

**ПРОБЛЕМИ ТА СУДЖЕННЯ**

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National University "Odessa Law Academy"**SPORT LAW AS A SYSTEMATIC PHENOMENON
IN LEGAL SCIENCE**

Changes in public life during the last quarter of the century have caused significant commercialization of the sports movement, which has become an integral part of a globalized society. Moreover, they significantly influenced on the increase of the legal relationships that arise in sports and related processes. At the same time, this arises controversial issues that require solving by improving both the legal science as a whole, and the adoption of new legal acts and the creation of new institutions and training of new specialists. In order to arrange all legal relationships that arise in the field of sport, leading specialists consider to expedient the allocation of sports law in a separate branch of law [1; 2]. However, certainly, there is no doubt the fact that sports law is at the junction of many industries and includes a large number of system elements from other branches of law. It should be noted that the author of this work (M.V.) previously systematized the works of various authors of sports law, established its features and indicators of formation, and defined the sport law as a branch of legal science [3–5]. In mentioned works the results and views on the sports law of other authors were discussed, which according to the author (M.V.) did not have a systematic study of this complex system – the system of sports law.

The purpose of the article is to study and determine the nature of sports law

in the system of just legal science as a systemic phenomenon.

The complexity of the structure of modern sports, the expansion of its functions, and the requirement of its legal regulation caused the necessity of sports law formation as a new independent complex branch of law, adapts a disparate, but huge array of normative and legal acts in the field of physical culture and sports in various countries of the world. In the states of the Anglo-American legal family and in the vast majority of Romano-Germanic legal families, since the 90s of the XX century sports law has been identified as an independent comprehensive law branch, educational institutions are training specialists in this field, various sports judicial authorities are created. At the same time there is a certain discrepancy in the development of sports law in countries that are recognized world leaders and Ukraine. This is largely due to the fact, that modern approaches to the management of sports, the organization of sports infrastructure, in general, come to Ukraine as a third-world country with a certain delay. It should be noted that the commercialization of sport in Ukraine began to take place only from the time of its independence, that is with a significant adjourn. By this time, in the sport was dominated an administrative model within the command-administrative system that prevailed in society. However, it is hardly possible to





say that it was ineffective, in particular, it concerns the training of athletes and champions, and the Ukrainian sport of that time can show such achievements that for modern athletes seem unattainable, although it should be noted that the administrative model of organizing and running the sport was completely another, but also systemic. The difference is that in the old legal system did not recognize the legal relationship associated with the extraction of profits: it had criminal characteristics. Today in the sports environment the market model prevails, thus allowing the professionalization of sport not only in terms of achievements (they were before), but also in terms of the organization and financing of sports and athletes. Accordingly, the legal regulation of sports relations is being built, that is it includes elements of other branches of law. In the majority of countries of the world, sport management is characterized by “managerial dualism”, which is also systemic in nature, and subsystems, it manifest, often act as systems themselves. So together with the state authority the development of mass sports and sports of supreme achievements and propaganda of the principles of the Olympic movement are carried out by National Olympic committees and other committees on sports that act as public organizations [6, p. 251]. They create their “soft” law and a weighty array of normative documents, which act as a system, while entering subsystems in other systems. Discussing the systematic understanding of sports law, we note that in legal science, unfortunately, system analysis was used extremely rarely, first of all, it was used by legal practitioners [7; 8]. It is appropriate to recall that many different concepts are understood by the system, but the system always includes many elements and connections, are interconnected in such a way that they form a single whole with a common goal, interacting with each other and with the environment. Frequently experts consider methods as ways of implementing organizing influence in re-

lations between subjects and objects of management [9, p. 31]. This approach is logical to consider from the standpoint of system analysis, which always has an object and subject of management. Methods of system analysis were used by O.X. Yuldashevym in the analysis of the process of standardization in the field of management and its improvement, the definition of the main stages of this process, construction of it in accordance with the stages that are allocated in the framework of these methods [10, p. 7].

The system approach in law is based on the study of management of the organization, on a systematic approach in the analysis of legal relations. The system approach involves consideration of any object as a system, and systemic as a general property of matter. The system approach includes methods, by which a real object is explored and described, as a set of interacting components. In the structure of modern system studies, three interrelated areas are distinguished: the general theory of systems, system approach and system analysis. The chief assignment of the system approach is to reflect the principles, concepts and methods of systemic research at the level of universal scientific methodology. System analysis mainly deals with the development of methodological means of research and includes the management of systems, taking into account the human purpose-oriented factor. In a particular case (the system approach in sports), the method is based on the basic concept of “system”, when it is understood the set of interconnected and arranged in a certain order of elements that constitute a holistic formation aimed at achieving a specific goal. In a particular case, the common theory of systems should act as a universal science of systems of any type, and the system approach acts as one of the general scientific methodological directions [11, p. 23]. It focuses not on any special science, but on science as a whole, on the integration of achievements of the sciences, as well as on the experience of practical activity, including





in sports law. And here the choice of purpose always has a subjective character, and the approach of the goal to an objective representation depends on the motivation of people's activities. Because of this, the leading role in the integrated management mechanism belongs to the motivational mechanism. The legal mechanism of management of a sports organization is intended to regulate the legal relationship between actors of interaction. Since these relationships are mostly moral, social, administrative and monetary, the objects of regulation are ethical, labor, administrative, economic and financial legal relations. Thus, sports law is a system that can be divided into a sufficient number of subsystems that have their own functioning mechanisms. So, under the system is understood a set of interrelated elements that is able to perform relatively independent functions, the goals of which are aimed at achieving the overall goal of the system. The name of the subsystem emphasizes that such part of the system must have some characteristics of the system (in particular, the integrity attribute). Dividing the system into subsystems, it should be borne in mind that, just as in the dismemberment of the system into elements, the allocation of subsystems depends on the purpose and can change as it is refined and the development of ideas about the system is analyzed. An important component of the system is communication, it is noticeable for the functioning of the system, it provides an exchange between the elements of the system, and acts as a single act of communication. Communication, actually, is what connects elements and qualities in the system process as a whole. In the case of sports law, it should be borne in mind that the regulatory function is not performed by the rule of law itself, but rather by the motivation of activity and the economic and organizational mechanisms corresponding to this motivation. The norms of law in the process of their implementation affect the composition and effectiveness of these mechanisms. Norms in

themselves are subjective in nature. The subjective nature of the legal norms does not allow to exclude the contradictory nature of the results of the same legal norm on different mechanisms, when under the influence of this norm, some mechanisms increase, while others weaken. It is impossible to exclude the contradictory nature of the various legal rules on the same mechanism of management.

As a result, of the implementation of these legal rules the motivational mechanism may weaken, the motivational significance of the goals may decrease, and the branch of non-motivated goals begins to expand. For a more complete assessment of the nature of possible changes in the motivation of activities in the system approach, the concept of "density of motivation" is introduced. Under the density of motivation is understood the number of various motives aimed at achieving a particular subset of goals. At the same time, the systemic approach without claiming a philosophical generality of conclusions appears in the legal science as one of the connecting links between the philosophical and legal methodology and the methodologies for studying specific subsystems (football law, power competitions, etc.) within the framework of sports law as a complete system. It is the integrity manifested in the combination of all the constituent elements and add to the whole new properties and characteristics not inherent in the individual elements of the system becomes the main property of the system. As S.S. Alekseev rightly noted, the essence of the problem lies in the fact that in literature one term "branch of law" denotes two superficially resemble, but different in their content phenomena [12]. In some cases, the author explains, it is about the scope of legal regulation – any set of legal norms, which is allocated on the subject of regulation; in others – a real, objectively determined and existing element of a holistic system – the rights as a single structural entity [12, p. 251]. In the case of sports law, the properties of the system, in particular, include:





– the hierarchy of the structure, which is associated with the subordination of one element to another and multi-level organization;

– the presence of various connections, both horizontal and vertical, or feedback;

– structural characterization of a certain stable organization of interconnection and interdependence;

– the multiplicity of elements characterizing the repetition of certain elements is based on the similarity of the individual properties of the elements of the whole, while retaining some individual differences between these elements.

In accordance with the above, at the international level sports regulation is carried out in two directions. In one – public subjects of law cooperate, i.e. states interact with each other bilaterally, and also states interact at the regional level within the framework of intergovernmental organizations, which in their work deal with certain aspects of sports activity. So, for instance, one of the activities of UNESCO is the anti-doping in sport. The results of such activities are international treaties and resolutions of relevant international organizations. In the second case, regulation of international sports life is carried out at the non-governmental level within the framework of the Olympic Movement by the International Olympic Committee and international sports federations. Rules made by them are followed by the participants of the Olympic movement, but scientists disagree on the nature of such rules. The spread of opinions is wide: it varies from the proposal to qualify them as corporate norms (MV) until the assignment of the provisions of the International Olympic Committee to international legal customs [13, p. 2, 8].

There is no objection to the claim that sports law is at the junction of many branches of law, including administrative, civil, economic, labor, etc. This is due to the fact, that the high social significance of sport obliges to create the appropriate legal framework for this area

of activity. Now in the legal system of Ukraine, there is a significant array of legal prescriptions, combining the norms of the constitutional, administrative, economic, medical and other branches of law. Thus, sports law regulates a variety of legal relations with the participation of sports actors: athletes, clubs, those who organize competitions, sell broadcasts of competitions, supply sports equipment, sell souvenirs and the like. All relations between these subjects can be attributed to sports, regulated by various branches of law in the broadest sense of the word. At the same time, sports law can be used as a branch of legislation, similar to military or medical legislation. We can assume that the sport law itself or its part (Olympic law) has developed both as a branch of legislation and as a branch of law. However, while it is difficult to identify the signs of regulation of sports law of social relations. The specificity of sports law in many respects lies in the fact that all over the world the relations connected with sports are regulated by the norms of so-called “soft law”. These are charters, regulations and rules of federations, sports associations and other organizations of a purely corporate nature. These norms regulate the relations of subjects of sports law at times more effectively than the norms coming from the state in the form of laws and by-laws. In principle, there should not be a predominance of state-legal norms in this sphere. So, in this way of the development of sports law are a number of European countries (Austria, Belgium, Denmark, Germany, United Kingdom, Switzerland) and the United States. It is logical that Ukraine could choose “some sort of golden mean” between the excessive participation of the state in regulating sports and its complete elimination from the regulation of sports relations. In addition, one of the subjects of sports legal relations in our country is the state, which manages sports through the Ministry of Youth and Sports. Therefore, based on the norms of law, which are enshrined in the Ukrainian legislation on physical





culture and sports, the legal relations, which are made up between subjects of the sphere of physical culture and sports, we note that sports law is a complex legal institution that combines the norms of quite different branches of law. The given opinion is also based on the idea of the basis for the emergence and composition of sports legal relationships.

At the same time, the analysis of legislation in the relevant field indicates the presence of a rather broad group of norms, internal rules, provisions that do not belong to any of the mechanisms of legal regulation of the listed branches of law. In the context of the subject of reflection of the author (M.V.) we are talking about rules for admission to sports clubs and federations, regulations for sports, rules for the transfer of players, anti-doping legislation, legislation on sports arbitration courts, etc. The peculiarity of such norms is not only in the establishment of special requirements for sports clubs, professional athletes, but also in their fragmentation, the presence of a particular subject of rule-making. Meanwhile, the specificity of the norms of "soft law" consists of their diversity, which sometimes leads to the absence of a single legal regulation of relations and all corporate norms of sports law are based on uniform international principles, for example, on the norms of the Olympic Charter, of which Ukraine is a party, on legal norms of international sports federations, the norms of the UNESCO International Convention against Doping in Sport, ratified by Ukraine, and the norms of the World Anti-Doping Code of WADA. At the corporate level, details are already being processed on the basis of common international principles. At the same time, the main subjects of sports legal subjects are, of course, those who are directly involved in sports activities: athletes, coaching staff, sports clubs, federations, other associations that are associated with the organization of sports activities. It seems possible to identify more than

ten areas of activity that are regulated by the establishment of international rules. They give an understanding of the regulation of international rules, namely [3]:

1) the activities of States, national sports organizations, athletes and other subjects of national law in international sporting relations;

2) participation in the international sports movement of international inter-governmental and non-governmental organizations;

3) international labor and related relations in the field of sports business, in particular; areas of professional sports (international movement of labor resources in the field of sports – international transfer, lease, other types of transfers of athlete (coach) from club to club, as well as international activity of sports agents);

4) the organization and order of international sports events, in particular, the Olympic Games (at the national level this is manifested in the preparation of athletes for participation in such competitions, organization of the state of mass sports, the provision of sports facilities, support of the national sports industry);

5) the settlement of international sports disputes, in particular, the resolution of certain moral and ethical issues of international cooperation in the field of sports (prohibition of all kinds of discrimination based on gender, ethnicity or race, the introduction of Olympic principles for sporting events in accordance with the requirements of honor and justice);

6) international commercial activities in the sports field (organization of joint ventures that produce goods of physical culture, sports and tourism, international trade);

7) international material support and foreign investments in the field of sports;

8) international protection of intellectual property rights in the field of sports – rights to trademarks, sports and Olympic symbols, radio and television rights to sporting events;





9) international tax relations in the field of sports;

10) injuries, sports medicine and insurance in international sports;

11) universal anti-doping policy and the fight against doping in international sports;

12) international cooperation in the fight against crime in the field of sports.

So, the process of registration of the set of norms governing the international sports movement is far from over. The totality of these norms can be characterized as a complex direction of interstate cooperation. This is pointed out by S.V. Alekseev in the famous monograph [1], pointing to the complex nature of international sports law. At the same time, in the concept of complexity, he embodies a slightly different meaning when he writes about international sports law as “a system of interrelated norms and rules governing social relations that are formed in international sporting activity” [1, p. 208]. Due to the heterogeneity of international sports relations and their subjects, sports law is characterized by a quality such as complexity, involving the integration in its composition of norms both international and domestic. “Integration itself is the subject of regulation itself – international sporting activity” [14, p. 214–215]. It should be explained the phrase about how international law can have in its composition the norms of national law. International sports law is designed to regulate sports relations of an international character, and there can be public-law or private law by nature. The last can be regulated by the norms, fixed both in the form of international treaties and in national legal forms [15, p. 142–143]. Thus, the process of registration of sports law as a comprehensive education is observed, it is a system of diverse norms that regulate sport relations, extend beyond one state. It includes both the norms of international public and private international law, as well as the corporate norms of international organizations

within the framework of the Olympic Movement. S.V. Alekseev all the regulatory and legal acts in the field of sports that exist, as well as those at the development stage, conditionally divides into the following categories [14, p. 247]:

- legal regulation of labor relations;
- legal regulation of managerial relations in the sphere of sport;
- regulation of financial and resource support;
- legal basis of sports traumatology;
- countering the use of doping;
- crimes in the sphere of sport;
- consideration and settlement of disputes in the field of sports.

Thus, the problem of finding the optimal combination of normative and subject approaches remains the focus. When solving this problem, there is in most cases an unconscious conflict: “support for sports” and “support for specific subjects of the sports (Olympic) movement”. This approach should not be considered as an alternative. The developed legal system is a complex multilevel mechanism, the elements of which are combined among themselves by rigid static and flexible dynamic links. At the same time, no matter how branched such a system is, the core invariably stable, stable and unshakable must remain in it – a system of law that is objectively existing and constantly becomes more complicated. In the case of sports law, it is advisable to talk about the objective existence of an industry not only of legislation but also of law, while solving the problem of legal regulation of the above-mentioned relations, the solution of which can be found within the framework of a system-wide subject-oriented approach. At the same time, its main feature is the definition of the system of sports law, which is the system of sports activities in general, as well as the actors involved in the development of this activity, forming sports law as a branch of science, and revealing sports law as a systemic legal phenomenon.





Key words: system, system approach, sports law, branch of law, norms of law, normative-legal act, “soft law”, legal mechanism of management, subject-oriented approach.

The article is devoted to the establishment of the system characteristics for sports law in the system of legal science with the corresponding regularities inherent in complex systems. From the positions of the system approach it is shown how legal regulation has conditioned the need for the formation of sports law as a new branch of law, adopting a huge array of normative and legal acts in the field of physical culture and sports in various countries of the world. In the context of this approach it is proved that the sports law system is a developed legal system with a complex multilevel mechanism, elements of which are combined with both rigid static and flexible dynamic connections. The problem of legal regulation in the field of sports law is specified and resolved within the framework of a specific systemic subject-oriented approach.

Стаття посвящена виявленню системних характеристик для спортивного права в системі юридическої науки з відповідними закономірностями, присущими складним системам. С позицій системного підходу показано, яким образом правовое регулювання обумовлює необхідність формування спортивного права як нової галузі права, адаптувавши величезну кількість нормативно-правових актів у сфері фізическої культури та спорту в різних країнах світу. У контексті такого підходу доведено, що система спортивного права являє собою розвинену правову систему зі складним багаторівневим механізмом, елементи якого об'єднані між собою як жорсткими статичними, так і гнучкими динамічними зв'язками. Проблема правового регулювання у галузі спортивного права конкретизується і вирішується в рамках системного суб'єктно-орієнтованого підходу.

области спортивного права конкретизується і вирішується в рамках определенного системного субъектно-ориентованного подхода.

Стаття присвячена встановленню системних характеристик для спортивного права в системі юридическої науки з відповідними закономірностями, притаманними складним системам. З позицій системного підходу показано, яким чином правове регулювання зумовило потребу формування спортивного права як нової галузі права, адаптувавши величезний за обсягом масив нормативно-правових актів у сфері фізическої культури та спорту в різних країнах світу. У контексті такого підходу доведено, що система спортивного права являє собою розвинену правову систему зі складним багаторівневим механізмом, елементи якого об'єднані між собою як жорсткими статичними, так і гнучкими динамічними зв'язками. Проблема правового регулювання у галузі спортивного права конкретизується і вирішується в рамках системного суб'єктно-орієнтованого підходу.

References:

1. Алексеев С.В. Международное спортивное право / Под ред. П.В. Крашенинникова. М.: ЮНИТИ-ДАНА, Закон и право, 2008. 895 с.
2. Вулах М.Г. Метод правового регулювання спортивного права. Вестник Саратовской государственной академии права: Научный журнал. 2009. № 5. С. 12–19.
3. Василенко М.Д. Становлення спортивного права в Україні як галузі юридическої науки в контексті розвитку міжнародного спортивного права. Актуальні проблеми держави і права. О., 2017. Вип. 78. С. 34–40.
4. Василенко М. Спортивне право: показники його формування (методологічний та учбовий аспекти). Юридичний вісник. Одеса: Юридична література. 2017. № 2. С. 65–72.
5. Василенко М.Д. Розвиток спортивного права як необхідна умова формування європейських стандартів спортивного ви-





ховання (освіти): загальнонаукові аспекти. Наукові праці Національного університету «ОЮА». Т. 20. Одеса: 2017. С. 29–38.

6. Галкин В.В. Экономика и управление физической культурой и спортом. Ростов-на-Дону: Феникс, 2006. 296 с.

7. Знаменский Г.Л. Общественный хозяйственный порядок и законодательство. Государство и право. 1994. № 4. С. 61–69.

8. Вінник О.М. Системний підхід до розв'язання проблеми гармонізації публічних і приватних інтересів у господарській діяльності. Юридична Україна. 2003. № 1. С. 37–45.

9. Игнатьева А.В. Исследование систем управления: учеб. пособие для вузов. / А.В. Игнатьева, М.М. Максимцов. М.: ЮНИТИ-ДАНА, 2002. 157 с.

10. Юлдашев О.Х. Регуляторна політика як засіб вдосконалення господарсько-

го законодавства. 2006. К.: МАУП, 2006. 302 с.

11. Дружинин В.В., Конторов Д.С. Проблемы системологии. М.: Сов. радио, 1976. 296 с.

12. Алексеев С.С. Общая теория права: курс в 2 т. М.: Юрид. лит., 1981. Т. 1. 360 с.

13. Nafziger J.A.R. International Sports Law. 2-nd ed. Ardsley, New York: Transnational Publishers, Inc., 2004. 148 p.

14. Алексеев С.В. Спортивное право России. Правовые основы физической культуры и спорта: учебник / под ред. П.В. Крашенинникова. М.: ЮНИТИ-ДАНА, Закон и право, 2005. 671 с.

15. Вострикова Е.А. Правовая природа международных спортивных организаций как международных неправительственных организаций частного характера. Современное право. 2011. № 7. С. 140–144.

