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THE NATURE OF THE WORK ENGAGEMENT OF ATHLETES

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Abstract. *The main goal of this article is to determine whether professional athletes can be viewed as employees in the sense of employment regulation. Whilst professional athletes shared common experiences as a result of their sporting careers, there are also some important differences both within and between these groups. The usual concept of a worker is defined by factors such as: the level and regularity of earnings; the prospects of security; work conditions; relations with the social strata above and below him; general conditions of living and the prospects for future advancement. The labor class was and always is characterized by a strong tradition of industrial organization, and as a result enjoyed relative economic advantages. A professional athlete, on the other hand, display some of the characteristics which define workers in general, but there are still significant differences between them and general workers. For example, many successful athletes enjoyed favorable living standards in comparison to general workers, but the continuation of this situation could not be guaranteed after retirement from their sporting careers. Furthermore, many professional athletes were excluded from employment protection provisions for many years. Because of this and many other reasons stated in this article, the authors are proposing that labor relations of professions athlete should be viewed as sui generis with full acknowledgement of its specific features.*

Key words: *professions athlete, voluntarism, labor relationship, flexible work.*

INTRODUCTION

Owing, amongst other factors, to extraordinary technological developments in the field of information technology and telecommunication, sport today has become a truly global social phenomenon, constantly present in today's daily life. There are few people who are not, at least as consumers, in contact with one of numerous sports activities.

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Despite the fact that a great number of sports events are held every day around the world and that their participants are, more and more often, professional athletes, their rights and obligations towards their employers (sports organizations – clubs), in terms of being a professional athlete, so far have not attracted a great amount of interest from the legal profession. Of course, the situation is the same in the opposite direction, i.e. when it comes to the legal position of employers (clubs) in relation to the players. The situation is identical with the labor status of professional athletes who participate in sports independently.

Therefore, even though sport as a social activity is rapidly expanding today, the most prominent advance in the legislation of developed (and other) countries is the widely accepted legal standing that in the case of the work engagement of athletes, a labor relation is at stake. The legislation has legally shaped the previously established social relations in a particular segment of society.

The lack of a widely accepted definition of the notion of sport which would be a starting point for further consideration certainly further complicates the question of the labor law status of athletes. Besides, it is certain that there is no uniform position in the relevant literature on the issue of the place of sport within society.

Professionalism as a phenomenon has accompanied sport since the time of ancient Greece, but it was the professional engagement in sports as a consequence of the development of sports in the 19th and the 20th century that affected the transformation of the basic principles of sport. To illustrate, until the Olympic Games in Barcelona (1992) the participation of professional athletes was forbidden in the largest and most important sports manifestation in the world, and after these Olympic Games, the performance of professionals became the most interesting part of the Olympic Games. And engaging in sports as a profession is a presumption of existence of the labor law status of athletes.

Professional athletes have the right to work, which is the right of every individual, guaranteed by the existing objective law (Đurđević, 1997, 21). The right stems from the constitutionally guaranteed general right to work which belongs to everyone in accordance with laws and other regulations. In our legal system, the primary legal grounds for regulating professional athletes' right to work is the Law on Sports with the subsidiary application of the Labor Law.

When it comes to the labor law status of professional athletes, with considerable certitude we may state that it is a legal status which is similar to the rights and obligations of persons engaged in a standard labor relation with a limitation of duration. In this regard, it should be noted that the main difference between the two forms of work engagement is that firstly a typical labor relationship still implies an unlimited duration, and secondly there is the possibility for the employee to spend in continuity his/her working life with the same labor status, and the work engagement of professional athletes excludes these two elements.

In order to determine what the legal nature of the work engagement of athletes is, it is necessary, in general terms, to consider all forms of working arrangements which are accepted in theory.

General Remarks on the Labor Relationship

A glance at the genesis of the notion of a labor relationship

Until the First World War the contract of employment was the basic notion of labor law because it covered, i.e. fully regulated the rights and obligations of employers and workers.

It can be said that labor relations, at the time when the contract was the only basis, were a subject of civil law, and that afterwards labor law became a separate legal discipline.

As a result of the overall social and economic changes, a distinction emerged between an employment contract and employment as a factual state. Also, the growing interventions of the state through labor law legislation in the domain of certain issues and relations brought labor law more into the position of a discipline of public law (the regulation of wages, work safety, rest and leave etc.). The activities of the state were mainly aimed at protecting the basic interests of the subjects of the labor relationship with the weaker position – the workers.

The importance and the position of the notion of labor relationship in labor law theory is highlighted by the standing that the "labor relationship as the central part of the subject of the labor law also has its source in the interest structure and the building of mutual relationships between people at work and in connection with the work". Therefore, it may be said that a crucial position in the labor law belongs to labor relationships. "Labor relationships, as a specific kind of legal relationships regarding labor, differentiate labor law from other branches of law which also involve certain kinds of work-related legal relationships (civil, commercial, administrative and other branches of law).

The notion of a labor relationship

According to one of the most recognized and most cited definitions, the labor relationship is defined as a voluntary (free), personal, labor law based, functional connection between the worker in the organization and the employer on the basis of which the worker is, under certain conditions and in a certain manner, included in organized labor within the organization, taking a certain position, in which he/she performs a specific job (work) or function, receiving income (wages or salary) for one's own personal labor, according to the invested work (Baltić and Despotović, 1981, 2). According to the author of this definition, it follows that the essential elements of a labor relationship are: voluntary initiation of the labor relationship, a personal labor law functional relationship, inclusion in the organization and personal income, i.e. wages or salary. Subordination is considered to be an irrelevant element (Jovanović, 2000, 166). Considering the abovementioned theoretical position, there is a view (justifiably based on the fact that all legal theoretical concepts have their full significance in space, but also in time) that an individual labor relationship can be defined as a voluntary, legally regulated relationship between employer and employee based on an employment contract, in which both of the parties acquires certain rights, obligations and responsibilities, with the employee accepting the obligation to undertake certain operations in a specific and organized manner and the employer accepting the obligation to pay the appropriate sum as earnings in accordance with the actual results and real possibilities (Kulić, 2005, 78). In the relevant literature one can also find much shorter definitions of a labor relationship than those outlined here (Šunderić, 2001, 165).

The subjects of a labor relationship

Anyone who is able to have rights and obligations is a subject of law. The subjects of law can be physical or juridical persons in whose favor or disfavor the law claims something, regardless of their consciousness and will.

If we begin with the statement that the labor relationship is a legal relationship, it necessarily involves two sides - the employer and the employee, who are both the subjects of the labor relationship. With the individual labor relationship, one subject of the labor relationship is the party providing the job. That subject of the labor relationship is the employer. Another subject of the labor relationship is the party which receives the job. That subject of the labor relationship is the employee. The labor laws in most countries around the world use the term worker, and in some the terms used are worker and official. An employer, depending on the type of ownership, can be a physical or a juridical person. The employee is a physical person who is employed by the employer, the employer is a domestic or foreign juridical or physical person which employs, i.e. provides the work engagement for one or more persons.

Every entity possesses a certain number of essential elements whose existence is necessary for the existence of this entity. Thus, the labor relationship cannot exist without any of its essential elements.

Voluntariness, the personal performance of work and pay for labor are always present (and the most widely accepted in theory) elements of the labor relationship (Brajić, 2001, 123). In our opinion, which is supported in theory by more than one author, another essential element of the employment relationship is subordination as the result of the economic and legal superiority of the employer in relation to the worker.

FLEXIBLE TYPES OF WORK

In legal theory, there is no consensus regarding the definition of issues of flexible (atypical) types of work and employment. The most common definition of the term is given through a negative definition with the use of an argumentum a contrari. Flexible forms of employment are currently one of the most topical issues of labor law in the world.

The International Labor Organization (hereinafter ILO) has in recent years paid special attention to the issue, adopting several documents in the field (Convention no. 175 on part-time work, and the Recommendation no. 182 of the same name - in 1994; Convention no. 177 on home work, and the eponymous Recommendation no. 184 – in 1996; Recommendation 189 on Small and Medium Enterprises in 1998.

The importance of this issue has not been neglected by the European Union (EU), which adopted a directive on part-time work in 1997 (based on a previous collective agreement concluded for the territory of the EU) and a directive on fixed term work in 1999 (Szyszczak, 2000, 131). In addition, Europe's largest trade union organizations (UNICE, ETUC, CEEP) are currently negotiating the conclusion of the European collective agreement on temporary work (Jašarević, 2006, 3).

Flexible forms of employment emerged as a result of the introduction of new technologies into the work process (automation, computerization, robotization) and the reaction of employers to the so-called standard (typical) form of employment.

In relation to this, an effect was made on the very content of the basic notion of labor law – the labor relation. Thus, in order to maximize the benefits provided by the new technology, it was necessary to make the labor relations system more flexible.

Thus, the Labor Law of the Republic of Serbia contains chapter XVIII entitled "Working without Labor Relations", which is contradictory to the essential convergence of (including the equivalence of accessory social rights) work based on a labor relationship and flexible types of employment.

In this regard, we will state that the current pension and disability insurance law in many cases introduced mandatory full pension and disability insurance for persons performing temporary or part-time work, as well as unemployment insurance.

Thus, we may conclude that the rights arising from labor relationships and from atypical types of engagement are growing more similar, especially social insurance rights.

Domestic positive legislation recognizes the following flexible types of work: work for a fixed period, part-time work, the labor relationship for performing work outside of employer's premises, household staff labor relationship, temporary and part-time jobs, work by contract and self-employment. A flexible work engagement is every work engagement which is not a standard (typical) type of labor relationship that involves a work engagement for a period which is not fixed and with no full-time working hours as determined by law.

Sport, a significant social field which is in great expansion as a modern form of business (Kostić, 1976), is an area of labor law where, due to the nature of sports activities, there are only flexible types of employment.

Starting Points for Considering the Legal Status of Athletes

General notes on the notion of sport

The notion of sport is very varied and there are numerous versions. They are often very broad in substance, with a tendency to encapsulate sport, as well as the relevant social area, in all its diversity. Here, in accordance with the needs and nature of this paper, we will mention a few, in our opinion, typical notions.

In its lexical meaning, sport signifies play, and fun. It originates from the Latin word "disportare", which means to deliver, while in the 14th century, it appears in the form of "disport", or "desport" meaning fun, game.

Sport has become one of the favorite pastimes of the young and a significant mass spectacle as well (Gillet, 1970, 5). The goals of sports are varied, including shaping personality. Therefore, not only is sport not to be identified with work but is exactly the kind of activity that should counter it; otherwise, the efforts of athletes should be in the same area of study, collected under the same heading as the successful efforts of soldiers, workers, colonists. Accepting the assumptions of a game, the concept of sport should include the concept of struggle. Struggling against some difficulty provides satisfaction in itself and that is what makes the true character of sports. There are three important elements of sports: the game, struggle and intense physical activity. It adds dignity, the true meaning to sport, which signifies a mode of action, rules of living and a special spiritual state.

Each original sport is characterized by three features: the use of leisure according to one's will and needs, the tendency to truly perfect the appropriate technique for reasons of physical development and, eventually, to test such technique in team and individual competitions with unhindered access to the game (Heesen, 1908, 5).

Sport and physical education in general cease to be a minor point in the life of modern man, one which man deals with in the course of his life primarily for his own leisure (Kostić, 1976, 1). Sport is increasingly becoming a social phenomenon.

Some authors see sports as labor (Marjanović, 1987, 180). Those authors, contrary to the opinions of those who view sport as a game, point out the fact of the undisputed internally structured similarities between sport and labor. They believe that it is wrong, or

at least should be justified, to separate labor and "the game", fun, as opposites and locate the game in a world outside of labor.

Sport usually implies a certain period of acquisition of skills, abilities, strength and endurance, agility, competence, intrepidity, which may even lead to risk (Koković, 1986, 7). Sport, in the opinion of this author, includes the victorious affirmation over one's opponent as well as oneself, time and space, and it embodies a combination of activities, player's character, cultural norms, struggle, competition and effort. "The man in sports inevitably becomes a homo metrum, the measurability of his results is one of the fundamental characteristics of sport, as well as sociability, particularly emphasized in team sports. Voluntariness is a fundamental characteristic of sport taken in the broadest sense. Many have especially emphasized the attributes of game in sports, claiming that it is non-utilitarian and unselfish. These claims are negated by professional sport which is becoming a means of acquiring a livelihood.

Some authors, in regard to defining sport, first state two basic opinions about sport: first, one according to which sport consists of the voluntary bodily activities of humans, regulated by its own rules, which takes place mostly in the form of competing with others, with the possibility of becoming a professional activity, and a second opinion, which considers sport to be an activity manifested in the form of movement and which serves to satisfy the instinct for play, maintain health or increase physical abilities. They believe that it is much more appropriate to use the so-called "type notion". The term is defined in such a way that the elements that appear in various sports activities, and that are seen as constituents, are included descriptively in one complex notion – "type". The greater the correspondence between the elements present in a specific case and those contained in the type notion, the safer it is to say that it is a sport.

So, the point of distinction between sports and all of the abovementioned related concepts (sport recreation, games, physical education) is that sports are essentially a struggle, a kind of competition with the aim of achieving the best possible results related to factors of distance, time, opponents, obstacles, but also of oneself. Sport, then, is essentially a struggle and competition, which is not or is ultimately not a basic feature of all abovementioned terms.

The differences between the legal status of athletes and standard labor relationships

The essential elements of a labor relationship and the characteristics of the work engagement of athletes in their comparative dimensions provide a valuable basis for analysis and reasoning regarding the legal nature of the work activities of professional athletes. In our opinion, special attention is due to the notion of earnings because of its evident existence in both cases on the one hand and pronounced differences in substance on the other. We believe that it is sufficient to keep only the generally accepted (in labor law theory) significant properties and some characteristic so-called insignificant elements.

Earnings

The earnings and other income arising from the labor relationship are different from giving money to start a labor relationship in the first place. At the very least, this practice is contrary to the reality of employment in other areas of life. Here it clearly follows that professional athletes receiving money when signing a contract, which here has the char-

acteristics of a previous condition, is not due to the athletes' labor relationship because it, dynamically speaking, precedes the relationship.

Although they do not have a labor law character, the earnings given by the sports organization during the signing of the contract, i.e. for the initiation of the labor relationship, are an integral, often the greatest, portion of the total earnings of a professional athlete. Our positive law contains an explicit legal decision which envisages the possibility of compensation to athletes when commencing the labor relationship with their employer (sports organization).

When it is known that the topical part of the earnings (the compensation for initiating the labor relationship) of athletes is not in a causal connection with his/her labor relationship, we easily come to the conclusion that such compensation is not regulated by labor law, but only contract law features. We add that it is not without significance for the previous statement that the state has no authority, not even indirect authority over the sum of compensation, which is not the area of labor relationships (e.g., one of the most important interventions of the state in the field of labor law is providing the conditions for determining the minimum price of labor).

In addition, agreeing on premiums as a part of a professional athlete's earnings with a pronounced aleatory component, has exclusively contract law features because of, among other things, the possibility of the athlete not receiving it because of unfulfilled sport results. In contrast, the standard contract of employment stipulates, as precisely as possible, the sum of earnings, which is consistent with the principles of legal security and permanent social security which are characteristic of labor relationships.

Furthermore, the athlete is not entitled to the extension of rights in the field of social insurance based on the abovementioned parts of their total earnings (fees received to initiate the labor relationship and premiums), and is not, or at least should not be, obliged to pay contributions to social insurance, but only in the fiscal area.

Starting with the principle of legal security and the need for technical simplicity, it would be legally justified to have all the rights and obligations of professional athletes and sports organizations as employers included in one contract.

However, since at first glance there is an evident difference between the labor relationship of professional athletes and traditional labor relationships, it is necessary to further investigate the issue of the legal nature of the labor relationship of athletes as a special type of labor relationship.

As we can see from the abovementioned, in order for a certain, primarily monetary transaction between the employer and the employee to be considered as earnings, which is an essential feature of the notion of a labor relationship, it must meet certain requirements.

Firstly, in order to consider a financial expenditure of the employer as earnings in terms of labor law, it is necessary that the employee performs work on the basis of which he/she receives a salary based on: the price of the working position where the worker is assigned, the work and the time spent at work, in accordance with the law and collective agreements. Therefore, it is necessary that for the worker to factually perform the work, provided that the price of work and the working position where he/she is assigned have been pre-determined. This means that the worker henceforth must have an effective performance at his/her workplace and, what is especially important, spend some time at the workplace. It is not in opposition to the above mentioned that in a particular situation, the employer pays the workers in advance, as the worker has to work off the earnings later on, usually within a short period immediately following payment. Furthermore, in this

case what follows is a period when the employee would not receive a salary because he/she has to invest the work that would justify the salary advance received.

Secondly, the salary is a cash benefit (according to the ILO Convention no. 95, only in special circumstances may a part of the earnings be paid in goods, and there are some other restrictions listed) that is occasional in character (periodical payments). This important element of the notion of salary is associated with the essence of the labor relationship which is a means of providing for the basic needs of man, and those needs are permanent.

Thirdly, the earnings are a cash equivalent for the work invested. Therefore, there must be some correlation between the work invested, i.e. performed and its effects on the particular employer and the salary. So, the employer always pays for the work performed at their premises and the amount is affected, as a rule, by the knowledge, abilities and skills that workers acquire and their effect on the work results during the worker's entire career.

Earnings, i.e. benefits obtained by a professional athlete from the employer – the sports organization, as a rule, consist of three cumulatively given parts: a) the part that the athlete receives as a lump sum or, less frequently, in installments during the signing of agreements - the so-called "amount received for the signing of the contract"; b) the premium that the professional athlete receives, depending on the sport results achieved, and c) the regular periodical sums guaranteed by contract to professional athletes regardless of other circumstances.

When we take into consideration that the third part of the total earnings of professional athletes is made up of the agreed amount that they receive at regular intervals as an obligatory sum, we conclude that only in this case is there an important element of earnings in terms of the labor law, because that part of the earnings, in its essence (periodicity of benefits, accessory social content, payment upon having performed the activities, etc.), is identical with earnings in a typical labor relationship.

In this sense, we can conclude that there are significant differences between the earnings as an essential characteristic of a labor relationship and the earnings of professional athletes.

Firstly, professional athletes obtain a greater part of their earnings during the signing of the contract to perform in a certain period for a certain sports organization. It should be mentioned that there is an exception to this, through engaging in professional sports independently. As we have already mentioned, in the case of earnings which are obtained through work in a standard labor relationship, there is a rule that the wages are paid for the performed work, i.e. based on the results of work, which means that the earnings are a consequence of certain relations, established in a labor law manner and, accordingly, of the invested intellectual and physical efforts of the employee. Thus, earnings, as an essential element of the standard labor relationship are consequential in character, since they always follow the invested effort.

This part of the total earnings of athletes should not be confused with certain benefits which the employer provides for some of the workers (use of vehicles, paid accommodation etc.), because they are a consequence of the employer's expectations that the employee will achieve better work results. Moreover, in the case of earnings as an essential element of the labor relationship, it is determined by the contract of employment, or based on one's actual work performance, independent of the mentioned material benefits that can also exist in this case.

Therefore, this part of the earnings of a professional athlete does not essentially have, in our opinion, a labor law character, but a contract law character because there are no elements of public law characteristic of labor law relations, which would in any way se-

cure the social interests i.e. rights of the athlete (e.g. in terms of earnings in the labor law sense, the state or the unions must influence the price of minimum wage, workplace safety, etc.). This means that the sum of the athletes' earnings is completely within the domain of the contracting parties' will (of course with due care not to conclude a legal transaction against public interest, public order and morality, which is a general limit of contract law) to the extent that it may occur that athletes, when signing a contract may getting nothing or the opposite – the athlete may gain an enormous amount of money; the degree of freedom of the legal subjects' decision-making, as described in the previous paragraph, is characteristic exclusively of civil or contract law, as mentioned earlier, when the earnings are seen as an important characteristic of the labor relationship, there is always the effective work done by the worker as a previous condition and an essential element which obligates the employer to pay the salary to the worker.

In the case of the first portion of the athletes' earnings, at the time of the agreement, there is no previously invested labor (by the professional athlete) for the employer with whom the agreement on the professional work engagement is signed, because determining the obligation of the employer, and usually also the very payment, are done in advance.

Let us remind ourselves of the difference between the advance salary for work in a typical labor relationship, which is quite permissible, although rarely, by the more powerful side in the labor relationship - the employer, an applied labor law category, on the one hand, and the said portion of the earnings of athletes, as we have said, with prevailing contract law features, on the other. The athlete, while accepting the obligation to perform for the employer, becomes entitled to be paid by sports organizations based on this, so that a higher power that would prevent the further fulfillment of the obligation by the athlete and would not lead to the right to return the sum given upon the signing of the contract.

Unlike this legal situation, there are quite a few different legal consequences in the case of the labor law relationship, or advance payment, due to the different legal nature of mutual relations. Thus, the employer has an obligation to the employee only on the basis of the performed work, and therefore the employer is entitled to the return of the sum of the advance payment even in the event of default due to force majeure. This clearly shows the difference between the legal characteristics of the portion of the earnings received by athletes when entering into a contract with an employer (usually it is a sports organization) and the advance salary based on the typical employment relationship, thus also showing the difference between the legal nature of the labor law relations and the legal relations that preceded them.

Secondly, the earnings gained upon signing the contract with sporting organization are obtained by professional athletes based on the expectations of the employer that sport results will be achieved, which will be due, among other things, to the quality of the sports performance of the contractor. We should say that "the professional athlete does not guarantee the successful execution of contract actions, i.e. the outcome of sporting events. The only obligation of athletes in this regard is to play for the sports team with whom they are under contract, as well as to keep their psychological and physical preparations for sports competitions at the level required for successful competition in a sports discipline.

Achieving sports results is always a very uncertain factor, so the risk for unaccomplished work effects for the sports organization as the employer is much higher than such a risk for an employer in a conventional form of employment. Here we come to the conclusion that the aleatory component is essential – as a characteristic of the employment contract of athletes, while with work in a typical labor relationship, i.e. employment contract, the prestations of both parties are known and uncertainty is an unimportant feature.

Thirdly, the earnings of professional athletes are obtained in a relatively short period of time, or part of the life of an athlete, because, due to biological constraints, it is impossible to perform an entire lifetime of work in sports by engaging in sports actively and professionally. Hence, professional athletes are aware that their sport (working) career lasts much shorter than the working life span envisaged by law. As a result, the athlete has the basic desire to achieve a higher fee upon signing a contract, with a tendency to, through that single payment by the employer, provide for himself in the long run, and gain a greater profit.

In contrast, the worker employed in a typical labor relationship, while concluding the contract of employment, tends to secure as favorable contractual terms as possible, with the primary intention of providing and establishing a work engagement for one's entire career on the basis of which he/she will secure his/her permanent social security, preferably until the end of the working life and beyond.

Fourth, a worker in a, typical labor relationship receives earnings in installments and the most important part of the profits gained by professional athletes – one gained at the conclusion of the contract, is singular in character. Premiums also are not mandatory regular payments, but depend on the achieved results that are not a certain category so, for example they can be unrealized and unpaid for a long time, which cannot happen in the standard forms of a labor relationship.

The duration of a labor relationship and transfer as a specificity of the Labor Law status of athletes

When it comes to the labor law status of professional athletes in our legal system, at the very beginning, with a substantial degree of certainty, it can be concluded that it is a legal status that is similar to the rights and obligations of persons who are in a standard labor relationship with a restriction in terms of duration. In this connection it should be noted that the main difference between these two forms of engagement is that the typical labor relationship first still implies an unlimited working life, and secondly that there is the possibility for the employee to continuously complete his working life in the status of an employed individual, and the work engagement of professional athletes excludes these two elements.

In elite sport everything is planned, prepared and organized, to the smallest detail. A professional athlete resembles a part of a perfect machinery. They no longer practice a specific action, rather they exercise in an isolated area equipped with video cameras, to make this action "enter into the blood, flesh and soul". The athletes are no longer of primary importance. It is more important what the clubs, the coaches, the spectators and the mass-media want.

The transfer of players as a specificity of the work engagement of athletes is a situation in which a professional athlete (the institution of transfer also exists with amateur sports, but of course with significantly different consequences) changes the sports organization in which he/she is employed, i.e. for which he/she performs. Of course, the above situation cannot come about in the case of independent sports engagements.

So, here is the fact that athletes, rarely of their own will, and more often according to the negotiations between interested sports organizations (with or without the intervention of a "sports manager") change the environment in which he/she works, i.e. where he/she performs, in order to achieve the best possible financial situation or position. An impor-

tant feature of transfer in sports is the participation of several entities in the event, with the pronounced role of sports organizations. However, it should be noted that the role of other agents (the player, national federations, international associations, brokers, etc.), is essential and unavoidable, and in some cases decisive.

The Bosman case is one of the most famous (and most far reaching in terms of consequences) cases in sports law that was conducted before the European judicial authorities. The procedure was concluded by the European Court of Justice in 1996. The legal effect of this decision greatly changed the previously existing situation regarding the rules pertaining to the transfer of players and the so-called "quota system" which is a restriction on the number of foreign players who could perform at football games.

Before the 'Bosman case', the situation in European football was much different than today. Firstly, regarding the transfer of football players, the rule was that a player can leave the club only through an agreement between his/her club and another one, interested in the transfer, which ended with the payment of a compensation fee.

Voluntariness

Voluntariness as an essential element of a labor relationship is often cited first in legal literature when citing those features and includes a free expression of will of the employer and workers in regard to the establishment and duration, or termination of the labor relationship. Voluntary establishment and duration of employment is a reflection of the freedom of work and the right to work. The employee voluntarily enters into work and decides on its termination.

Furthermore, the athlete does not have the ability to terminate the employment at will like other workers because, while bound by a contract, he/she will not be allowed to register (and thus perform) with another sports organization. In this regard, we may note that there are common abuses by the employer (the sports organization) when the intention is to keep the player whose contract expires in the immediate future, and the competitor announces that he/she does not intend to extend the contract.

Publicity

The public is absolutely excluded during the establishment of the labor relationship of athletes. This the difference between the labor relationship in general and the "sports labor relationship" has two dimensions. First, it is understandable and justified that the sports managers in clubs do not allow their decisions regarding the hiring of certain players to be influenced. Coaches and other sports experts leading the competing squads of sports organizations bear the absolute responsibility for achieving results as determined by management, and it would be inappropriate to force a certain choice upon them through the involvement of public in the process of engaging players. Second, when we start with the fact that "the transfer of players usually occurs within the flow of the illegal underground economy" it is clear that the public being excluded during the employment of athletes has a negative social dimension. For athletes, the absolute absence of the public has always been an important feature of the establishing, and therefore of the labor relationship itself. In contrast, publicity is not a mandatory component of a labor relationship in other areas of life, but it is possible and very often present while employing. So, advertising free working positions is a regular occurrence in the practice of the employ-

ers. Sometimes we come across examples that tell us that the involvement of the public, i.e. the publication is a necessity for executors and a legal obligation of the employers.

Because of these substantial differences which exist within the contents of the notions of earnings and voluntariness, in the case of a professional athletes' work not all necessary features exist for two important elements of a labor relationship, and therefore neither does the conventional labor relationship. This conclusion is also suggested by the absence of certain non-essential characteristics of the typical labor relationship in the case of a work engagement of professional athletes, participation of third parties, or entities (sports association) during the establishing of the labor relationship, its duration and termination, and the absolute exclusion of the public while establishing the labor relationship.

Working hours

The industrial revolution that occurred in the nineteenth century brought an unimagined economic development, but also caused certain social problems and contradictions. The contractual relationship regarding the work only formally reflected the equality (will) of the contracting parties. The pursuit of profit generation motivated employers, as the legally and economically superior party, to impose extremely adverse conditions on workers, especially in terms of working time. The legislative intervention by the state in the area of work imposed, among other things, the legal limitation of working hours. The basic form of the work engagement meant that the worker spends a certain number of hours at work, mostly in manufacturing facilities, for which he/she receives the agreed wage or salary.

Today, the working hours in their original form are losing their importance. The development of science in the area of information technology and communication have made working over long distances, among other things, possible (e.g. in programming), so that the principle obligation of performing work in specific business facilities is increasingly being replaced by the principle of effectiveness, i.e. results achieved with no connection to a location.

From the very beginnings of professionalism in modern sport (the beginning of the twentieth century), in order to evaluate the results of a sport engagement, a criterion of achieved sports results was applied, with the issue of working hours being irrelevant (how much time an athlete spent training, on trips, at sporting events, etc.). The situation remains unchanged today. The difference between the standard working relationship and the sports work engagement can best be seen in the example of income that athletes receive when signing a contract and in the case of premiums for the achieved placement. In these cases, in fact, one cannot even discuss the existence of working hours.

THE LABOR LAW STATUS OF ATHLETES AND THE FORMS OF WORK ENGAGEMENT

The Labor Law status of athletes and the standard labor relationship

The answer to the question whether the labor law status of athletes can be achieved through the typical labor relationship can be easily obtained through a brief analysis of the generally accepted essential elements of the labor relationship.

First, voluntariness, in the case of work engagement in sports exists only in terms of entering, i.e. signing a contract and not in the event of termination. Thus, the ability to

terminate employment at any time without restriction (with the obligation to respect the prescribed notice that it, as a rule, does not exceed 30 days) is not given to athletes. Here it is evident that these are essential differences in the content of the notion of voluntariness.

Second, when it comes to earnings, we have already noted that in the sport law work engagement, there are parts that are non-existent in the typical labor relationship in which the earnings are the expression of equivalence with the invested labor and the achieved work results. These components of earnings are the amount of money athletes receive for signing contracts and premiums for accomplished results.

Third, the personal labor law functional relationship exists in the case of the work engagement of athletes unreservedly on the part of the employer, or sports organizations. It is understood that athletes perform their duties in person, which means that the contract is concluded absolutely intuitu personae. However, athletes may, with the existence of a contractual clause or not, be loaned to another club. It should be noted that this situation is, in principle, beneficial for the athlete as well, since the assignment is done only when it is certain that the athlete will not be performing for a long time in competitions for the sports organization in possession of a contract, which is a presupposition for the weakening of the athlete's sports and competition potential.

From the abovementioned, it follows that the work engagement of athletes does not have the basic features of the standard labor relationship.

The Labor Law status of athletes and fixed time labor relationship

At first glance, one may be under the impression that fixed time labor, as one of the flexible types of work, is identical to the labor relationship of professional athletes, because there is the illusion that professional athletes are in fact hired through a fixed time labor relationship. Therefore, it is necessary to some degree to further investigate this issue. It is undeniable that there is great similarity between the fixed time labor relationship and the work engagement of professional athletes, which is also time limited.

However, it is not difficult to prove that, despite the high degree of similarity that exists, the two specified forms of engagement are not identical, and that there are substantial differences between them.

The fixed time labor relationship, although one of the atypical forms of work, contains all the essential elements of the standard labor relationship, except for being limited in terms of its duration. A typical work engagement is characterized by permanent employment in the form of a labor relationship with full working hours. Everything else is not standard or typical (Jovanović, 2004, 7).

A fixed time labor relationship is a generally accepted type of work that is prescribed by law so that there are always limitations in the sense of a legally specified possibility for the employer to use this type of employment. It can be argued that the fixed time labor relationship is a type of work which is derived from a standard type of work, i.e. an indefinite time labor relationship, and that the this atypical type of labor relationship meets the needs of the employer to, in certain cases and under certain conditions, employ certain persons for a fixed period of time (e.g. replacement of justifiably absent workers, increased workload, etc.).

Therefore, this kind of work engagement, due to the public interest to employ as much of the working population as possible for an indefinite period, has some elements of the general social acceptance due to certain interests, and has an exceptional character

only for valid reasons determined by law. In addition, we present the well-known example that legislators often prescribe conditions (limiting the employer and preventing possible abuse), which opens the possibility for the transformation of a fixed time labor relationship to a full time labor relationship automatically. The very legal stipulation of the requirements, or opening and prescribing possibilities (under certain conditions) for the direct and mandatory transformation of a fixed time labor relationship to an indefinite time labor relationship at a certain time, indicates the intention of the legislator to reduce the scope of practical application of this form of engagement in favor of permanent employment, which is quite understandable from a general social point of view.

As mentioned, the labor relationship of professional athletes is, by definition, an atypical type of work which does not allow the completion of the entire working life of the professional athletes with this type of engagement due to biological constraints, and because of the nature of the work opportunities for the sport which involves continuous dynamics conditioned by the uncertainty of achieving sports scores and sports marketing, which is an important part of the transfer of athletes from one sporting environment to another.

In contrast to all that has been stated about the fixed time labor relationship, when it comes to the work engagement of professional athletes, limited duration is an absolute, infallible, socially acceptable and constituent element of that type of engagement. And when we ignore the biological constraints that exist with athletes as employees, we conclude that it has become a generally accepted social postulate that the employer - the sports organization - has a natural right to offer employment for a fixed period of time, and in no case for an indefinite period, to certain workers (athletes and coaches), which therefore puts sports organizations in a privileged social and legal status as an employer in relation to other legal entities which employ persons who work based on a fixed-time labor relationship.

Therefore, a fixed-time labor relationship is a complementary form of work engagement derived from an indefinite period labor relationship. Fixed-time work in a way allows for better, and sometimes even the very functioning, of the standard type of employment of labor. Thus, when another person performs work to substitute the absent worker, there is an assumption of the existence of a permanent job, as well as the worker whose labor rights status is secured in a way by the work provided by the substitute worker. Also, if we take as an example the work engagement on the basis of a temporary increase in workload, it is obvious that it is preceded by the existence of a permanent job and a number of employees whose regular work engagement cannot satisfy the needs of the employer's operations. We think there are justified reasons for legally enumerating the causes for fixed-time labor relationship, because it reduces the possibility of abuse by the employer by keeping workers in an unjustified state of uncertainty by not establishing permanent employment.

In this sense, fixed-time work has complementary characteristics with the performance of work for an indefinite period of time.

In contrast, the labor relationship of professional athletes, in essence, entails only the time-limited work engagement of employees - athletes, which is in a certain way contrary to the very concept of the labor relationship that involves a working full-time involvement with the number of working hours determined by law. The basis for the work engagement of athletes is not full time work, but on the contrary, time-limited work which exists for itself and by itself, and as such is objectively - socially, as well as subjectively (by athletes) -justified and accepted.

From the preceding it follows that a legal standardization which determines in a specific way the duration of the work engagement of athletes is a legal shaping of existing social relations. On the other hand, the Law on Sport has, rightly, left open the opportunity for athletes to be engaged for a fixed period of time that is longer than the one foreseen by the general regime of labor relations.

Ad concludentam, it can be stated that the work engagement of professional athletes is not a fixed-time labor relationship because there are substantial differences in all the important elements of a labor relationship, which means that it is not a labor relationship, and therefore it is not a fixed-time labor relationship.

Labor Law status of athletes and flexible types of work

It has been said that flexible types of work are, as a rule, defined negatively - as a work engagement that is not the standard labor relationship. This means that flexible forms of work do not provide the persons employed in sports with rights which are characteristic of the labor relationship. On the other hand, the majority of solutions in positive legislation (including the Republic of Serbia) contain the legal definition that the athlete establishes a labor relationship with a sports organization, which is appropriate to this kind of engagement. As noted, the work engagement of athletes which in many respects coincides with the fixed-time labor relationship which is, in most doctrines, considered atypical work solely due to its fixed duration, which was discussed in the previous section. Therefore, given the fact that the labor engagement of athletes cannot be considered a fixed-time labor relationship, it can be concluded that in this case it is not a flexible form of work. In the last few decades there has been a change in the legislative attitudes in which the employment status of athletes was treated as contract law status (as, for example is still the case with football in Poland). Loosely speaking, we could say that the involvement of sports labor law engagement of athletes has evolved by the "skipping" status of flexible forms of work and transformed from a relationship with exclusively contract law features, into a labor relationship that is regulated in many comparative legal systems, including the system of the Republic of Serbia.

Labor Law status of athletes in domestic positive legislature

The Law on Sport of the Republic of Serbia dating from 1996, as the most important source of law at the time, resolved a long lasting dilemma in legal theory and in practice, which boils down to the question whether the basis for the work engagement of athletes is a labor relationship or not. There has been a lot of controversy regarding the issue of the labor relationship of athletes in Serbian legal theory and practice.

Therefore, this law removed earlier doubts about the legal nature of the work engagement of athletes by a provision which states: "A professional athlete establishes a labor relationship with the sports organization, in accordance with the law." Gradual shifts in the direction of said solutions were being made in our legislative as well. The provisions of Article 12 Paragraph 1 of the Law on Sport in Serbia confirmed the determination that the athlete engages in a labor relationship with a sports organization, concluding a contract that has all the features of a contract of employment. This shows that in our positive law, a professional athlete establishes a labor relationship with a sports organization, which entails legal consequences characteristic of the standard type of work, ex-

cept regarding the duration of the engagement, which in no way can last the entire work life of the athlete in the terms of the labor law. It first involves the obligation to sign an employment contract before commencing work, and to ensure the rights and obligations arising from employment stipulated by law and other regulations (commencement of work, wages, working conditions, disciplinary liability, occupational safety, etc.), as well as social security rights.

Thus, in the legislature of Serbia, a sports organization as the employer is obliged to establish a labor relationship with professional athletes in accordance with the law, sports rules and the collective agreement.

CONCLUSION

A labor relationship in the classical sense and the work engagement of professional athletes are different in terms of the content of important characteristics, and some other, "secondary" characteristics such as the exclusion of the public at the conclusion of the contract and the insignificance of working hours as a segment of the execution of work duties. Earnings, voluntariness and the personal labor law based functional relationships are important elements of the labor relationship which in the case of the work engagement of athletes differ substantially from the same features of the labor relationship.

The work engagement of athletes is a specific, sui generis, form of employment that is always fixed in time with no legal restrictions (conditions) for the employer in this regard. That is, namely, one of the essential differences in comparison to the performance of work through fixed-time employment. The possibility of hiring the athlete for a fixed time with no statutory limitations on the duration of such employment is justified by the fact that the sports work engagement is by nature of limited character in a two-dimensional (objective and subjective) sense. First, due to biological and physical limitations of each person it is impossible to spend one's full working life participating in professional sports. Secondly, both the employer and athletes benefit from a contract of employment for a limited time. Athletes benefit because they may, after investing some effort in the sports club, achieve good results and improve their athletic potential and thus enable an enlargement of "one's value." In contrast, the employer benefits from having a time limit on their obligations due to the possibility of the athlete losing a part (or all) of his/her sporting quality in time, which would lead to a situation where the sports organization pays an athlete whose work engagement is not necessary.

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PRAVNA PRIRODA RADNOG ODNOSA SPORTISTA

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Radni odnos u klasičnom smislu i radno angažovanje profesionalnih sportista razlikuju se kako u pogledu sadržine bitnih karakteristika, tako i po nekim "sekundarnim" obeležjima kao što su: isključenje javnosti pri zaključivanju ugovora i beznačajnost radnog vremena kao segmenta izvršavanja radnih obaveza. Zarada, dobrovoljnost i lična radnopravna funkcionalna veza su bitni elementi radnog odnosa koji se u slučaju radnog angažovanja sportista suštinski razlikuju od istih obeležja radnog odnosa. Radno angažovanje sportista predstavlja specifičan, sui generis, oblik radnog odnosa koji je uvek vremenski oročen bez postojanja bilo kakvih zakonskih ograničenja (uslova) za poslodavca u tom pogledu. To je, inače, jedna od suštinskih razlika u odnosu na obavljanje rada preko radnog odnosa na određeno vreme. Mogućnost da se sportisti radno angažuju na određeno vreme bez zakonom predviđenih ograničenja u pogledu trajanja takvog radnog odnosa opravdava se činjenicom da je radno angažovanje sportista po prirodi stvari ograničenog karaktera u dvodimenzionalnom smislu. Prvo, zbog biološko-fizičkih limita svakog čoveka nemoguće je ostvariti pun radni vek profesionalnim bavljenjem sportom. Drugo, i poslodavcu i sportisti pogoduje zaključivanje ugovora o radu na određeno vreme. Sportisti, jer može nakon angažovanja u nekom klubu ostvariti dobre sportske rezultate i unaprediti svoje sportske potencijale te tako ostvariti pretpostavke za uvećanje "svoje vrednosti". Nasuprot tome, poslodavcu odgovara oročavanje njegovih obaveza zbog mogućnosti da sportista vremenom izgubi deo svojih sportskih kvaliteta čime bi sportska organizacija došla u situaciju da plaća sportistu čije radno angažovanje joj nije potrebno.

Ključne reči: *profesionalni sportista, dobrovoljnost, radni odnos, fleksibilni rad.*