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**The particularities of the “job” performance of the
professional athlete: Rights and obligations of the parties to
the employment contract**

Costas PAPADIMITRIOU

Professor of Labour Law

Faculty of Law

National and Kapodistrian University of Athens

Introduction

- Sport is traditionally an activity tending to the physical, moral and spiritual improvement of the person.
- Sport is however no longer merely a hobby. It is commercialized.
- There exists a great industry moving around sport. Professional athletes cannot pursue any other activity.

- This progression from the amateurism of the athletes to the spirit of commercialization demands a legal framework. There is, however, a need to take into account the specificity of the sport phenomenon
- Furthermore, there is need of social protection of professional athletes as not all of them belong to the highest category, which is very well-paid and has the capacity to protect its own interests.
- Therefore, there is a reason to apply labour law.
- A new branch of law is created; the sport labour law.

The obligations

- The main obligation of the athlete is to perform his sport activity and to participate in all of the sport events proposed by the club.
- This concerns not only the participation in a match but also to all training sessions organized by the club.
- Even if the athlete is not selected for participation in a match, he must be ready for performance.
- In any event he is obliged to employ all his energy and his sporting capacity for his employer's benefit, as any other employee.
- The place of the performance can be designated not only within the country, but also abroad.

- Furthermore, athletes are expected to respect rules concerning doping and to refrain from it as it damages the exemplary image of sport.
- They shall not refuse to participate in doping tests organized either by the sport federation or by the club.
- A general duty of fidelity is also recognized. He has to avoid any activity which could be considered contrary to the interests of his employer.
- He is obligated not to reveal any kind of information concerning the organization and the tactics of the team risking damaging it directly or indirectly.
- He has forfeited the possibility to exercise competitive activities to those of the club, such as to participate in athletic games of another club.
- Finally, he has to participate to the public relations activities of the club. In the event that he has contracted to a clause concerning his participation to advertisement activities of the club, he shall participate in them.
- During the sports activities or the social activities of the club he is not entitled to wear sports gear other than that produced by the outfitter of the club.

The power of direction

- The employment contract of the athlete is not distinguished from other types of employment contracts concerning the managerial power of direction.
- The athlete shall follow the instructions of the representatives of the club concerning the content, the time and the place of the performance, as it is rather impossible to define them in all detail in the initial contract.
- This power of direction will be exercised by the persons legally representing the club, or all other persons to whom the power of direction has been partially transferred, such as the coaches or other trainers.
- The athlete shall respect and obey their orders concerning his performance even if he does not agree with them.
- This requirement is apparent in team sports where the personal ability is less important than the capacity to follow a team spirit

- The athlete cannot, in principle, claim a concrete position in the team, unless it is differently concluded in the employment contract.
- Like all other employees the athlete is not obliged to follow the orders of his employer or of his coach which risk endangering his health.
- Therefore, he has discretion not to follow excessive training periods which risk his health.
- However, practice of many sports includes some risks of injury which is expected to be accepted by the athlete.

- The athletes constitute the most important part of the image of the company and the requirement to contribute to its improvement via public relations activities is a secondary obligation of their employment contract.
- However, the use of the individual image of the athlete for advertising reasons needs, to our opinion, a special clause.
- The right to his image must prevail here, but without reference to the employer's image, name, emblems and / or other distinctive signs.
- The employer's prior consent must be obtained from the employee in order to use his individual image and that of the employer.

The protection of the personality of the athlete

- During the negotiations for the conclusion of the contract, the athlete must provide information concerning his activity and his performance.
- Questions making reference to a discrimination are not admissible and the athlete is entitled to refuse to answer or to even to lie.
- Questions regarding his career are generally admissible.
- The principle of equal treatment is also applied in relation to the sport relationship.

- Like all employees, the athlete is a free person during his private life.
- The private life of the athlete may affect his performance. Only activities directly linked with his labour performance are included in those the employer has a right to control.
- However, these limitations concerning athletes seem various and extremely extended.

- Often, the image of the club coincides with the image of its athletes.
- The private life of the athlete affects the interest of the club.
- The athlete must refrain from certain conduct during his private life which is not considered compatible with the common “image of a sportsman”.
- However, the club is not entitled to adopt “police” methods in order to verify if the clauses accepted are effectively respected.
- The athletic contract may possibly include clauses providing for his obligation to avoid during his free time the exercise of some activities dangerous for his physical integrity.

- On the other hand, when the team travels to another location, the athletes may be requested to travel in a group in order to reinforce the spirit of the team and certainly stay in the same hotel with other teammates.
- The athlete shall also, like all other employees, exercise a duty of fidelity towards his employer, the club, even during his private life.
- He has an obligation to avoid declarations to the press or interviews commenting negatively on the performance of his colleagues, the choices and the tactics of his coach, the behavior of the supporters and the policy and the internal affairs of the club.
- An important issue linked to the protection of the personality of the athlete is the knowledge of the athlete's state of health.
- The club has a particular interest to know, as it is directly related to the sport performance of the athlete in order to plan the future of the team and the training of its members.

- The club must not reveal information concerning the status of health of the athlete due to the interest of the supporters or the press.
- An important issue is the care of the athlete during the employment contract.
- Finally, sometimes the club is obligated to terminate the contract with the athlete due to the pressure of third persons like its supporters or its sponsors.
- He must defend the athlete unless he was the person who created the problem e.g. by unjustified declarations to the press.
- In such cases the athlete may be requested to make all necessary efforts in order to normalize the situation which may risk creating problems for the club.

Disciplinary measures

- Discipline is often necessary in order to reserve the regular execution of the work. Team work demands particular respect of the discipline in order to arrive at the best results.
- Discipline in team sports acquires particular importance especially in a field where individualism constitutes a natural manifestation of the athlete (and particularly of the young athlete less accustomed to team work).

- This situation leads the responsible persons of the club to request strict discipline measures concerning not only the mere sport performance, but also secondary aspects of this activity.
- Finding the balance between the necessary team discipline and the respect of the personality of the athlete is not always an easy issue.
- In the event of breach of discipline, some original measures are provided such as breach of the contract, individual training, financial penalties or exclusion from club events.
- In any event, arbitrary measures are to be avoided

Right to employment

- The participation of the athlete to the game is effectively of particular importance for him.
- This is the way to maintain and to improve his image, his popularity and his performance.
- However, this right finds important limits in team sports, where considerations other than the interest of the athlete to participate, prevail.
- The number of the athletes who are going to participate in a game is lower than the total number of club's athletes.

- Therefore, it belongs to the coach to proceed to the choice of the athletes who are going to participate in the game or who will remain on the substitute bench.
- Unless it is possible to be proved that the lack of choice is due to an arbitrary decision of the responsible persons of the club, the athlete cannot claim his participation in a game or to a concrete number of games.
- However, the club has to give all the athletes the chance to participate in a game. It cannot therefore refuse an athlete to participate in the training sessions and to use the training installations of the club like all other athletes.
- In any event, if the exclusion from the team's activities is systematic and objectively unjustifiable tending to his marginalization, then it could be considered as “mobbing”, justifying the resolution of the employment contract

The salary

- The main obligation of the club as an employer is the payment of the salary. This salary is either annual or monthly based.
- A portion from the basic salary supplementary bonuses are often agreed depending either on the performance of the team, or on the performance of the athlete.
- The athlete like all other employees is also entitled to annual holidays and to a holiday bonus.

Health and security

- The athlete being member of the team has tacitly accepted this possibility. In these cases someone shall be contented to provide some protective measures in order to avoid major injuries.
- Finally, the club must protect the athlete from acts of bullying emanating either from some of his teammates or other members of the team attempting to marginalize him and place him outside the team.

Working time

- Sporting activity has a particular rhythm of work, organized in sporting seasons, in which the competitions take place.
- Therefore, there is a question of how the rhythm of the season the sports will be adapted to the labour law and if working time regulations are really adapted to the management of sports activities.
- In fact, provisions on working time are not completely accommodated to the enterprise of sports.

- The performance of the athlete is not evaluated according to the time during which it is performed.
- They often remain at the disposal of the club during the entire day in hotels or campuses chosen by the club.
- Daily working time may exceed, in these situations, eight hours per working day or working week.
- The interval between the end of the working day and the beginning of the next day may also not exceed 11 hours.
- Finally, as many matches take place on Sundays, the interdiction of Sunday work is not possible or even feasible to be applied.
- Finally, grant of holidays shall be adapted to the particularities of professional sport performance.

THE END

Thank you for your attention!