

The status of a sportsman as an entrepreneur

Abstract

This diploma thesis deals with the legal status of professional sportsmen, both in individual and collective sports. The main aim of this diploma thesis is to assess under which conditions it is or is not possible to perform professional sporting activity as an employment, as an entrepreneurship or as an independent profession. The diploma thesis is divided into five chapters, which are then subdivided into subchapters.

The first chapter introduces the reader to some basic terms, as well as the basic dividing of sport into different types. In this chapter, I also briefly discuss the legal regulation of sport in the Czech Republic and point out its insufficiency in this area.

In the second chapter I discuss in detail the definition of the terms entrepreneur, independent profession and employee. In particular, the first subchapter analyses the individual attributes of entrepreneurship that an activity must fulfil in order for the person performing it to be an entrepreneur with full rights. I also explain in this subchapter that there are entrepreneurs, who don't have all the rights as entrepreneur with full rights has. In the second subchapter, I deal with the definition of an independent profession, and since there is no unified opinion on this legislation, I outline the different views of different authors. At the end of this subchapter, I lean towards one of the views outlined, explaining why I identify with that view. In the third subchapter, I briefly provide an introduction to labour law by defining some basic terms in order to get to the very core of this subchapter, dependent work. I then analyse in detail the various attributes and conditions of dependent work.

The third chapter analyses the legal status of professional sportsmen. In the first subchapter, I compare the attributes of a entrepreneurship with individual and collective sporting activity, and I conclude under which conditions a sporting activity can or cannot be performed as an entrepreneurship or an independent profession. At the end of this subchapter, I also state the position taken by the Court of Justice of the European Union in its decisions on this issue.

In the second subchapter of the third chapter, I look further into the question of whether the performance of a sporting activity by sportsmen in collective sports fulfils the attributes and conditions of dependent work within the meaning of the Labour Code, and under what conditions collective sports sportsmen should or could have the status of employees. I also state some institutes of the Labour Code which are practically inapplicable to a sporting activity. I also state again in this case how the Court of Justice of the European Union deals with this issue. I also discuss in detail the most important decisions of the Supreme Administrative Court

of the Czech Republic which dealt with the status of professional sportsmen as employees. I summarise the whole subchapter with a partial conclusion in which I present a possible solution to the problematic applicability of the Labour Code to a sporting activity.

In the fourth chapter I compare the domestic legislation with the German legislation, as the situation in Germany is very similar to that in the Czech Republic. In the introduction I briefly describe how the entrepreneur and the employee are regulated in the German legal system. I then focus primarily on the case law of the German courts because, unlike Czech law, German law is based on the consistent and long-standing decision-making praxis of the German courts, and therefore the position of professional sportsmen in individual and collective sports in Germany is defined quite clearly.

In the last chapter I deal with the legal regulation of sport within the European Union. In particular, I describe and analyse in detail selected essential decisions of the Court of Justice of the European Union and, on the basis of these, I conclude how European Union law views the legal status of professional sportsmen.

Keywords: Professional sport, legal status of sportsmen, status of a sportsman as an entrepreneur