of Sport,” *Retos*, no. 41 (December 9, 2020):132, <https://doi.org/10.47197/retos.v0i41.84178>.

³ European Commission, *White Paper on Sport*, White Paper COM(2007) 391, adopted July 11, 2007, XXXX, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52007DC0391>; OECD Competition Policy Roundtable Background Note, “Competition and Professional Sports,” accessed January 1, 2024: 3, <https://www.oecd.org/daf/competition/competition-and-professional-sport-2023.pdf>.

Based on this, the author finds that the interpretation of the term “sport” is yet to be refined based on the modern peculiarities of this sphere of social relations and argues that proper understanding of “sport” may bring additional value in the pursuit of finding the theoretical foundations of the legal regulations of sport as a whole and its different types (or areas) as parts. That said, with an established definition of “sport” it will be much feasible to provide the interpretation for the narrower term of “professional sport”, which constitutes a significant part of contemporary sport.⁴

The author is currently working on the issue of theoretical foundations of legal regulations in professional sport, and this particularly defines his interest in finding the solid ground for further expedition into the jungles of professional sport regulation. It seems to the author that the understanding of concept of “sport” will facilitate subsequent understanding of such interrelated notions as “professional sport” and “legal regulation of professional sport” through their authentic and creative legal interpretation. The latter, in their own turn, will form the basis for further delving into the nature of legal regulations applicable to the area of professional sport and will assist in substantiation of the underlying theoretical foundations intrinsic to such inevitable part of the widespread phenomenon of sport.

Importance of interpretation of “professional sport”

While it is evident what benefits may interpretation bring to general understanding of any topic, it still seems necessary to point out the main reasoning why this article focuses on defining both “sport” and “professional sport”. In the context of this article, the former will serve as a starting point for establishing the general framework of social relations under our scrutiny, and the latter will become practical incorporation of the “sport” framework into real-life legal regulations based on some peculiarities associated particularly with professional sport. In addition to the general importance of having main terms of each topic defined, it is also worth noting the following considerations which make definition of “sport” and “professional sport” crucial for finding theoretical foundations of professional sport legal regulations.

First of all, such definitions are needed to establish boundaries. It may seem that everything is crystal clear with the sport and what kinds of activity shall be included into this notion, however the discussion over this topic is ongoing. One of the pressing issues is whether e-sport may be regarded as sport – with practitioners and scholars being divided into opposing sides, there is still no certainty in whether the one can compare playing computer games to being involved in sport. On the one side, e-sport lack some “physical” involvement which is us-

⁴ “Professional Sports,” Statista, accessed January 1, 2024, <https://www.statista.com/markets/409/topic/627/professional-sports/#overview>.

ually associated with sport.⁵ On the other hand, research and observations show that computer-alike sport are highly similar to the sport people are traditionally accustomed to.⁶

Another interesting point which is related to the margins of sport is about inclusion of some extreme entertainment activities into this notion, for instance – bullfighting. Although there was no substantial research on the matter, the Spanish commercial court once adjudicated about intellectual property issues arising out of *corrida* by comparing it with football and treating bullfighting in the same way as traditional sport due to their similarity.⁷ Based on this, it becomes interesting whether bullfighting should be included into the corpus of sport and, even more, whether the author need to research theoretical foundations of this entertainment-based activity within the realm of his wider research on sport. To avoid such bottlenecks, it is crucial to establish the boundaries of sport and, subsequently, professional sport since this will directly influence the scope of research and the preciseness of findings of the author.

Secondly, clear definition and interpretation of the terms “sport” and “professional sport” will promote clarity of the laws and regulations to be applicable in the context of “legal regulations” which will be taken into account while establishing theoretical foundations of the latter in the context of professional sport. Having a unified understanding of this terms should form the basis for having comprehensive understanding of which legal frameworks are to be detected, analyzed and applied. The question of which regulations apply to sport are usually answered in a manner which refers to “*all law that pertains to sport*”.⁸ In its turn, the mentioned “law” comprises of different categories of regulations, which include both government-supported laws and norms established by sport institutions, internal laws and international public law as well as decisions of international tribunals together with findings of

⁵ Jim Parry, “E-Sports Are Not Sports,” *Sport, Ethics and Philosophy*13, no. 1 (July 12, 2018): 3, <https://doi.org/10.1080/17511321.2018.1489419>.

⁶ “Is Esports a Sport?,” CMS in Germany, accessed January 1, 2024, <https://cms.law/en/deu/publication/is-esports-a-sport>; Daniel Kane and Brandon D. Spradley, “Recognizing Esports as a Sport,” *The Sport Journal*, May 11, 2017, <https://thesportjournal.org/article/recognizing-esports-as-a-sport/>.

⁷ Eleonora Rosati, “Spanish Supreme Court Applies Cofemel and Rules That Bullfighting Cannot Be Protected by Copyright,” *The IPKat*, March 6, 2021, <https://ipkitten.blogspot.com/2021/03/spanish-supreme-court-applies-cofemel.html>.

⁸ Robert C.R Siekmann, “What is Sports Law? *Lex Sportiva* and *Lex Ludica*: a Reassessment of Content and Terminology,” *International Sports Law Journal*, no. 3- 4 (2011): 9.

ad-hoc dispute resolution bodies within sport institutions.⁹ Taking that into account, it becomes obvious that there is a need of proper definition of the terms “sport” and “professional sport” for purposes of set the limits of regulations which will be taken into account while assessing the theoretical foundations of professional sport legal regulations.

In summary, defining “sport” and “professional sport” in this article serves as a critical foundation for examining the theoretical underpinnings of legal regulations in the realm of professional sport. Establishing clear boundaries is essential to address ongoing debates, such as whether e-sport or unconventional activities like bullfighting should be considered sport. This clarity in definition not only aids in navigating theoretical research but also ensures precision in determining the scope of applicable laws and regulations, encompassing a variety of legal frameworks from government- supported laws to international norms within the complex landscape of sport regulation. Ultimately, a unified understanding of these terms is crucial for searching and understanding the theoretical foundations of legal regulations in professional sport.

Theoretical considerations of legal interpretation

Legal interpretation holds a pivotal role in shaping important decisions within the legal realm, notwithstanding whether interpretation is used by theoreticians or practitioners.¹⁰ If to think in the terms of sport, it impacts range of different issues: from fates of individual sportsmen who allegedly breached the rules of the game to novel application of federal legal norms to the sport in a manner which will create new legal obligations for all the entities and persons involved in such sport.¹¹ While proficiency in legal interpretation serves as an indicator of a legal professional’s overall level,¹² it is also a powerful tool in deciding over practicalities of almost every case of law application and related theoretical considerations. In some cases,

⁹ Siekmann, “What is Sports Law? *Lex Sportiva* and *Lex Ludica*: a Reassessment of Content and Terminology,” 9; Kharytonov et al., “To the Peculiarities of Legal and Non-Legal Regulation of Social Relations in the Field of Sport,” 132.

¹⁰ Yevhen Oleksandrovych Zvieriev, “Do pytan'nia pro vyznannia yurydychnoho tлумachennia mystetstvom,” *Naukovi zapysky NaUKMA. Yurydychni nauky* 193 (2017): 38, <https://ekmair.ukma.edu.ua/handle/123456789/12456>.

¹¹ “Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs et al.,” Oyez, accessed January 1, 2024, <https://www.oyez.org/cases/1900-1940/259us200>.

¹² Mykola Ivanovych Koziubra, “Yurydychne tлумachennia: problemy metodolohii,” *Naukovi zapysky NaUKMA. Yurydychni nauky* 155 (2014): 3, <https://ekmair.ukma.edu.ua/handle/123456789/3242>.

legal interpretation may be even considered as art, although certain criteria should be met.¹³ Bearing that in mind, in the context of this article the author will use interpretation purely for theoretical good – as a tool to construct the notions of “sport” and “professional sport” with the purpose to use such interpretations in the following research and definition of the theoretical foundations of the latter.

Legal interpretation has ancient origins, dating back to the practices of Greek and Roman orators.¹⁴ The term “*interpretatio*” originated in the Ancient Rome and laid the foundation for modern understanding of interpretation to be made in legal context.¹⁵ Notwithstanding the longevity of the notion of interpretation, there is still no consensus in relation to the definition of legal interpretation since there are a lot of various thoughts on how to understand and describe it depending on the context, purpose, subject of interpretation, etc.

Nevertheless, most of the available constructions of the legal interpretation are aligned in the fact that interpretation is viewed as a process of defining the meaning of something and the result achieved in the end of such process.¹⁶ The aforementioned process and result are closely linked with the notion of “understanding” which entails understanding of something not only based on its objective nature but also with the reference to a subjective peculiarities present in that specific case of interpretation. Contrary to a more straightforward “cognition” which is focused on answering basics questions about an object of interpretation *per se*, “understanding” is aimed at defining the meaning from the standpoint of the subject of interpretation and in the context in which subject tries to conduct interpretation.¹⁷

At the same time, interpretation can also be regarded from different standpoints of its nature as a process. On the one hand, it can be viewed as a way towards finding the meaning of a notion being interpreted. On the other hand, it can also constitute an action of describing and explaining the nature and meaning of interpretation’s object to the people (or the eph-

¹³ Zvieriev, “Do pytannia pro vyznannia yurydychnoho tlumachennia mystetstvom,” 40.

¹⁴ Mykola Ivanovych Koziubra, ed., *Zahalna teoriia prava: Pidruchnyk* (Kyiv: Vaite, 2015), 249, <https://www.osce.org/files/f/documents/8/f/283756.pdf>.

¹⁵ Yevhen Oleksandrovych Zvieriev, “Deiaki pytannia stosovno teorii yurydychnoho tlumachennia,” *Naukovi zapysky NaUKMA. Yurydychni nauky* 168 (2015): 49, <https://ekmair.ukma.edu.ua/handle/123456789/7790>.

¹⁶ Zvieriev, “Deiaki pytannia stosovno teorii yurydychnoho tlumachennia,” 49.

¹⁷ Koziubra, “Yurydychne tlumachennia: problemy metodolohii,” 5.

meral group of people).¹⁸ Additionally, these types of processes may coincide, in which case interpretation shall be viewed as a process aimed at both establishing the meaning and explaining it to the target audience. Notwithstanding the direction of the interpretational processes, results will be the reflection of the outcome received after the process at stake was conducted. Based on this, interpretation shall be viewed as an intrinsically linked combination of: (i) the process aimed at determining the meaning of an object and/or explaining such meaning through the prism of subjective factors causing the need of interpretation and influencing its purpose; and (ii) the result of such process expressed in the established meaning of the object within the subjective context.

In terms of classifications, there are plenty of them in the modern legal discourse. One is used for dividing interpretation based on the officiality of the subjects involved in interpretation, while the other is aimed at pointing out the scope of knowledge enclosed into the interpretation result.¹⁹ Since there are different approaches to classification of interpretation types, we will limit ourselves to a short discourse into the most applicable once as per the aim of this article.

First of all, there is a division of interpretation types by the methods used for interpretation. Four types exist in accordance with such classification: philological, historical, systematic, and teleological. Philological interpretation entails the analysis of notion through its textual expression from the perspective of its lexical, morphological, and syntactic characteristics. Historical interpretation is based on understanding the meaning within the historical perspective including events preceding, following and resulting from the interpreted notion. Systematic interpretation clarifies the meaning based on finding connections with other notions. Finally, teleological interpretation takes into account the purpose of the respective notion and the aims its application may pursue.²⁰ In this article, there will be an attempt to use all of the described types in conjunction in order to establish detailed meaning of “sport” and “professional sport” within the context of theoretical discourse.

Secondly, there also is a classification per the theories of legal interpretation. According to this approach, there exists three main theories: textualism, originalism (also known as con-

¹⁸ Zvieriev, “Deiaki pytannia stosovno teorii yurydychnoho tлумachennia,” 49.

¹⁹ Koziubra, *Zahalna teoriia prava: Pidruchnyk*, 253.

²⁰ Koziubra, *Zahalna teoriia prava: Pidruchnyk*, 253.

textualism), and teleological theory.²¹ Textualism takes into account solely the formulation of the interpreted norm without regard to any context and associates meaning of the interpretation's object with its actual wording.²² It makes this theory quite one-sided and not oriented at the thorough analysis of the notion at stake. To the contrary, originalism covers the type of interpretation which is aimed at defining the underlying idea behind the notion, not the textual form in which it was reproduced.²³ In its turn, interpretation based on the teleological theory pursues the finding of the aim incorporated into the notion together with the application of the objective circumstances present in the moment of interpretation.²⁴ Of this three approaches, author views teleological interpretation as the most appropriate in the case of creating boundaries for further finding of the theoretical foundations of legal regulation of professional sport.

Another point worth mentioning is about legal terms and definitions. In general, terms are understood as textual denominations of the notions, and are used for making specific references to that notion in some context.²⁵ At the same time, there also exist legal definitions which contain short interpretation of the term with the logically presented reference to its main substantial characteristics.²⁶ Contrary to linguistic approaches, all legal definitions and terms constitute the result of interpretation made on the basis of general concepts used to subsequently find the actual meaning of the interpreted term.²⁷

In the context of this article, the main difficulty is created by the fact that interpretation is usually applied to the legal norms which are quite straightforward due to their exact formulation in text or precedents. In contrast, we aim to apply the instruments of legal interpretation to find the meaning of quite abstract though still distinctive concepts of "sport"

²¹ Zvieriev, "Deiaki pytannia stosovno teorii yurydychnoho tлумachennia," 49.

²² Zvieriev, "Deiaki pytannia stosovno teorii yurydychnoho tлумachennia," 49.

²³ Zvieriev, "Deiaki pytannia stosovno teorii yurydychnoho tлумachennia," 50.

²⁴ Zvieriev, "Deiaki pytannia stosovno teorii yurydychnoho tлумachennia," 51.

²⁵ Koziubra, *Zahalna teoriia prava: Pidruchnyk*, 217.

²⁶ Koziubra, *Zahalna teoriia prava: Pidruchnyk*, 218.

²⁷ Anna Jopek-Bosiacka, "Definitions in Law Across Legal Cultures and Jurisdictions," in *Handbook of Terminology* (Amsterdam: John Benjamins Publishing Company, 2023), 37, <https://doi.org/10.1075/hot.3.def1>.

and “professional sport”. For this, we plan to, firstly, approach the interpretation as the process and, secondly, receive the result – a proper interpretation of terms “sport” and “professional sport”. Such interpretation will be made with the use of various methods and with the aim to define the actual purpose and meaning of the above defined terms. This will then amount into creation of definition for the respective terms which will be used for further establishment of the theoretical foundations of the legal regulations of professional sport.

Interpretation of “sport”

If we think about sport in layman terms, the first point which may come to mind is that it is a publicly shown competition based on some predetermined rules. Such view is by some means affected with a widespread misconception that real sport exists only in the context of a well-established industry and everything outside this market is a pure recreational or entertaining field. At the same time, many people still find sport to be far wider than just a commercially successful enterprise, but rather the phenomenon which, by having various implications for public health and social wellbeing, is opened to all the people notwithstanding their abilities, skills and origin.

Such approach sometimes creates an illusion that sport does not need any definition or interpretation as it is a concept with the presumed meaning.²⁸ With this in mind, in this section we will try to come closer to the understanding of the “sport” through interpretation of this notion.

As a starting point, it is worth considering the definitions and descriptions of the term “sport” as these are presented in dictionaries. For instance, Cambridge Dictionary provides a two-fold explanation of what sport is. On the one hand, it is described as “a game, competition, or activity needing physical effort and skill that is played or done according to rules, for enjoyment and/or as a job”. On the other hand, it encompasses “all types of physical activity that people do to keep healthy or for enjoyment.”²⁹ Basically, these meanings in conjunction cover the understanding of sport as the physical activity which may be conducted as either pure enjoyment or the competitive activity within the set of rules.

²⁸ Janwillem Soek, “Sport in National Sports Acts and Constitutions: Definition, Ratio and Purposes,” *International Sports Law Journal*, no. 3-4 (2006): 28.

²⁹ “Sport,” in *Cambridge Dictionary* (n.d), accessed January 1, 2024, <https://dictionary.cambridge.org/dictionary/english/sport>.

Merriam-Webster Dictionary has a simplified definition as opposed to the ones proposed above, and interprets sport as either “a physical activity engaged in for pleasure” or “a particular activity (such as an athletic game) so engaged in.”³⁰ From such standpoint, sport is viewed simply as an activity (either physical or athletic) in which someone is engaged either for pleasure or by nature of such activity.

At the same time, Oxford English Dictionary provides three meanings which may be attributable to sport. Firstly, it is considered “an activity involving physical exertion and skill, esp. (particularly in modern use) one regulated by set rules or customs in which an individual or team competes against another or others.” Secondly, it is given a meaning of “an occasion on which people compete in various athletic or other sporting activities.” Thirdly, it is also viewed through prism of “participation in activities involving physical exertion and skill, especially competitive activities regulated by set rules or customs.”³¹ Within such approaches, sport is regarded in three dimensions: a physical activity, an occasion of competition and an act of participation in the related activity.

In summary, these dictionary definitions collectively encompass sport as trinity of senses: (i) a physical or athletic activity engaged in either for pure enjoyment or as a competitive endeavor within a set of rules; (ii) participation in such activity; and (iii) occasion in which such activity takes place. Based on this, we may further assess the notion of sport based on the definitions present in the regulations, by-laws and legal studies.

In the 2007, Commission Staff Working Document SEC(2007) 935, European Commission did not provide a straightforward definition of the term “sport”, however established its status as “human activity” and elaborated on the roles it plays in European society. It was noted that sport has: a health-promotion role – by improving the public health of people; an educational role – by impacting the physical, social and learning capacities; a social role – by creating grounds for social inclusion; a recreational role – as a tool for entertainment; and, finally, a cultural role – by fostering identities and promoting collaboration between people.³² In addition, Recommendation CM/Rec(2021)5 of the Committee of Ministers defines sport as “all forms of physical activity which, through casual or organized par-

³⁰ “Definition of Sport,” in *Merriam-Webster Dictionary* (n.d.), accessed January 1, 2024, <https://www.merriam-webster.com/dictionary/sport>.

³¹ “Sport, meanings, etymology and more,” in *Oxford English Dictionary* (n.d.), accessed January 1, 2024, https://www.oed.com/dictionary/sport_n1?tl=true.

³² European Commission. *The EU and Sport: Background and Context*, Commission Staff Working Document COM(2007) 935, adopted July 11, 2007, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52007SC0935>.

ticipation, are aimed at maintaining or improving physical fitness and mental well-being, forming social relationships or obtaining results in competition at all levels.”³³

From another perspective, sport may also be viewed as an object of economic statistics, for which there shall be a separate approach to sport. According to CPA- 2008, sport's statistical definition includes sporting services only. At the same time, a narrow definition of sport encompasses all the services and products required to do and organize sports. Broad definition in that context comprises both statistical and narrow definitions together with all products and services which are at least somehow related to sport as activity.³⁴ These three definitions create a perspective to view sport as the scope of services and products which either constitute sport as an activity or are required to create and maintain sport as such or in any other way relate to sport in the broad sense.

There is also a definition contained in the Law of Ukraine “On physical culture and sport”. There the sport is regarded as “activity of entities of the sphere of physical culture and sport, aimed for identification and unified comparison of people’s achievements in physical, intellectual and other training by means of conducting sports competitions and appropriate training for them.” By entities the legislator means individuals engaged in physical culture and sport, specialists in the sphere of physical culture and sport, institutions of physical culture and sport as well as relevant state authorities.³⁵ Based on this, the Ukrainian legal approach to sport emphasizes that sport is not only an activity from the standpoint of athletes, but also a set of actions conducted by all the subjects in various dimensions of sport.

Finally, based on the analysis of different legal definition from state legislation of various countries, there is also a definition reflecting the main characteristics associated with sport on the national levels. In the view of this approach, sport is regarded as “the specific behaviour of persons that is characterized by a unique attitude combined with competitive effort or fighting spirit and expressed by means of physical or mental exercise within different disciplines and standards as established within a framework respecting moral, civil, and social

³³ Committee of Ministers. *Recommendation to member States on the Revised European Sports Charter*, Commission Staff Working Document CM/Rec(2021)5, adopted October 13, 2021, <https://rm.coe.int/recommendation-cm-rec-2021-5-on-the-revision-of-the-european-sport-cha/1680a43914>.

³⁴ European Commission. *Definition of Sport - Version 2.0 (“Vilnius Definition 2.0”) according to CPA 2008*, adopted September 19, 2013, https://ec.europa.eu/eurostat/documents/6921402/0/Vilnius+Definition+Sport+CPA2008+official+2013_09_19.pdf/f/30838d11-01ea-431f-8112-50786e187c1c.

³⁵ Verkhovna Rada Ukrainy. *Pro fizychnu kulturu i sport*, Zakon Ukrainy 3808-XII, adopted December 24, 1993, Article 1, <https://zakon.rada.gov.ua/laws/show/3808-12#Text>.

values.”³⁶ In contrast to other similar definitions, this one considers sport as mindset aimed at competitively applying physical or mental skills with the view to established system of rules.

The analysis of various perspectives on the definition of “sport” reveals a multifaceted understanding that encompasses different approaches to this notion. However, all of the presented interpretations omit the important feature of sport in the modern society – it is not a one-dimensional concept based on the associated activity, mindset, occasion or entities. In contrast, it is a complex variety of social relations related to a physical activity performed for either joy or competition based on the widely-recognized set of rules, principles and approaches.

Interpretation of “professional sport”

Back in 1995, professional sport was no longer considered to be as simple as a pure competition of athletes, but has been already recognized as a “commercialized entity and big business” instead.³⁷ Nothing changed nowadays, when professional sport’s industry worldwide revenue exceeded 486 billion US dollars in 2022,³⁸ of which just sponsorship market is worth approximately 65 billion US dollars.³⁹ This definitely emphasizes that even if professional sport remains a kind of that “conventional” sport we were discussing above, still it is substantially governed by and based on the economic factors. In the view of this, this section is devoted to interpreting the term “professional sport” so as to align it with the understanding of the term “sport” and make it suitable for further analysis in the context of searching the theoretical foundations of the legal regulation of professional sport.

International Labour Organization does not provide stable definition of professional sport, however approached this question from another viewpoint and provided characteristics of the professional athlete, what directly refers to professional sport as the area of such athletes’ occupation. In one of its Discussion Papers in 2020, International Labour Organization defined that people may be considered professional athletes if: (i) athletes gain income through competitive sport; (ii) the activities in such sport are controlled by a sport organization,

³⁶ Soek, “Sport in National Sports Acts and Constitutions: Definition, Ratio and Purposes,” 30.

³⁷ Gregor Lentze, “The Legal Concept of Professional Sports Leagues: The Commissioner and an Alternative Approach from a Corporate Perspective,” *Marquette Sports Law Review* 6, no. 1 (1995): 65, <http://scholarship.law.marquette.edu/sportslaw/vol6/iss1/4>.

³⁸ “Competition and Professional Sports | OECD Competition Policy Roundtable Background Note.”

³⁹ “Professional Sports.”

such as a club or federation; (iii) athletes are either employed/contracted by sport clubs or spend significant time training and competing in the respective sport in addition to their other occupations.⁴⁰ Such approach addresses one of the main characteristics of professional sport, namely the fact that its main actors, players or athletes, are involved in their sports not purely from the competitive desires, but due to commercial considerations such as salary, contractor's remuneration or sponsorships' payments.

In Ukraine, the attempts to define professional sport were conducted in paragraph 13 of the National on Development of Physical Culture and Sport, where it was stated that the state undertakes to create conditions for development of professional sport on the commercial grounds.⁴¹ At the same time, the Law of Ukraine "On physical culture and sport" defines professional sport as "a commercial branch of athletic activities related to preparing and conduct of spectacular sports events at the high organizational level and with an aim to receive profit."⁴² Additionally, the law also requires that sport activity is the main source of income for a person to be deemed a professional athlete, with such status being applicable to the person only after the contract for participation in the professional competitions is concluded with a respective professional sport entities.⁴³ Such an approach reflects the view that what matters for professional sport is to create an high-quality event or show with a substantive involvement of athletes (as evidenced with the requirement to have a main source of income from the sport) who are associated with an organization operating within the realm of professional sport (club, federation, or team).

Contrary to this, there is an approach that professional sport is a profit-based entrepreneurship aimed at fulfilment of interests of professional sports' organizations, profes-

⁴⁰ "Issues paper for discussion at the Global Dialogue Forum on Decent Work in the World of Sport," International Labour Organization GDFWS/2020, accessed January 1, 2024, https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/meetingdocument/wcms_728119.pdf.

⁴¹ Prezydent Ukrainy. *Pro Natsionalnu doktrynu rozvytku fizychnoi kultury i sportu*, Ukaz Prezydenta Ukrainy 1148/2004, adopted September 28, 2004, paragraph 13, <https://zakon.rada.gov.ua/laws/show/1148/2004#Text>.

⁴² *Pro fizychnu kulturu i sport*, Article 38.

⁴³ *Pro fizychnu kulturu i sport*, Article 38.

sional sports' organizations, professional athletes and spectators.⁴⁴ Another standpoint considers professional sport as a type of entrepreneurship conducted by sports' officials and professional athletes with the aim of creating the product in the form of the entertaining sports' show.⁴⁵ Both of these perspectives admit the commercial nature of professional sports, although emphasize different underlying motives for conducting such activity.

Based on the above, the evolution of sport from a traditional competition of athletes to a globally recognized commercially-driven business of professional sport highlights the pervasive influence economic factors have in modern development of this branch of sport. In this context, professional sport must at least fulfil the following requirements: (i) athletes are involved in their sports on a full-time basis and upon salary or other compensation; (ii) all relations are managed or controlled by the competent entities/institutions specializing in professional sport generally or one particular sport separately; and (iii) all actors are oriented at creating a spectacular show worth following and/or observing by a general public; and (iv) all the activities are aimed at receiving profit. Such understanding covers various elements inherent in professional sports and interprets its meaning needed to further work with theoretical foundations of legal regulations in this sphere.

For the sake of clarity, it must be noted that professional sport also has almost all the features described by the author in the above interpretation of sport, except for those which contradict the very commercial nature of professional sport. With such considerations in mind, the ultimate interpretation of the notion of "professional sport" amounts to complex variety of profit-based social relations related to a publicly engaging performance based on the activity performed by paid full-time athletes according to the set of rules, principles and approaches established and controlled by special entities/institutions.

Conclusion

This article is devoted to interpretation of the notions of "sport" and "professional sport" in the context of further reliance upon these terms for determination of theoretical foundations of legal regulation of professional sport. Such interpretation is of critical importance for the expressed purposes since it promotes clarity in the definition of the scope of professional sport and helps to ensure precision in determining range of applicable laws and

⁴⁴ Yu. M. Riepkina, "Administratyvno-pravovi osnovy rehuliuвання fizychnoi kultury i sportu" (extended abstract of dissertation of candidate of legal sciences, Natsionalnyi universytet bioresursiv i pryrodokorystuvannya Ukrainy, 2010), 7-8.

⁴⁵ Yu. A. Briskin, "Profesiyni sport yak navchalna dystsyplina," accessed January 1, 2024, <https://repository.ldufk.edu.ua/bitstream/34606048/14120/1/ТЕМА%20No1-ПРОФЕСІЙНИЙ%20СПОРТ%20ЯК%20НАВЧАЛЬНА%20ДИСЦИПЛІНА.pdf>.

regulations to be analyzed for proper understanding of the theoretical foundations of legal regulations in professional sport.

By virtue of consolidation of author's interpretation of terms "sport" and "professional sport", it was established that the notion of "professional sport" amounts to complex variety of profit-based social relations related to a publicly engaging performance based on the activity performed by paid full-time athletes according to the set of rules, principles and approaches established and controlled by special entities/institutions. This understanding will be taken as a ground for further research and analysis aimed at substantiation of the underlying theoretical foundations intrinsic to professional sport.

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ЮРИДИЧНЕ ТЛУМАЧЕННЯ ПРОФЕСІЙНОГО СПОРТУ ЯК ПЕРЕДУМОВА ВИЗНАЧЕННЯ ТЕОРЕТИЧНОГО ПІДҐРУНТЯ ЙОГО ЮРИДИЧНОГО РЕГУЛЮВАННЯ

Ця стаття присвячена тлумаченню термінів «спорт» та «професійний спорт». Зазначається, що правильне тлумачення даних термінів є важливим для пропаганди чіткості та точності при визначенні професійного спорту та для аналізу законів та підзаконних актів, які стосуються цієї сфери. Авторський креативний підхід до тлумачення приводить до висновку, що «професійний спорт» включає в себе комплексну мережу суспільних відносин, спрямованих на отримання прибутку, сутнісно пов'язану із публічною діяльністю що здійснюється професійними оплачуваними спортсменами. Ця діяльність регулюється низкою правил, принципів та підходів, встановлених та контрольованих спеціалізованими установами та інституціями. В статті робиться висновок, що таке розуміння може стати фундаментом для подальших досліджень та аналізу, спрямованих на обґрунтування базових теоретичних підвалин поняття «професійний спорт».

Ключові слова

спорт, професійний спорт, тлумачення, визначення, теоретичні підвалини, обґрунтування