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FOOTBALL PLAYER TRANSFER AGREEMENT

SUMMARY

The presented doctoral dissertation was devoted to a comprehensive analysis of the player transfer agreement in football in the light of the theory and philosophy of sports law and contract law. The discussed issues, on the example of a football player transfer agreement, in particular include the right of sports organizations and the practice of creating and implementing legal norms and legal standards covering binding relations in sport.

The main purpose of the work is to analyze the legal regulations of bond contracts in sport on the example of a football player transfer agreement, as well as to a certain extent accompanying agreements such as a football contract or an agency agreement in sport both at the level of FIFA (fr. *Fédération Internationale de Football Association*) regulations and the process of implementing these regulations by national sports associations affiliated to FIFA (members: national associations), in particular in Poland by the Polish Football Association (PZPN). The above analysis, on the example of a football player transfer agreement, using the deductive approach, it aims to show that in current social relations there are many rule-making centers (the so-called "multicentric system of law"), and the establishment of standards actually applicable in a specific factual situation is difficult due to the approach of the entities when creating and publishing these rules. First of all, individuals expect, and entities exercising their regulatory powers, willingly use these actual rights, including the formulation of regulations in a detailed or even casuistic way. Such an approach creates a state of affairs in which we are dealing with the inflation of the law, an excess not so much of norms that are repeated very often, but an excess of legal texts, which significantly hinders the interpretation of the law. The aim of the work is to show not only how to determine the "legal environment" and the limits of freedom to shape private law relationships, but above all to show that legal entities, including entities creating regulations, should focus more on the referred standards, look for model solutions, and consequently formulate rules, in particular contractual terms (principles of contracts law). Standards, in particular those relating to contracts concluded in trade, should not take a casuistic form, which often determines the overregulation of a given legal institution, but indicate interpretative directives and establish minimum contractual requirements, both in

formal and substantive terms. The above approach is consistent with the assumptions of the approach presented by O. Landro¹⁷.

In order to achieve the main goal of the work outlined in this way, auxiliary goals that can be classified have been defined. Firstly, it is necessary to determine the conceptual grid and analyze the provisions of a generally applicable nature in the field of mediation in sport, including employment mediation and the transfer of an employee, as well as the assignment of contracts. Secondly, it is necessary to determine and assess the classification and legal classification of bond contracts in football. The last element is the analysis of related legal problems with the conclusion and performance of a player transfer agreement and accompanying agreements, such as an agreement for the representation of players or sports (football) clubs by transaction intermediaries (football agents), with particular emphasis on control exercised by national football associations.

The subject of the work are legal problems related to the regulation, legal construction and content of the football player transfer agreement, including issues related to the limit of freedom of contract in sports law on the example of this agreement. In this regard, it should be assumed that contractual relations, in particular in sport, including football, are subject to formal (correct) and informal (incorrect) global integration referred to in the doctrine as *lex sportiva*. This is the case because legal regulations in sport are contractual provisions (*lex contractus*), which as such do not exclude the direct application of *ius cogens* common law norms. However, the situation in which sports associations (national and international, also referred to as "sports federations") use a broadly understood autonomy, acting as a kind of integrators of legal regulations, resulting in the lack of not so much effective as real state control over the activities of these sports associations.

The methodological concept of conducting the research was agreed with the logic of the principles of conducting scientific research¹⁸, in order to ensure the verifiability of the established hypotheses and research questions, and to present related statements with the presented issues in the science of sports law, in particular by establishing the paradigm¹⁹ appropriate for *lex sportiva*. At the same time, it should be emphasized that according to the

¹⁷ Cf. O. Landro, *Principles of European Contract Law: An Alternative to or a Precursor of European Legislation?*, *The American Journal of Comparative Law*, Vol. 40, No. 3 (Summer, 1992), pp. 573-585.

¹⁸ K. Opałek, *Problemy metodologiczne nauki prawa*, PWN, Warszawa 1962, *passim*

¹⁹ T.S. Kuhn, *Struktura rewolucji naukowych*, PWN, Warszawa 1968, *passim*.

concept of T.S. Kuhn, a fixed paradigm need not explain all the phenomena it covers, which is the nature of this paper²⁰. Perceiving sports law as a real social phenomenon that can be counted to scientific post-disciplinarity, *in abstracto* one can show integrative phenomena in legal relations. In this regard, establishing a paradigm seems crucial for clarification of legal problems related to the issues passed to sports law as a field of law.

Indicating the methodological foundations of the prepared scientific dissertation, in the first place, the methods used were systematized by reason moment and purpose of their use. In this regard, the following should be distinguished: 1) methods of thinking, 2) methods of research and 3) methods of systematizing knowledge. The process of thinking about the presented issue includes, above all, analysis and synthesis and argumentation. The main part of the dissertation, in terms of the research methodology, was based primarily on the dogmatic-legal, theoretical-legal, comparative and, to a limited extent, historical methods. Whereas in the process of knowledge systematization, in particular methods of knowledge classification were used, including research processes, knowledge qualification and typology (typology of concepts). The adopted methodology of work, including theory-oriented research, made it possible to formulate *de lege ferenda* and *de lege lata* conclusions.

The work consists of an introductory part, six chapters and final conclusions. The introduction was constructed based on the concept of "pre-understanding" by D. Patterson²¹, according to which the process of determining facts and interpreting legal regulations is carried out in accordance with the current knowledge and life experience. The proposed form of introduction allows you to get to know the environment and social relations that occur in the sport discipline – football, as well as to make you aware of the circumstances in which transfer contracts are concluded (the context of the situation). This procedure is intended to unify the perception of the "context of the situation" by the recipients and the author of the dissertation, which in turn allows to avoid thinking traps²².

Due to the interdisciplinary nature of the dissertation, which mainly concerns the theory and philosophy of law and broadly understood private law, in particular issues of a civil law

²⁰ *Ibidem*, s. 34.

²¹ D. Patterson, *From Postmodernism to Law and Truth*, „Harvard Journal of Law and Public Policy” 26/2003, s. 61-64, Ch. Altieri, *Some Limits of Postmodernism in Legal Studies: On Dennis Patterson's Law and Truth*, „SMU Law Review” v. 50, Issue 5, article 7/1997, p. 1664, R. Dworkin, *Justices in Robes*, Cambridge MA–London 2006, s. 170-171, A. Dyrda, *Spory prawnicze a pragmatyczność teorii prawa*, *Principia LXI–LXII z 2015 r.*, pp. 253.

²²D. Kahneman, *Pułapki myślenia. O myśleniu szybkim i wolnym*, Poznań 2012, s. 10, 82-107.

nature, was informally divided into two parts. Chapters I – III deal with theoretical and legal issues, and chapters IV – VI deal with issues related to the principle of freedom of contract in sport – football (civil part).

As a result of the conducted research, phenomena such as multicentric system of law were shown from the perspective of sports law and multilevel regulations, as well as privatization of law, which influence and shape the applicable regulations, in particular regarding bond relations. As a result of the analysis of regulatory activities and the implementation of regulations by organizations in the field of regulating obligatory relations, they led to the conclusion that the norms of sports law re all regulations covering sports, regardless of the source of origin of such a norm and the subjective and objective scope its validity. Regardless of the different approaches to the concept of sports regulation in different legal cultures, sports law can be considered not only as a separate discipline of law, but in the case of leading disciplines such as football, or basketball, you can talk about the legal system. However, with regard to the football player transfer agreement itself, especially in the context of the Polish sports law system, it is an unnamed agreement within the meaning of the doctrine of civil law, which is based on the principle of freedom of contract, the boundaries of which are both at the level of statutory regulations, in particular art. 353(1) CC and regulation of "statutory regulations" of sports associations: FIFA and PZPN. In addition, the analysis of the regulation of the player transfer agreement in football in the context of Polish sports law turned out to be an adequate example to present challenges in the field of introducing effective law regulating the national and international trade by private institutions that will comply with the mandatory standards applicable both at the national level as well as internationally. In this regard, it should be pointed out that it is necessary to adopt effective legal tools to ensure the security of legal transactions on the compliance of regulations of sports organizations with common law of a jus cogens nature, aimed at protecting the fundamental rights of legal subjects, including respect for the principles of democratic states ruled by law.