

THE LEGAL SIGNIFICANCE OF THE APPLICATION OF THE EUROPEAN UNION COMPETITION LAW TO SPORTS RULES

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Abstract

The subject of the author's interest in this paper is the consideration of the impact of autonomous sports rules on competition in the relevant sports market. The results of the research are primarily based on the principled opinions or attitudes of the European Court of Justice and the General Court, brought forth in the so-called leading cases, in which the scope of the application of the basic provisions on the competition law of the European Union to sports rules is specified. The basic rules of the Community competition law are found in Articles 101 through 109 of the Treaty on the Functioning of the European Union. Although it is not a formal source of the European Union law, the practice of the European Court of Justice and the General Court is extremely important for the interpretation and application of the aforementioned rules. It acts like a kind of signpost on the way to the application of norms governing the protection of competition on the common market. On the basis of the Stabilization and Association Agreement, the Republic of Serbia undertook the legal obligation to implement community law (*acquis communautaire*) in the domestic legal system. The legal basis for harmonising the competition law in the Republic of Serbia with the law of the European Union is represented by Articles 72 and 73 of the Law on Confirmation of the Stabilization and Association Agreement between the European Communities and their member states.

Key words: autonomous sports rules, peculiarities of sport, competition law, community law.

ПРАВНИ ЗНАЧАЈ ПРИМЕНЕ ПРАВА КОНКУРЕНЦИЈЕ ЕВРОПСКЕ УНИЈЕ НА СПОРТСКА ПРАВИЛА

Апстракт

Предмет интересовања аутора у овом раду јесте разматрање утицаја аутономних спортских правила на конкуренцију на релевантном тржишту у спорту. Резултати истраживања преваходно се темеље на начелним мишљењима или

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ставовима Европског суда правде и Општег суда, заузетим у тзв. водећим случајевима, у којима је прецизиран домашај примене основних одредби о праву конкуренције Европске уније на спортска правила. Основна правила комунитарног права конкуренције налазе се у члановима 101 до 109 Уговора о функционисању Европске уније. Према није формални извор права Европске уније, пракса Европског суда правде и Општег суда је од изузетног значаја за тумачење и примену наведених правила, попут својеврсног путоказа на путу примене норми које уређују заштиту конкуренције на заједничком тржишту. Правну обавезу имплементирања правних тековина комунитарног права (*acquis communautaire*) у домаћи правни систем, Република Србија преузела је на основу Споразума о стабилизацији и придруживању. Правни основ за усклађивање права конкуренције у Републици Србији са комунитарним правом представљају чланови 72 и 73 Закона о потврђивању Споразума о стабилизацији и придруживању између европских заједница и њихових држава чланица.

Кључне речи: аутономна спортска правила, посебности спорта, право конкуренције, комунитарно право.

INTRODUCTION

Currently, sport is rapidly moving in the direction of complete commercialisation solely for the sake of profit, and it represents a highly profitable business activity worth hundreds of billions of dollars annually (Burton, 2018, pp. 383-384). Organisations in the field of sports carry out a whole range of very diverse commercial activities. They sign sponsorship contracts, advertising contracts, contracts for the sale of media rights for broadcasting sports events, participate in transfers of athletes, and sell tickets for sports events, sports equipment. Accordingly, it is reasonable for sports organisations to try to protect not only the proclaimed sports goals but also their economic interests with the sports rules they adopt. In this way, certain restrictions can be imposed on other persons participating in sports activities. Therefore, it is quite justified to ask the question of whether specific sports rules impose justified sports restrictions on other participants in the sports system, or whether they are unjustified commercial restrictions on competition.

In the most general terms, competition represents the relationship between a certain number of market participants who offer goods or services of the same type, at the same time, to a certain group of consumers. By placing goods or services on the market, each participant inevitably comes into a relationship of potential competition with other participants in the same market (Jovanović & Radović & Radović, 2020, p. 694). Therefore, competition represents a process of rivalry in the market competition. The goal of every rational participant in that process is to be as efficient and productive as possible, in order to make their products or services as attractive as possible to potential consumers, thereby 'beating' other competitors, taking over their clients, and maximising profits. It

goes without saying, with respect to the standardised rules of market competition (Doklešić, 2010, pp. 19-20; Goyder, 2003, p. 8).

In an attempt to answer the question of whether sports rules can impair competition on the market, it is necessary to take into account the 'peculiarities' of sport, which differentiate it from other commercial activities to a certain extent, and to determine the extent of their influence on the application of European Union competition law to autonomous sports rules (Piga, 2017, p. 17).

THE 'PECULIARITIES' OF SPORT IN RELATION TO OTHER BUSINESS ACTIVITIES

The 'peculiarities' of sport are, first of all, reflected in its specific organisational structure. Contemporary sport is predominantly based on a pyramidal structure. Such organisation of sports also implies a hierarchical structure, since organisations in the field of sports at a lower level are subordinate to sports organisations at a higher level, and are obliged to comply with the appropriate sports rules. The pyramidal structure of sports practically allows the sports federation that is at the top of the organisational pyramid at the international level to enjoy monopoly (Report from the Commission to the European Council with a view to safeguarding current sports structures and maintaining the social function of sport within the Community framework 644, 1999).

The 'specificities' of sports are also a consequence of the special nature of competition in sports. Sports events are the result of the competition of different sports organisations, that is, athletes. However, unlike economic activities, sports organisations and athletes are necessary for each other. No sports organisation can survive on its own, but 'depends' on other sports organisations participating in the same competition (Fidanoglu, 2011, p. 72). The plurality of sports organisations is a condition for sports competitions to be held at all. This kind of interdependence of competitors is a characteristic that differentiates sports from economic activities. However, in order for sports events to be interesting for the audience, the result must be reasonably uncertain, which implies that there must be a certain degree of equality in the competitions (Filho, 2017, p. 403). The principle of equality represents one of the basic ideas in sports. According to all participants in sports competitions, the same rules must apply so that their individual abilities and skills can come to the fore. Therefore, unlike economic activities, in which competition between market participants aims to eliminate inefficient participants from the market, the interest of sports organisations is not only the existence of other sports organisations as competition but also their economic sustainability (Siekmann, 2012, p. 714). That is why competition in sports has somewhat different principles than in other business activities.

The ‘peculiarities’ of sports are recognised in the practice of the European Court of Justice. Thus, as long ago as 1974, in the first case in which the question of the application of competition law to sports rules was considered, the Court of Justice took the approach that sport is a subject of EU law only in cases in which it represents an economic activity (C-36/74 *Walrave and Koch v Association Union Cycliste Internationale*). This created the concept of ‘sports exception’, which implied that a sports rule of an exclusively sporting nature is outside the framework of Community competition law. Therefore, the ‘specificities’ of sports were regarded in such a way that ‘purely sports rules’, i.e. sports rules that have no economic effect, were automatically exempted from the application of EU competition law. This approach has been consistently followed for several decades, until the decision in the *Meca-Medina* case in 2006. In this case, the question of whether the anti-doping rules of the International Olympic Committee are in line with EU competition law was considered. During the 1999 FINA World Swimming Championship, swimmers David Meca-Medina and Igor Majcen were banned from participating in competitions for four years by the decision of the World Aquatics Federation (FINA) due to the use of a doping substance (anabolic steroid nandrolone). The athletes appealed this decision to the Court of Arbitration for Sport (CAS) in Lausanne, which confirmed the existence of a violation of anti-doping rules, but reduced the period of suspension to two years. Dissatisfied with such an outcome, the swimmers initiated proceedings before the European Commission, with the argument that setting the limit of the permitted use of nandrolone at two nanograms per millilitre of urine is a form of collective practice between the IOC and 27 laboratories accredited to perform anti-doping control, and that this violates EU competition law and restricts the freedom to provide services (C-519/04 *Meca-Medina and Igor Majcen v Commission*). The decision of the Lausanne Court was confirmed, and was criticised by the professional public. In this sense, the unusually harsh assessment of prominent sports worker Gianni Infantino, the UEFA director of legal affairs at the time, and current FIFA president, is illustrative. In the author’s text, Mr. Infantino, while not disputing the competence of the EU institutions for the control of commercial sports activities, expressed the opinion that the Commission’s position that every sports rule (and even an anti-doping rule) is subject to an assessment of compliance with EU competition law, represents “a significant step backwards regarding the appreciation of the specifics of sport” (Infantino, 2018).

The fact is that there is a relatively small number of sports rules that can be treated as ‘purely sports rules’. These are, for example, rules about the dimensions of sports fields, the number of athletes participating in a sports competition, separate sports competitions for men and women, transfer periods, and the duration of sports competitions (European

Commission White Paper on Sport, p. 13). Most sports rules have a certain (even indirect) economic effect. Given the limited number of 'pure sports rules', the decision in the Meca-Medina case points out that any sporting rule can be subject to assessment, in order to determine whether it complies with EU competition law. However, this does not mean that every sports rule that has an economic effect and which restricts the freedom to perform commercial activities to a certain extent automatically violates EU competition law. Rather, whether the restrictive effects of a certain sports rule are inherent in the organisation of sports, the proper performance of sports activities, as well as whether they are proportional to the valid sporting interest that was sought to be achieved by adopting that rule should be determined in each individual case (Geeraert, 2013, p. 20). That is, whether competition restrictions are necessary to achieve sports goals and derive from the specificities of relationships in sports is relative to each case (Ječmenić, 2018, p. 145).

THE APPLICATION OF THE EUROPEAN UNION COMPETITION LAW TO AUTONOMOUS SPORTS RULES

The application of EU competition law to sports rules necessarily involves answering the following questions:

- 1) Can organisations in the field of sports be treated as companies, or associations of companies?
- 2) Can sports rules have the character of agreements between companies, decisions of business associations or collective practices?
- 3) Can sports rules affect trade between member states and can sports rules aim or have the effect of preventing, limiting, or distorting competition within the common market?
- 4) If the answers to the questions are affirmative, can sports rules be exempted from the ban based on Article 101(3) of the Treaty on the Functioning of the EU, or do other rules apply in this regard?
- 5) Can organisations in the field of sports have a dominant position on the relevant market?

In the following sections of the paper, we will try to provide satisfactory answers to these questions.

Organisations in the Field of Sports as Companies, or Associations of Companies

According to the practice of the European Court of Justice, the term company includes any legal entity that performs some economic activity, regardless of its legal form and method (source) of financing (C-41/90 Klaus Höfner and Fritz Elser v Macrotron GmbH). Moreover, economic activity means any activity that includes the offer of goods or ser-

vices on the market. Non-commercial organisations are also treated as companies to which competition law is applied, if they are engaged in business of a commercial nature (Vukadinović, 2014, p. 395). Then they can make a profit, with the notion that it will be used for a purpose determined by law and statute, and not for the reproduction of capital.

When we apply this point of view to organisations in the field of sports, we come to the conclusion that they will also be treated as companies if they are involved in the performance of economic activities that involve the sale of goods and services, even in situations where they make little or no profit by performing such activities. If they coordinate their activities, they can be treated as associations of companies (Parrish, 2003, p. 117). This attitude was taken in the decisions of the European Commission, and the European Court of Justice, that is, the General Court. One example of this is the decision of the European Commission in the case of ENIC vs. UEFA. The procedure was initiated by the company ENIC, which had a share in the ownership of six professional football clubs from different EU member states. The case was concerned with the question of whether a sports rule prohibiting two or more football clubs participating in a club football competition under the auspices of UEFA from being directly or indirectly controlled by the same entity is in accordance with EU competition law. The European Commission treated the international sports federation (UEFA), and national football federations and sports organisations (football clubs) as companies. The decision points out that professional football clubs are companies, as they 'supply the sports industry' by playing football matches against other football clubs in football competitions. Such sports events are also commercial activities that generate profit through the sale of tickets, rights to television broadcasts, and advertising. Since football clubs represent companies, national football associations that bring together football clubs represent an association of companies, while UEFA, which gathers national football associations at the European level, is an association of associations of companies. UEFA can also represent an individual company when it is directly engaged in performing economic activities related to the organisation of European football club competitions, as well as the European Championship.

The General Court followed a similar approach in the decision related to the Piau case, which considered whether FIFA's sports rules governing the activity of mediating the football transfers restricted competition in the common market. The procedure was initiated by Mr. Laurent Piau. According to the FIFA rules in force at the time, the obligation to possess a license was prescribed for mediating the transfers of football players. The license was issued by the national football associations, where those who wanted to become a sports agent had to pass a written exam, and then sign a professional liability insurance contract, or submit

a bank guarantee in the amount of 100,000 Swiss francs. Mr. Piau, who wanted to become a sports agent, believed that FIFA had restricted competition in the common market by imposing a license requirement. With the current FIFA Regulations on Working With Intermediaries, signed in 2015, the system of 'licensed agents' was abandoned and the system of 'registered intermediaries' was introduced. However, we believe that the decision of the General Court in the Piau case deserves attention even now (that is, it must be viewed in a much broader context), bearing in mind that the position of sports agents differs significantly in different sports and individual countries, depending on the autonomous sports and national legal regulations. The Court here assessed that the national football associations represent associations of companies since they bring together football clubs that carry out commercial activities. The fact that national football associations, in addition to professional ones, also gather amateur football clubs cannot affect their qualification as associations of companies. The status of an amateur club does not mean that they cannot participate in performing economic activities. FIFA, which brings together national football associations at the world level, is an association of companies. FIFA can also represent an individual company in terms of carrying out economic activities related to the organisation the World Cup.

Individual athletes can also be treated as traders if they perform economic activities independently of their sports organisation. For example, they conclude individual sponsorship contracts (Vermeersch, 2007, p. 16). This approach was taken by the European Court of Justice in the *Deliège* case, which was concerned with the question of whether the International Judo Federation's sporting rules limit the freedom to provide services in the common market. The Court assessed that the fact that, according to the rules of the sports federation, athletes formally have the status of amateurs does not mean that they cannot perform commercial activities. In some amateur sports, the participants are professionals in all aspects of sports, except that they do not receive monetary compensation in the form of a salary for performing sports activities. However, they can earn even very high amounts of money in other ways, most often on the basis of sponsorship and advertising contracts. Thus, although Ms. *Deliège* was not directly paid by her club, she was sponsored by a bank and a car manufacturer, and accordingly, her activity had an economic character (C-51/96 and C-191/97 *Christelle Deliège v Ligue francophone de judo et disciplines associées ASBL*). Similar situations occurred in the field of skiing sports, figure skating, combat sports (amateur boxing, wrestling, etc.), and other sports disciplines that enjoy popularity and require exceptional dedication and rigorous training.

Sports Rules - Agreements between Companies, Decisions of Associations of Companies, or Collective Practices

The question of whether sports rules can have the character of agreements between companies,¹ decisions of associations of companies, or collective practices is linked to the theoretical discussion about the legal nature of sports rules. There is no single opinion on this in legal literature (Reichenberger, 2008, pp. 5-6). The opinion that sports rules, in the context of the application of competition law, can have the character of an agreement between companies is based on the contractual theory about the legal nature of sports rules. The basic starting point of this opinion consists in the understanding that sports rules are created through the mutual exchange of consistent statements of will of organisations in the field of sports, by which they express their agreement with their content. Therefore, sports rules have the character of a contract and do not lose that character even in the time that passes after their adoption, so they are also binding for the sports organisations that accede to them, based on private law recognition of their obligation through the accession contract. The supporters of this point of view believe that sports organisations can conclude restrictive agreements with the consent of their will, which have the aim or effect of preventing, disrupting or limiting competition. According to the normative theory, sports rules do not represent the result of an agreement, i.e. agreements of will between the competent sports association and the sports organisations of the members, but the competent sports association adopts them precisely on the basis of the authority recognised by its members. Therefore, sports organisations do not have the immediate ability to influence their content. From this approach, it follows that sports rules can only have the character of decisions of associations of companies, which coordinate the behaviour of sports organisations, or members of the association, in such a way that it can affect the prevention, distortion or limitation of competition. According to the mixed theory, sports rules can have a dual nature. At the moment of adoption, they have the character of a contract that is the product of legally relevant consent of the will of the sports organisations that directly participated in their adoption. However, with the passage of time, they lose the character of contracts for those sports organisations that join the association without the possibility to influence the content of the sports rules. According to this opinion, sports rules can have the characteristics of both restrictive agreements and decisions of associations of companies, depending on the circumstances of the observed case (Gardiner, 2012, pp. 243-244).

¹ Restrictive/cartel agreements;

Bearing in mind that modern sport is predominantly based on a pyramidal structure, we believe that sports rules have the character of decisions of associations of companies. Also, due to the principle of publicity of sports rules, we are of the opinion that they cannot be characterised as a contractual practice between companies.

This attitude is also present in practice. Thus, for example, the anti-doping rules of the IOC in the case of Meca-Medina were characterised as a decision of an association of companies, while the UEFA sports rules in the case of ENIC vs. UEFA were characterised as a decision of an association of associations of companies.

*The Effect of Sports Rules on Trade between Member States,
and on the Prevention, Restriction or Distortion of Competition
within the Common Market*

It is indisputable that sports rules can affect trade between member states, given their globally binding nature. Due to the pyramidal structure of the sports organisation, the international sports federation controls the activities of the national sports federations, which then supervise the activities within their jurisdiction, and it is undoubted that many sports rules have international implications. On the other hand, the sports rules of a national sports association that apply on the territory of the country in which that association operates can affect trade within that country.

It has already been said that sporting rules may have the object or effect of preventing, limiting, or distorting competition within the common market. In this context, the recent decision of the General Court in the case of the International Skating Union's Eligibility Rules should be mentioned. According to some authors, if confirmed by the European Court of Justice, this decision would have far-reaching consequences in the direction of limiting the monopoly of international sports federations and liberalising the market for organising sports competitions (Szyszczak, 2018, pp. 188-189). In this case, the sports rules of the International Skating Union (ISU), which prescribed severe sanctions for skaters who participate in a sports event whose upholding was not approved by that union, were analysed. The ISU is an 'umbrella' sports organisation at the international level that is responsible for organising competitions in skating sports. The international rules for skating disciplines adopted by the ISU are binding for national skating federations, skating clubs, and skating athletes. Those rules foresee significant restrictions regarding the ability of skaters to participate in international competitions in skating sports organised by independent organizers. That is, for participation in such competitions, the approval of the ISU or a certain national skating association, is necessary. If the skaters disobey these rules, they risk the imposition of sanctions ranging from warnings and fines to time-limited bans from participating in skating competitions, including a lifetime suspension. The

General Court assessed that the aforementioned sports rules affect competition on the relevant market. That is, they prevent free access to the market for the organisation and commercial exploitation of international skating competitions. This is also reflected in limiting the possibility of developing new skating disciplines. Skaters are prohibited from offering their services to other organisers, which deprives them of additional sources of income during a relatively short sports career on the basis of sponsorship, for example, or by winning a monetary prize for the achieved result in a specific competition. Bearing in mind the amount of effort and sacrifice necessary to reach top sports performance, and the fact that athletes can compete at the top level for a limited number of years, there would have to be particularly justified reasons to condition the prohibition of their participation in other competitions. This could, for example, be the protection of their health and safety. Consequently, the General Court took the approach that the aforementioned sports rules, considering their content, and legal and economic contexts, aim and have the effect of preventing and limiting competition on the common market, according to Article 101(1) of the Treaty on the Functioning of the EU (Cattaneo, 2021, pp. 18-20).

When it is established that a certain sports rule has the purpose or effect of preventing, limiting, or distorting competition within the common market, it should be determined whether there are valid and objective reasons that can justify these infractions. For this purpose, the so-called Wouters test² is used. Due to the fact that the proclaimed sports goals are generally considered legitimate, the application of the Wouters test is practically reduced to the assessment (determination) of the predominant interest (Vermeersch, 2007, p. 21). It is considered that a specific sports rule does not conflict with EU competition law when its restrictive effects are inherent in the organisation of sports and the proper performance of sports activities, and if they are proportional to the valid sporting interest that was sought to be achieved by adopting that rule (C-309/99 *Wouters v Algemene Raad van de Nederlandse Orde van Advocaten*). Therefore, the restrictive effects of a certain sports rule which are immanent to sports, that is, which arise from the special nature of relationships in sports and are necessary for the achievement of legitimate sports goals, are in accordance with Community competition law. During the assessment, all the circumstances of the specific case must be taken into account. In other words, the general context in which the sports rule is adopted, or produces its consequences and goals, must be taken into account (Ječmenić, 2018, p. 145).

² Proportionality test;

If the sporting rule cannot be justified on the basis of the Wouters test, Article 101(3) of the Treaty on the Functioning of the EU is applied, and it prescribes an exemption from the application of Article 101(1). Such justification of the restrictive effects of a specific sports rule is applied in cases when it is not inherent in the organisation and proper implementation of competitive sports, which would be justified by the application of the Wouters test, but the positive effects of the sports rule nevertheless exceed its restrictive effects (Geeraert, p. 22). For example, the positive consequences of the application of a certain sports rule can be reflected in the protection of the health and safety of athletes, or the protection of the integrity of the sports competition.

In the decision regarding the case of ENIC vs. UEFA, it was assessed that there was no infringement of competition within the meaning of Article 101(1) of the Treaty on the Functioning of the EU. The legitimate goal of the sports rule that prohibits two or more football clubs participating in the same football club competition from being directly or indirectly controlled by the same entity is to guarantee the integrity of sports competitions. More precisely, the purpose of the mentioned sports rule is to ensure the uncertainty of the outcome of the sports competition and to guarantee the football audience that the matches played are part of an impartial and fair sports competition.

In the case of Meca-Medina, the attitude taken was that the anti-doping rules of the IOC, due to the possibility of an unjustified exclusion of an athlete from sports activities, may have negative effects on the competition. However, as the goals of the anti-doping rules are primarily reflected in the need to protect the health of athletes, to ensure the fairness of sports competitions with equal opportunities for all athletes, and to protect the ethical values of sports, the restrictions provided for by the anti-doping rules are inherent in the organisation of sports and necessary for the proper conduct of competitions, and the prescribed penalties are proportional to the goal that was sought to be achieved by adopting those rules.

In the Piau case, the General Court did not apply the Wouters test, but Article 101(3) of the Treaty on the Functioning of the EU. The court assessed that prescribing the obligation to possess a license and other prerequisites for the performance of representation activities in football transfers limits access to that economic activity and, therefore, affects competition on the common market. Nevertheless, it is emphasised that the obligation to possess a license represents a justified restriction of competition in order to protect the interests of athletes and raise the level of professional and ethical standards in that activity. Consequently, the Court found that it was a justified exception, in accordance with Article 101(3) of the Treaty on the Functioning of the EU.

*The Dominant Position of Organisations in the Field of Sports
on the Relevant Market*

A dominant position is held by a company that has the power to act, to a significant extent, independently of its competitors, customers or suppliers. In other words, a dominant position represents the ability, knowledge, and power of a company to independently determine the terms of exchange, without taking into account the will and interests of other participants in a certain market (Vukadinović, 2014, pp. 441-442). It can be enjoyed by one company independently, or connected to other companies. The dominant position of the company is determined on the basis of two elements. The first is the relevant market, which includes the relevant product market and the relevant geographic market. The second is the participation of the company in the relevant market. Viewed from the aspect of majority physical participation in the relevant market, a company has a dominant position if its market share is over 50%, with a market share of over 40% being a serious indicator of dominance (Besarović, 2010, p. 19).

The relevant product market includes products or services that are considered interchangeable by consumers, taking into account their characteristics, price and purpose. It is, therefore, about identical or similar, i.e. competitive, products and services. The procedure for determining the relevant product market involves an analysis of substitutability on the demand side, whereby the so-called SSNIP³ test is applied. The goal is to determine the range of products that consumers consider interchangeable (European Commission Notice on the Definition of the Relevant Market for the Purposes of Community competition law, OJ (1997)). The SSNIP test involves answering the question of whether consumers would, in the event that the seller of a certain product introduced a relatively small, but still significant and permanent increase in the price of that product (between 5% and 10%), turn to the purchase of another product to the extent of making such a price increase unprofitable. A positive answer would mean that the two products represent interchangeable products and belong to the same product market (Doklešić, 2010, p. 145).

The relevant geographic market concerns the spatial boundaries of the area in which a certain conduct will be valued. It includes the territory where the observed entity carries out its economic activity, and where the conditions of competition are sufficiently homogeneous for all traders and can be clearly distinguished from neighbouring areas, wherein the conditions of competition are significantly different.

Acquiring and maintaining a dominant position on the market is not automatically prohibited and illegal. The abuse of a dominant position, i.e. behaviour that distorts competition in an 'inappropriate' way, is

³ Small but significant non-transitory increase in price.

prohibited. Behaviour that abuses a dominant position must exist within the common market, or on a significant part of it (Besarović, 2010, 20). Article 102 of the Treaty on the Functioning of the EU does not foresee possibilities for exceptions to the prohibition of abuse of a dominant position. However, in practice, the concept of the 'objective justification' of appropriate behaviour has been developed. According to this concept, behaviour that can otherwise be qualified as abuse of a dominant position can avoid prohibition if the dominant company proves that there are reasons that represent an objective justification for such behaviour (Doklestić, 2010, p. 386). For instance, this concept would hold true for a company which stopped further delivery of goods to a customer who became a competitor. Also, the ban can be avoided if it is proven that such behaviour has more positive than negative consequences. This is about the protection of the 'overriding interest'. This, for example, can include the protection of the health and safety of consumers.

Regarding the determination of the relevant product market in sports, it can be stated that the SSNIP test is not adequate, and a case-by-case approach is applied (Heikki, 2016, p. 45). In principle, three types of relevant product markets can be recognised in sports. The first is the market for organising sports competitions. The second is the supply market, where sports organisations carry out player transfers. The third is the exploitation market (Pijetlović, 2015, p. 170), where organisations in the field of sports economically exploit the activities that accompany the holding of sports events; for example, they sell media rights to broadcast sports events, advertising space, or package deals for sports events. The relevant geographic market in sports is the territory where the observed sports rule applies.

As competent international sports federations practically have monopolies in specific sports, there is no doubt that they have a dominant position on the relevant market. If they were to coordinate their activities with the members of the federation, it could be said that they have a collective dominant position, which practically means that they have no competition on the relevant market.

In this sense, in the Piau case, the General Court assessed that FIFA has a collective dominant position on the market for the provision of sports agent services. This understanding is based on the fact that the FIFA rules governing representation in sports transfers are binding for national football associations that are members of FIFA, as well as for football clubs that are members of national football associations. Therefore, FIFA, national football associations, and football clubs in the market of representation in sports transfers are economically connected to the extent that they act as a collective entity vis-à-vis sports agents. If sports agents were to violate the standardised rules, they would be sanctioned by a ban on performing the activity of representation in sports transfers. The fact that FIFA is not a direct user of the services of sports agents is irrelevant for the application of Article 102 of the Treaty on the Functioning of the

EU, since FIFA, as an emanation of national football associations and football clubs, is the actual user of the services of sports agents, and acts on the market of representation in sports transfers through its members. However, according to the Court's understanding, there was no abuse of a collective dominant position on the market in this case, because it was about justified qualitative restrictions aimed at protecting football players, and raising professional and ethical standards in the activity of representation in sports transfers.

On the other hand, the abuse of a dominant position was noted in the decision in the case of the International Skating Union's Eligibility Rules, in which it is pointed out that the ISU is practically the only regulator of skating at the international level and that it exclusively decides on the organisation of international competitions in skating. The existence of a dominant position is indicated by the fact that no independent entity has been able to successfully enter the market for the organisation and commercial exploitation of international competitions in skating sports. Therefore, the sports rules adopted by the ISU completely eliminated competition, creating an insurmountable barrier for their entry into the relevant market. Consequently, the ISU abused its dominant position on the market for the organisation and commercial exploitation of international competitions in skating sports, according to Article 102(3) of the Treaty on the Functioning of the EU.

CONCLUSION

Autonomous sports rules represent a set of rules of a private law nature that regulate the behaviour of all participants in the sports system when performing sports activities. The effect of sports rules is based on the autonomy of the will of those who joined together in sports organisations, i.e. sports federations, and their legal validity is regulated by the provisions of the Law on Sports. In addition to the protection of the proclaimed sports goals, sports organisations try to fortify their economic interests with the sports rules they adopt. Thus, they can impose certain restrictions on other participants in the sports system. Apart from the justified sports restrictions, these can also include the unjustified commercial restrictions on competition. Considering that the pyramidal structure of modern sports practically allows the sports federation that is at the top of the organisational pyramid at the international level to enjoy monopoly, and that organisations in the field of sports at a lower level are subordinate to those at a higher level, sports rules can have far-reaching consequences in limiting competition in the market of sports competition organisation. Therefore, any sporting rule that has an economic effect may be subject to an assessment of compliance with the Community competition law. Hence, whether the restrictive effects of a certain sports rule are inherent in the organisation of sports and the proper performance of

sports activities, and whether they are proportional to the valid sporting interest that was sought to be achieved by the adoption of that rule should be determined in each individual case. Unless the sports federation that has a dominant position fails to prove that there are reasons that represent an 'objective justification' for such behaviour, or that it is a matter of protecting a 'predominant interest', such behaviour is considered an abuse of a dominant position on the market for the organisation and commercial exploitation of sports competitions. These reasons can, for example, be the protection of the health and safety of athletes, or the protection of the ethical values of sports or the integrity of sports competitions.

REFERENCES

- Besarović, V. (2010). Restriktivni sporazumi i zloupotreba dominantnog položaja na tržištu Republike Srbije u svetlu komunitaranog zakonodavstva [Restrictive agreements and abuse of dominant position on the market of the Republic of Serbia in the light of communitarian legislation]. U: S. Lilić (Prir.) Pravni kapacitet Srbije za evropske integracije, knjiga V, Beograd, Pravni fakultet, 1-24.
- Burton, R. (2018). *The US Sport Industry - Sport Business in Leading Economies* Bingley, Emerald Publishing.
- Cattaneo, A. (2021). International Skating Union v Commission: Pre-authorisation Rules and Competition Law. *Journal of European Competition Law & Practice*, 12(4), 18-20. Doi: [org/10.1093/jeclap/lpab011](https://doi.org/10.1093/jeclap/lpab011)
- Doklešić, S. (2010). Zloupotreba dominantnog položaja na tržištu u pravu konkurencije Evropske unije [Abuse of a dominant market position in the European Union Competition Law] (Phd Dissertations). Kragujevac, Pravni fakultet.
- Fidanoglu, B. (2011). Sporting exception in the European Unions sports policy. *Ankara Bar Review*, 2(4), 65-80.
- Filho, C., Zardini, E. (2017). European Union Competition Law in Sport: Cases and Relevant Aspects of Article 101 and 102 of the Treaty on the Functioning of the European Union, their Importance and Influence on Sport Managers and Institutions. *Podium – Sport, Leisure and Tourism Review*, 4, 392-408. Doi: [10.5585/podium.v6j4.201](https://doi.org/10.5585/podium.v6j4.201)
- Gardiner, S. (2012). *Sports law*. London, Routledge.
- Geeraert, A. (2013). *Limits to the autonomy of sport: EU law*. Leuven, KU Leuven.
- Goyder, D. (2003). *EC Competition Law*. Oxford, Oxford European Community Law Library.
- Heikki, H. (2016). The FIFA transfer system: Contractual stability and training compensation in the light of EU free movement and competition law (Master's thesis). University in Helsinki. Retrieved from: <https://helda.helsinki.fi/bitstream/handle/10138/169810/Heikki%20Hannelin%20gradu.pdf?sequence=2>
- Ječmenić, M. (2018). Ugovor o sponzorstvu [Sponsorship Contract] (Phd Dissertations). Kragujevac, Pravni fakultet. Retrieved from: <https://nardus.mpn.gov.rs/handle/123456789/10958?show=full&locale=attribute>
- Jovanović, N. & Radović, V. & Radović, M. (Eds.). (2020). *Kompanijsko pravo-Pravo privrednih subjekata [Company Law]*. Beograd.
- Parrish, R. (2003). *Sports law and policy in the European Union*. Manchester-New York, Manchester University Press.

- Piga, N. (2017). On the Reconciliation of the Specificities of Sport and European Competition Law (Master's thesis), Tilburg University. Retrieved from: <http://arno.uvt.nl/show.cgi?fid=142825>
- Pijetlovic, K. (2015). *EU Sports Law and Breakaway Leagues in Football*. The Hague, Asser Press – Springer.
- Reichenberger, J. (2008). Das Verbot dynamischer Satzunverweisungen – Theorie und Wirklichkeit (Seminararbeit). Universitaet Bayreuth. Retrieved from: www.sportrecht.com
- Siekmann, R. (2012). The specificity of sport: sporting exceptions in EU Law, *Zbornik radova Pravnog fakulteta u Splitu*, 4, 697-725.
- Szysczczak, E. (2018). Competition and Sport: No Longer So Special?. *Journal of European Competition Law Practice*, Oxford Academic, Volume 9, Issue 3. 188-196.
- Vermeersch, A. (2007). All is fair in sport and competition? The application of EC competition rules to sport, *Journal of contemporary European research*, 3(3), 1-15. doi: 10.309550/jcer.v3i3.48
- Vukadinović, R. (2014). *Uvod u pravo i institucije Evropske unije [Introduction to the law and institutions of European Union]*. Kragujevac.

ПРАВНИ ЗНАЧАЈ ПРИМЕНЕ ПРАВА КОНКУРЕНЦИЈЕ ЕВРОПСКЕ УНИЈЕ НА СПОРТСКА ПРАВИЛА

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Резиме

Аутономна спортска правила представљају скуп правила приватноправног карактера којима се уређује понашање свих учесника у систему спорта приликом обављања спортских активности и делатности. Дејство спортских правила заснива се на аутономији воље оних који су се удружили у спортске организације, односно спортске савезе, а њихова правна важност нормирана је одредбама Закона о спорту. Поред заштите прокламованих спортских циљева, спортске организације настоје да спортским правилима која усвајају штите и своје економске интересе. Тиме осталим учесницима у систему спорта могу наметати извесна ограничења. Осим оправданих спортских ограничења, то могу бити и неоправдана комерцијална ограничења конкуренције. С обзиром да пирамидална структура савременог спорта практично омогућава монопол спортском савезу који је на међународном нивоу на врху организационе пирамиде, те да су организације у области спорта на нижем нивоу подређене онима на вишем нивоу, спортска правила могу имати далекосежне последице у правцу ограничења конкуренције на тржишту организовања спортских такмичења. Стога свако спортско правило које има економско дејство може бити подложно процени усклађености са комунитарним правом конкуренције. Дакле, у сваком случају понаособ треба утврдити да ли су рестриктивни учинци одређеног спортског правила својствени организацији спорта, правилном обављању спортских активности, те да ли су пропорционални ваљаном спортском интересу који се желео постићи усвајањем тог правила. У супротном, ради се о злоупотреби доминантног положаја на тржишту организовања и комерцијалне експлоатације спортских такмичења, осим уколико спортски савез који има доминантни положај не успе да докаже да постоје разлози који представљају „објективно оправдање“ за такво понашање, или да је реч о заштити „претежнијег интереса“. Ти разлози, на пример, могу бити заштита здравља и безбедности спортиста, или заштита етичких вредности спорта или интегритета спортског такмичења.