



CIVIL LIABILITY FOR VIOLATION OF THE TERMS OF AGENCY AGREEMENTS IN THE FIELD OF SPORTS

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Abstract: This article addresses issues of civil liability arising from violations of the terms of agency contracts in the field of sports. It examines the causes of breaches in contractual relationships between sports agents, athletes, and clubs, their legal consequences, and forms of liability. The article analyzes the foundations of civil liability in national and international legislation, dispute resolution mechanisms, as well as matters of compensation for damages and contractual penalties. Additionally, it offers suggestions for preventing violations of contract terms and ensuring fair liability.

Keywords: Sports agency, agency agreement, civil liability, breach of contract, athletes, clubs, compensation, dispute resolution, national legislation, international standards.

The agency's activities in the field of sports are a kind of new contract for the civil legislation of our country. The Agency in the field of sports is recognized as an institution aimed at ensuring the effective work of an athlete in the context of developed sports relations, making the right choice with sports clubs, rational use of their time, and most importantly, the athlete's genuine trust in the agent for managing their activities and, as a result, receiving more profit from their property in their property relations.

It should be noted that in civil law, issues of liability for violation of contractual obligations have been thoroughly investigated[1]. It should also be noted that, since the provisions on agency contracts are not defined in the current Civil Code, civil liability for violation of the terms of the contract is determined based on the general foundations of civil law on contractual liability.

As a general rule, liability measures for breach of contractual obligations ensure the protection of the property interests of organizations and enterprises, allowing for the restoration of violated rights and the filing of a lawful claim against violators[2].

It is known that a sports agent is a relationship based on the athlete's wishes and desires, based on their trust. In this situation, the athlete transfers the legal and factual actions related to them to the sports agent. In this case, he chooses the counterparty based on his worldview, desires, wishes, and interests[3]. Trust, as a rule, is a feeling underlying a certain life reality, which is a kind of sincerity and a formal expression of another mental state. Trust between people is determined by how well they know each other, how they conduct themselves in certain trials, and other circumstances[4]. At the same time, it should be noted that in the agency agreement in the field of sports, we can see that there is responsibility for the sports agent not only with the athlete/coach, but also with the sports federations.

Based on this circumstance, it should be noted that responsibility in agency relations in the field of sports also has its own peculiarities.

Consequently, A.V. Mikhailov also expressed appropriate opinions on this matter. He noted that the central link in maintaining the procedure for carrying out the activities of the

sports agency is the proper fulfillment of the agency's obligations to the subjects of the sports system. Despite the fact that at least two parties participate in the agency agreement, it is actually possible to conclude the presence of a third party, however, in the legal regulation of contractual liability in agency relations in sports, the main attention is paid to ensuring the fulfillment of agency obligations. Such a nature of the intervention of legal and corporate norms in the procedure for carrying out the agency's activities is explained, first of all, by the weakness of its position as a key client link in the professional activities of sports agents[5].

In particular, N. Solomenik emphasizes that the main method of influencing participants in agency relations in sports in ensuring contractual obligations is liability measures, which can be divided into two groups. Some sanctions are aimed at protecting the interests of the parties to the agency agreement from the negative consequences arising from the violation of the procedure for its implementation. Such measures are of a civil law nature and are called elimination measures when assessing the theory of common law[6].

At the same time, in accordance with the principles of civil law, the guilt of a sports agent is assumed in relation to the committent (athlete or coach) [7]. The obligation to fully compensate for damages also meets the general conditions for participation in civil relations. At the same time, there are no specific features within the framework of civil legislation in terms of holding the parties to the agency agreement accountable, which means that the fulfillment of agency obligations does not always directly correspond to the conceptual provisions of labor legislation[8].

From this point of view, we should talk about the liability of the principal, who in most cases is the person entrusting the agent with the issue of employment in the relevant sport. When entering into labor relations, an employee always requires a guarantee of limiting their liability, which is associated with their weak legal and factual status in modern economic relations[9]. On the contrary, under current civil law, a potential job seeker in the sports system does not have such a guarantee when entering into agency relations, that is, simultaneously entering into pre-labor relations[10], which initially makes him dependent on a conscientious sports agent. As a result, it is advisable to use the limitation of the potential amount of damage in the part of the director's civil liability as direct real damage to the sports agent. Such limited liability is also reasonably applied by other subjects of civil circulation, but requires a corresponding legal basis[11].

As evidence of our point, Article 12 of the Code of Regulating the Activities of Agents states that "Only official FIFA agents who have passed the FIFA exam can act as official agents of foreign players"; it restricts the transfer of foreign players to domestic league clubs and domestic players to foreign leagues[12].

In particular, in the context of modern realities, liability measures for influencing the participants of agency contracts have been established, which are classified on two different grounds. The first group consists of measures to protect against negative consequences arising in the event of violation of the interests of the subjects of the agency agreement. The second, in accordance with the principles of civil law, presupposes the guilt of a sports agent as a subject of entrepreneurial activity in relation to the principal[13]. Also, A.Yu. Zadeglu argues that based on the relationship between the agent, player-coach, and club, the civil liability of agents in sports should be divided into three types. That is:

1) relations between the athlete and his agent (related to the provisions of the agreement on securing the interests of the parties);

2) relations between the athlete and the club (the contract is the result of the agent's efforts and negotiations with the club);

3) relations between the agent and the club (in some cases, the agent may be liable in case of violation of certain requirements) [14].

In our opinion, in agency contracts in the field of sports, a situation has arisen that contradicts the measures of responsibility for violation of contractual obligations provided for by civil legislation.

In particular, N. Solomenik emphasized that the damage must be compensated in accordance with the general conditions of civil law. However, from the point of view of the specifics of the civil liability of the parties to the contract and the circumstances related to the fulfillment of the agent's obligations, there is a discrepancy between some provisions of civil and labor legislation. This means the responsibility of the athlete who hired an agent to solve a number of problems related to employment in any sport. Agency relations are inextricably linked with labor relations, and the status of a person wishing to work in the sports system depends on how conscientious the sports agent is. Such liability is also applied by other subjects of civil circulation, but is not properly established by law[15].

Based on the foregoing, I.B. Eidelman concludes that the content of corporate norms is clear from the point of view of determining the responsibility of the parties to the agency agreement. As a rule, the responsibility of the sports agent is directed not at the principal, but at the sports federation that granted him the appropriate permission to carry out professional mediation activities in this sport. In particular, the use of the services of unlicensed agents is the decisive basis for the emergence of liability for the subjects of the sports system. It should be noted that the majority of offenses for which a sports agent can be brought to special responsibility are related to non-compliance with corporate-level instructions[16]. In I.B. Eidelman's opinion, of course, there is truth. Consequently, A.B. Shyerbakov notes that corporate-level instructions include violation by agents of the deadline for registration of the contract, failure to provide information, violation of insurance obligations, coercion by the athlete's agent to change or terminate labor relations with the existing employer, unlicensed activity of the agent (based on the invalidity of the license), etc. As a specific object, this structure of offenses has a system of relations arising between the sports agent and the sports federation controlling its activities. Only certain types of offenses can be included in the composition directly related to the procedure for concluding and executing agency contracts[17].

In this regard, V.P. Vaskevich also emphasized the essence and content of corporate norms regulating the mutual responsibility of the parties to the agency agreement, primarily related to the liability of the agent protecting the interests of the athlete not personally, but to the sports federation that authorized the athlete to mediate in the field of a particular sport. Also, sanctions lead not only to the deprivation of the agent's status, but also to property consequences. The issue of responsibility for the athlete is resolved in the same way. This responsibility arises when he (the athlete) applies to the services of unlicensed agents. For all other violations, the sports federation does not interfere in the concluded agency agreements[18].

As D.S.Vavilkin and A.A.Tashiyani rightly pointed out, the conclusion is drawn that most of the offenses for which a sports agent can be brought to special responsibility arise from violations of corporate rules. For example, non-compliance with the terms of contract

registration, insurance obligations, etc. The specific object of these offenses is the system of relations between the sports agent and the sports federation that controls their activities. At the same time, some illegal actions include violations arising from non-compliance with the procedure for concluding and executing an agency agreement. However, additional sanctions based on corporate norms cannot be imposed on agency contracts in sports, as such a liability system does not exist in civil circulation[19].

V.V. Saraev, A.V. Kiknadze also put forward ideas similar to the above. They emphasize that within the framework of civil legislation, the guilt of such a subject as a sports agent is assumed in relation to the athlete. Moreover, the sports agent is responsible not only for the athlete themselves, but also directly for the sports federation that authorized them to operate. Moreover, it is impossible to ignore the sanctions applied to a sports agent, which may be aimed at both professional status and deprivation of property. At the same time, in case of violation of corporate norms by an agent, separate liability arises, and material fines are considered additional to the main liability[20].

For example, the agent's failure to fulfill or improper fulfillment of contractual obligations to the principal, failure to inform the principal about the registration of the contract with the relevant sports federation. At the same time, property fines, used by sports federations as a measure to eliminate the negative consequences of such offenses, have an auxiliary character in relation to the main types of sanctions applied on the basis of civil legislation[21].

At the same time, the presence of additional liability of a property nature in civil law itself is possible only in two cases: if such measures are provided for by law or are directly stipulated in the contract with the mutual consent of the parties to the transaction[22].

However, regarding agency agreements in sports, it is difficult to explain the essence of the additional sanctions, since the indicated system of liability is unusual and unparalleled in modern civil transactions. In the literature, there are opinions that these liability measures can be considered as a manifestation of self-management in a narrow professional sphere[23].

In particular, I.B. Eidelman believes that, taking into account the qualifications and specifics of each sport, agents cannot follow only the general rules of business law, which requires the development of business ethics. However, ethical issues in self-governance are resolved not by external entities or sports federations, but by direct participants in professional activity. Therefore, according to I.B. Eidelman, it is impossible to consider the special responsibility of sports agents as professional and moral responsibility according to the models proposed in modern science[22].

At the same time, if we consider this liability through the principles of general legal theory, its legal nature can be questioned. As can be seen, the model of civil liability does not correspond to the responsibility of participants in agency relations in sports to sports federations, since they are neither a party to the agency agreement nor a state body. Such liability does not have a legislative basis, and the conditions and grounds for its occurrence are determined by a subject independent of the state and business entities[25]. This means that currently this responsibility is not legally regulated, which allows us to talk about its non-legal nature.

To support this, one can also express the idea that the state, as a subject of legal regulation, does not interfere in the procedure for applying these liability measures. In this regard, the requirement for all sports federations to resolve disputes at the corporate level, without resorting to court, is not without reason. This situation is explained by the fact that there is no

legal basis for the application of punitive measures established by sports organizations by the court. Therefore, in judicial practice, there are no clear conclusions about the legality of applying such liability measures, which also distinguishes the professional liability of sports agents from legal liability[26].

In our opinion, the fulfillment of obligations for offenses committed by participants in agency relations in sports is only voluntary and is based not on state coercion as certain types of legal liability, but on a special mechanism of influence of sports organizations that are members of the relevant sports federation.

This means, in particular, that the use of special norms at the corporate level when applying to government agencies is a direct violation of the law. However, failure to comply with the instructions, including liability measures, automatically leads to the exclusion of the sports agent from the sports system, which deprives him of access to the relevant sources and, first of all, the client base[27]. As an example, national regulations governing the activities of official agents state that "Any person (including agents) who is subject to FIFA charter and regulations will be fined and their license suspended for two years if their actions lead to a violation of the transfer agreement between a professional footballer and a club"[28]. Thus, the special responsibility of participants in agency relations in sports, regulated by the corporate documents of sports federations, should be considered as a type of social responsibility that exists in parallel with legal responsibility, regulated by the rule of law.

The only way to implement its measures is to control access to the professional sports community, managed by federations for individual sports. At the same time, the problem of unregulated agency relations in most sports allows us to conclude that the implementation of preventive measures against sports agents and their clients depends only on the will of the relevant sports federation, which confirms the opinion about the unequal status of agents in some sports[29].

However, the perception of the possibility of applying special liability measures in a dispute is not a conceptual problem in the special legal regime of the agency's activities. In particular, within the framework of national hockey, more radical norms are observed that establish the presumption of the agent's responsibility for the actions of the principal[30].

The basis for this is the legal relationship between them based on an agency agreement, according to which the agent is the embodiment of the legal profile of the athlete he represents[31].

However, from the point of view of legislation, which, despite the adequacy and specificity of many corporate norms, remains the main source of legal regulation of agency relations, such objectification of the fault of a sports agent contradicts the general principles of civil law. Thus, in the sphere of agency relations, there are currently serious disputes requiring immediate state intervention in terms of securing the contract requirement.

It should be noted that M.B. Telemuratov's views on improving civil liability for violation of contracts in the field of professional sports are relevant. He emphasized that in practice, in contracts concluded between an athlete and his representative, in order to prevent non-compliance with the terms of the contract between the athlete and the club, the main focus is on the inadmissibility of unilateral refusal to fulfill the obligation (Article 237 of the Civil Code), and the possibility of ensuring the fulfillment of the contract through means of termination of the contract by paying an indemnity (Article 342 of the Civil Code) [32]. In particular, it is advisable to open specialized sports arbitrations under the relevant sports

federations and establish their activities. Because by eliminating disputes regarding liability arising from contractual obligations between agents, athletes/coaches, and sports federations, excessive funds spent on applying to international sports arbitration courts and court costs imposed on the defendant will be prevented.

Based on the results of the research conducted within the framework of this paragraph, we can highlight the following main conclusions and put forward a number of proposals for solving existing problems in this area.

In particular, the guilt of a sports agent, in accordance with the principles of civil law, must be clearly defined in relation to the principal (athlete) as a subject of entrepreneurial activity.

As a rule, they are aimed at the responsibility of the sports agent not to the committent, but to the sports federation that gave him the appropriate permission to carry out professional mediation activities in this sport. The majority of cases of possible civil liability for a sports agent are related to non-compliance with corporate-level rules.

It is necessary to improve the responsibility of the parties to the agency agreement in sports from the point of view of the theory of general law.

In particular, the fulfillment of obligations for violations committed by participants in agency relations in sports is only voluntary and is based not on state coercion as certain types of legal liability, but on a special mechanism of influence of sports organizations that are members of the relevant sports federation. This means that applying corporate-level special standards when applying to government agencies is a direct violation of the law. However, non-compliance with the requirements, including the need to apply liability measures, automatically leads to the exclusion of the sports agent from the sports system, which deprives him of access to the relevant resources (including, first of all, the client base).

Thus, it is advisable to recognize the special responsibility of participants in agency relations in the field of sports, regulated by the corporate documents of sports federations, as a type of social responsibility that exists in parallel with legal responsibility, regulated by the rule of law.

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