# 68. Sports law in Russia

Alexander Chebotarev

## I. Introduction

Sports law in the Russian Federation is a relatively young field, emerging in the mid-1990s of the last century. Previously, in the Soviet Union era, there had been exclusively traditional, classical substantive fields of law: civil law, administrative law, criminal law, and labour law. Moreover, there were also segments of procedural law, which included criminal procedure and civil procedure law.

However, after the demise of the USSR and the change in the official course of the country's development from communism to capitalism, the state legal system began to change. Russia began to adopt practices from Western legal systems. Russian sports law was formed as a result of an evolutionary process within the state legal system. Sports legal regulation emerged from the separation of professional sports from the general post-Soviet sports era, which was focused not only on obtaining high sports results but also on commercial profits for sports clubs, leagues, and federations.

Since the fall of the Iron Curtain, Russia has become an open country for foreigners, including athletes. Players from other countries are playing for Russian football, hockey, and basketball teams. As a result of such migration of athletes, disputes began to arise related to the issues of international transfers, sports rights, rights to television broadcasts, doping, etc. Consequently, it became necessary to distinguish between special rules and general legal rules that would regulate such sports-related issues, reflecting the special features of the legal status of athletes, coaches, and coaches, as well as referees.

These rules were adopted in the form of laws, decrees of the government of the country, and orders of the Ministry of Sports. In addition, Russia ratified a number of international conventions that form part of the country's unified legal system. Accordingly, Russian sports law can be defined as a set of legal rules established or sanctioned by the state or national sports federations that regulate social relations arising in the field of physical culture and sports.

Alongside the emerging of sports law as a separate field of law, specialists involved in sports jurisprudence began to appear. Russian scholars began to discuss special legal rules in the field of sports and published scientific papers on this topic. For example, Professor Alekseev S.V. defines sports law as a system of legal and regulatory rules that regulate relations in the field of physical culture and sports.

## II. Russian sports law

In Russian law, in any field of law, it is customary to define the subject and method of regulation. It is the subject of legal regulation that differentiates the fields of law from each other. Such a subject refers to those social relations between an athlete and a club, a coach and a federation, sponsors and a club, an agent and an athlete, etc. Professor Alekseev S.V. defined an organic complex of social relations arising in the field of physical culture and sports, in particular, civil law relations, labour law relations, and social security law relations, state management relations, financial law relations and resource support law relations, business law relations, criminal law relations, relations in the field of sports medicine and health security, involved in physical education and sports, anti-doping as well as procedural law relations (on the settlement of sports disputes) as a subject of sports law.

The legal method is considered a set of legal methods of impact on relations in the field of sport. The nature of Russian law distinguishes two main methods: imperative and dispositive. These methods also form the foundation for distinguishing between public law and private law. The imperative method implies the obligation for subjects to fulfil the rules established by the legislator without taking into account their wishes; such a method is mainly used in public law. On the contrary, the dispositive method empowers individuals to determine their course of action within the framework outlined by laws, a feature most associated with private law. Nevertheless, instances exist where both methods coalesce within a single area of law.

For example, labour law in Russia, which largely governs the roles of athletes and coaches, is classified under private law; however, it incorporates imperative regulations as well.

When using the imperative method, the legislator mandatorily establishes how a particular subject of public relations should behave. For example, Article 348.1 of the Labor Code of the Russian Federation (Трудовой кодекс Российской Федерации) establishes the

obligation of an athlete to comply with anti-doping rules when exercising his sports activities. That is, the athlete must not dope.

In turn, the dispositive legal method provides the possibility for the subjects of legal relations to establish the range of rights and obligations within the framework of the law. Thus, there is no imperative in establishing dispositive rules of conduct. For example, Article 348.12 of the Labor Code of the Russian Federation, which states that an employment contract with an athlete may provide for a condition on the obligation of the athlete to make a monetary payment to the employer in the event of termination of the employment contract at the initiative of the athlete (of his/her own free will) without good reason, as well as in the event of termination of the employment contract at the initiative of the employer on grounds that relate to disciplinary sanctions. That is, this condition does not have to be included in the athlete's contract but is introduced at the will of the parties.

## III. Sources

Perhaps the most important aspect in the study of sports law is its sources, which are understood as all acts of state power containing the rules of sports law. In Russian sports law, the sources include the following:

- International treaties and conventions;
- The Constitution of the Russian Federation;
- Federal laws of the Russian Federation;
- Decrees of the President;
- Government Orders;
- Orders of the Ministry of Sports of Russian Federation;
- Regulations of sports leagues and federations;
- Local regulations of sports clubs;
- Legal practice.

From the above list, it can be seen that it lacks judicial precedent as a source of law. This is possibly due to the fact that judicial precedent is not a source of sports law, just as the Resolutions of the Plenum of the Supreme Court of Russia are not. This is the main difference between Russian sports law and international sports law. But there is a nuance here. First, in doping disputes, judicial precedent is used because appeals in these types of cases are heard by the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland, where CAS jurisprudence is taken into account in the decision-making process. Second, when considering sports disputes in the federal courts of Russia, judges usually pay attention to court practice in resolving similar cases; that is, *de facto* earlier decisions on similar cases are taken into account when making decisions.

As for the use of international treaties and conventions, an example here can be the Agreement between the Russian Federation and the Federal Republic of Germany dated 29 May 1996 (as amended on 15 October 2007) 'On the avoidance of double taxation with respect to income taxes and property tax' as well as the UNESCO Convention against Doping in Sport (Paris, 19 October 2005). According to the first act, citizens of Germany and Russia who receive income in these countries are entitled to receive a tax deduction in their country for the amount of taxes already paid in the host country. This rule also applies to athletes and coaches. Another example is the UNESCO doping convention, which was ratified by Russia in 2006 and began to apply to Russian athletes and coaches in full.

Article 15 para. 4 of the Constitution of the Russian Federation (Конституция Российской Федерации) generally recognises that principles and rules of international law and international treaties are an integral part of the legal system of the Russian Federation. If an international treaty establishes rules other than those provided for by law, then the rules of the international treaty shall prevail.

The next source of sports law in Russia is the Constitution of the Russian Federation. It was adopted by popular vote in 1993. The Constitution of the Russian Federation does not contain any rule directly related to the field of sports. However, it provides for a rule that indirectly indicates the existence of this kind of social relations, which is further concretised in special laws. This provision is established in Article 41 of the Constitution of the Russian Federation, which states that federal programmes for the protection and promotion of public health are financed in the Russian Federation. Measures are being taken to develop state, municipal, and private healthcare systems, activities that promote human health, the development of physical

culture and sports, and sanitary and epidemiological well-being.

## IV. Law on physical culture and sports

The main federal law that regulates relations in the field of sports in Russia is Federal Law No. 329-FZ 'On Physical Culture and Sports in the Russian Federation' (Федеральный закон № 329-ФЗ «О физической культуре и спорте в Российской Федерации») (hereinafter referred to as the 'Law on Sports'), which was adopted in 2007. This act defines the main terms that are used in the regulation of sports relations, as well as the basic principles of organising physical culture and sports in the country, and aspects of financing this segment of the industry.

It should be noted that in Russia the share of state participation in the regulation of physical culture and sports is very large. At the state level, the governors adopted rules concerning certain forms of sports management, the volume of its financing, the procedure for assigning categories to coaches, and the competence of municipalities in financing children's and youth sports.

It is important in the Law on Sports that it establishes a rule according to which athletes in team sports participating in professional competitions must have a mandatory written employment contract with a sports club. This important aspect legally separates athletes in individual sports (e.g. tennis, boxing, swimming) and team sports (e.g. football, hockey, basketball). In individual sports, you can often find civil law contracts that are concluded on the basis of the Civil Code of Russia (Гражданский кодекс Российской Федерации) instead of the Labour Code. Athletes who work in team sports appear to be in a more privileged position, since Russian labour law provides greater security and social guarantees in sports. Although athletes in individual sports are not prohibited from entering into an employment contract, clubs or federations are generally reluctant to do so, as they have to bear significant costs for the health and social insurance funds of employees.

Separately, it is necessary to mention Article 26 of the Labour Code, which is dedicated to anti-doping provisions. The doping scandal that occurred in Russia in 2015 after the investigation by Professor Richard McLaren served as a pretext for a global change in Russian legislation in the field of anti-doping rule violations. In addition, in 2016, criminal liability was introduced for inducing athletes to use prohibited substances and methods (Article 230.1 of the Russian Criminal Code), as well as for using such substances and methods against an athlete (Article 230.2 of the Criminal Code).

It should be emphasised that the rules of the Labour Code, which since 2008 have included a separate Chapter 54.1, providing for features in the regulation of the work of athletes and coaches. The rules of this chapter define an athlete as an employee performing a labour function in preparing for competitions and participating in them under the supervision of a coach. In turn, a coach is an employee who is obliged to organise and conduct a training and competitive process for athletes for a certain fee in order to achieve a sports result. The law does not determine what kind of result it should be, but from the general principles of sports law, it can be concluded that the result should be high. That is, the team must achieve certain success in the playing season under the supervision of a coach (win medals, get into the playoffs, etc.). For each club, the successful result is determined separately by its founders and communicated to the team and coaches at the beginning of the playing season.

It should be mentioned that the rules of labour law establish the mandatory conditions of an employment contract for an athlete, which must be included in the employment contract. According to Article 348.2 of the Labour Code of Russia, the athlete is obliged to comply with the sports regime and adhere to the anti-doping rules established by international and national sports organisations. In case of violation of these duties, the athlete may be subject to disciplinary measures.

It must be said that the current labour legislation does not provide for fines for athletes as a penalty, which often causes difficulties in maintaining proper order in the team. According to Russian legislation, only one of the following three penalties can be applied to an employee as a penalty: a remark, a reprimand, or a dismissal. Such a system of disciplinary measures against an athlete seems to be ineffective since, as practice shows, the most effective penalties are fines. That is why many clubs impose monetary fines on players, which they pay voluntarily. For example, such penalties may apply for being late

for training, unreasonable conduct during a game, or insulting the referee or a partner. Players voluntarily pay these funds because they follow corporate ethics.

For anti-doping rule violations, an athlete or coach in Russia can be fired from a club without any compensation. Moreover, the Labour Code establishes that in the process of such dismissal, the athletes themselves may be required to pay the club the amount of compensation specified in the contract.

## V. Sports governing bodies' regulations

Since 2008, the Russian Labour Code has recognised the rules and regulations of sports federations, leagues, and unions along with other laws in Article 348.1 of the Labour Code. Accordingly, the regulations of sports federations were given greater legal authority and acknowledgement. In the author's view, the employment-related sports regulations subject to athletes and coaches are now found in labour legislation, sports regulations, collective agreements, and regulations adopted by employers. This is all in accordance with the requirements of Article 8 of the Labour Code, taking into account the rules approved by the all-Russian sports federations, and the opinion of the elected body of the shop-floor union organisation.

## VI. Criminal liability

As mentioned above, Russian sports law is a complex area of law that requires the application of other fields of law. Because of this, it is necessary to note several criminal law and administrative law rules that are part of the system of Russian sports law. Article 184 of the Russian Criminal Code provides for criminal liability for unlawfully influencing the outcome of an official sports competition or spectacular commercial competition, or coercion or inducing such persons to exert such influence, or prior collusion with such persons for the same purposes. In particular, this crime is, *inter alia*, punishable for athletes, referees, coaches, heads of sports teams, other participants or organisers of an official sports competition (including their employees), and jury members.

Furthermore, Articles 230.1 and 230.2 of the Criminal Code criminalise doping. Thus, the first of these rules provides for liability for inducing an athlete by a coach, sports medicine specialist, or other specialist in the field of physical culture and sports to use prohibited substances and/or methods. The maximum punishment provided for by these provisions is three years of imprisonment. Finally, Article 6.18 of the Code of Administrative Relations provides for administrative liability in the field of doping in the form of a fine.

## VII. Dispute resolution

Recently, in Russia, a number of regulations have been amended to provide for a sports dispute resolution mechanism. The general structure of dispute resolution bodies in Russia is as follows:

1. The initial dispute resolution bodies are the so-called jurisdictional bodies of national sports federations and leagues (arbitration committees, disciplinary commissions and chambers, etc.); these entities perform mainly a conciliatory function when, guided by corporate standards, judicial commissions try to resolve the dispute.
2. The National Centre for Sports Arbitration of Russia is an arbitration body for resolving sports disputes. This arbitral tribunal is the main sports tribunal in Russian sports, which considers sports disputes both at first instance and on appeal. Any decisions of the above jurisdictional bodies may be subject to review. The decisions of Russian sports arbitration are final and not subject to review with the exception of doping cases, in which the CAS remains the final appeal instance.

## VIII. Conclusion

In general, Russian sports law has finally gained a foothold in the legal system of the country and continues to improve. Its formation is influenced by international treaties and sports rules and regulations.

## Bibliography

*Primary sources*

Agreement between the Russian Federation and the Federal Republic of Germany dated 29 May 1996 (as amended on 15

October 2007) "On the avoidance of double taxation with respect to income tax and property tax." Electronic resource: http://www.consultant.ru/document/cons_doc_LAW_13006/

Code of Administrative Legal Relations of the Russian Federation. Electronic resource: http://www.consultant.ru/document/cons_doc_LAW_34661/

Constitution of the Russian Federation (adopted by popular vote on December 12, 1993) (subject to amendments introduced by the Laws of the Russian Federation on amendments to the Constitution of the Russian Federation of December 30, 2008 No. 6-FKZ, of December 30, 2008 No. 7-FKZ, of 5 February 2014 No. 2-FKZ, dated 21 July 2014 No. 11-FKZ) // Collected Acts of the Russian Federation – 8 April 2014 – No. 31 – Art. 4398

Criminal Code of the Russian Federation of 13 June 1996 No. 63-FZ / Collected Acts of the Russian Federation – 17 June 1996 – No. 25 – Art. 2954

International Convention against Doping in Sport (Paris, 19 October 2005)

Labor Code of the Russian Federation dated 30 December 2001 No. 197-FZ // Collected Acts of the Russian Federation – 7 January 2002 – No. 1 (part 1) – Art. 3

*Secondary sources*

SV Alekseev, *Sports Law: A Textbook for University Students Studying in the Areas of Jurisprudence and Physical Education* (5th edn, Unity-Dana 2016)