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# SOME ASPECTS OF PROTECTION OF PERSONAL RIGHTS AND FREEDOM OF CONTRACTING ATHLETES IN SERBIAN LAW

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**Abstract:** *In addition to the income that they earn by playing sports (salaries), athletes also have the opportunity to gain additional income, which they earn by commercially exploiting their personality rights, as a rule, by concluding sponsorship contracts. Sports rules of sports federations (rules contained in the statutes and rulebooks of sports federations) that athletes must follow or they would be exempted from organized sports events, have interposed between them and the maximum realization of the possibility of additional earnings. The basic hypothesis of the paper is that, with their sports rules, sports federations impose significant restrictions on athletes in terms of concluding sponsorship contracts, thus restricting their freedom of contracting. The paper aims to answer the question, whether such restrictions on the freedom of contracting of athletes are allowed in Serbian law and, if so, under what conditions. The paper employs scientific methods such as deduction and comparative analysis.*

**Keywords:** *sponsorship contract, personal rights, freedom of contracting, sports rules, abuse of a dominant position*

## 1. INTRODUCTION

Professional athletes, in addition to their desire to achieve success in sports, also want commercial success. Apart from the earnings they earn by playing sports (salaries), sponsorship contracts are available to them as additional sources of income (On the sponsorship contracts in Italian, French, Swiss and German law, see: Ječmenić, 2017:483-498). The sponsorship contract obliges the sponsor to make money or items available to the beneficiary in support of his activities, and the beneficiary undertakes to promote the sponsor in the agreed manner (Ječmenić, 2022:136). In

sports, sponsorship contracts typically come in two forms such as equipment contracts and testimonial contracts. Equipment contracts are concluded with sports equipment manufacturers, where the sponsor makes their sports equipment available to the beneficiary and pays them a certain amount of money, and the beneficiary undertakes to use only the sponsor's sports equipment in a manner suitable for advertising. Testimonial contracts are concluded with sponsors who make products that have nothing to do with sports. In this case, the athlete as a witness confirms the quality of the sponsor's product, allowing the sponsor to use his personal rights, right to name and right

to character for promotional purposes, and the sponsor pays him the agreed amount of money in return (Roskopf, 2009:12). Sports rules of sports federations (rules contained in the statutes and rulebooks of sports federations) that athletes must follow if they want to participate in the organized sports activities have interposed between them and the realization of the maximum income based on the sponsorship contracts. With their sports rules, sports federations regulate not only purely sports issues, but economic issues as well.

Namely, just like athletes, sports federations have a legitimate right to generate income. In order to achieve the objectives set by the statutes (promotion and development of a specific sport, providing conditions for unhindered and safe performance of sports activities, and providing equal opportunities for athletes to engage in a particular sport), sports federations are very focused on sponsorships as a source of income.

Thus, sports federations conclude sponsorship contracts, such as equipment contracts, for the needs of the national sports team. It would be ideal if athletes and sports federations had the same sponsors, but that is a rarity. Therefore, sports federations regulate marketing activities according to their sports rules. As a rule, it is envisaged that athletes are obliged to wear only sports equipment made available to them by the sports federation, which is received from contractual partners based on the equipment contract (therefore, athletes are denied the conclusion of their own equipment contracts), furthermore to relinquish their personal rights to be used for promotional purposes to the sports federation and its sponsors, and to participate in promotional activities for the sports federation and its sponsors.

In this way, either the freedom of contracting of athletes with regard to sponsorship contracts is completely abolished, or it is significantly limited. If we take into account the pyramidal structure of sports, as well as the so-called principle - one sports federation for one sports branch (namely, there can only

be one world branch sports federation, one continental branch sports federation, as well as one national branch sports federation), it becomes clear that sports federations have a monopolistic position in their sports branch (Đurđević, 2018:289). Logically, the question arises whether by adopting the above-mentioned sports rules, sports federations abuse their monopolistic position, in order to exclude competition (athletes) from the market of providing advertising services in sports competitions.

In this paper, we will try to answer the following questions: 1) under what conditions can sports federations and their sponsors use the rights of the athlete's personality for promotional purposes and, in this regard, whether the sports federation can impose on athletes the obligation to participate in its promotional activities as well the promotional activities of its sponsors; 2) can a sports federation ban individual advertising activities of athletes?

## 2. BINDING ATHLETES TO SPORTS RULES

Sports federations are associations. They cannot make rules that are generally binding. Their rules bind only their immediate members. Thus, in Germany, Switzerland and Austria, athletes are not, as a rule, direct members of sports federations. They have only indirect membership in a sports federation, through membership in their sports association (club), or do not even have indirect membership in a sports federation, if they are independent professional athletes, i.e. professional athletes who do sports independently without belonging to a sports association (club), which is possible in individual sports (Thus, according to our Law on Sports, an athlete can engage in sports activities independently, or within organizations in the field of sports., Art. 9, para. 1, Law on Sports ('Official Gazette of RS', No. 10/2016), hereinafter referred to as LS. A top athlete can independently and professionally engage in activities in individual sports and as an independent professional athlete, i.e., entrepreneur, Art. 14, para. 1 of the LS. However,

according to our LS, independent professional athletes can be direct members of branch sports federations., Art. 97, para. 1, LS).

The same rules must apply to all participants in the sports system. One possibility for ensuring respect for the sports rules of sports federations by athletes, which can only be applied in the case of athletes who have indirect membership in a sports federation, is through the statutes of their sports association. Namely, the sports association in which the athlete has direct membership includes in its statute a provision according to which its members are obliged to respect the sports rules of the higher sports federation. However, there are two disadvantages to this solution. First of all, this includes only athletes who have indirect membership in the sports federation. In that way, the athletes are committed to abide by the sports rules of the sports federation, not to the sports association, but to their association. If they do not follow the sports rules of the sports federation, sanctions for non-compliance cannot be imposed by the sports federation, but only by the association of which the athlete is a direct member.

Another possibility for ensuring compliance with sports rules of sports federations by athletes, which can be applied only in the case of athletes who have indirect membership in the sports federation, is the so-called double membership. Specifically, to achieve that, it is necessary for the sports association of which the athlete is a direct member to include in its statute a provision according to which the athlete automatically becomes a member of the superior sports federation by joining the sports association. On the other hand, the superior sports federation must also include an appropriate provision in its statute, namely, that the athlete automatically becomes a member of the superior sports federation by joining the sports association. The disadvantage is again that athletes who do not have indirect membership in the sports federation are not included in this way.

There is a third possibility for binding athletes to the sports rules of sports federations,

which can include both athletes who have indirect membership in the sports federation and those who do not have indirect membership in the sports federation. To ensure the compliance of their sports rules by athletes, sports federations of Germany, Switzerland and Austria conclude different modalities of contracts with athletes that can be entitled as contracts on the acceptance of sports rules (For more on the modalities of binding athletes to the sports rules of sports federations, see: Matzler, 2009:218-228).

This agreement obliges the athlete to respect the sports rules, and the sports federation to allow the athlete to participate in the competition. These are unique, standard form of contracts, compiled by the sports federation and which ensure the binding of athletes to sports rules, via contracts that can be treated as general business conditions and which regulate in detail the legal relationship between sports federation and athletes in one sports branch (Thaler, 2007:21). However, the fact is that due to the monopolistic position of sports federations, there is a de facto pressure for athletes to sign these contracts, or they can forget about participating in the organized sports activities.

In order to avoid the problem of binding athletes to the sports rules of sports federations, our Law on Sports (hereinafter referred to as LS) primarily defines sports rules, and then prescribes their legal obligation. Thus, sports rules represent rules determined by general acts of the competent national sports federations, which regulate the performance of sports activities and the achievement of established sports goals (Art. 3, para. 28, LS). Organizations in the field of sports achieve their goals and perform sports activities in accordance with the law, sports rules, ratified conventions in the field of sports, and principles established in the documents of international organizations of which the Republic of Serbia is a member (Art. 3, para. 28, LS).

Sports rules apply directly to all persons who are, directly or indirectly, covered by the competences of the competent national sports federation (Art. 6, para. 2, LS). The competent

national sports federations harmonize their sports rules with the sports rules of the competent international sports federation, and in case they are not harmonized or the competent national sports federation has not adopted appropriate sports rules, the sports rules of the competent international sports federation are directly applied unless they are in accordance with this law (Art. 6, para. 3, LS).

Therefore, our sports federations do not have to conclude contracts with athletes in order to ensure compliance with sports rules. Athletes are obliged to respect sports rules based on LS. That is the advantage of our solution. However, in Germany, Switzerland and Austria, due to the contractual nature of sports rules, the procedure for determining their nullity takes place before regular courts. The sports rules of our sports federations are contained in the general acts of the sports federations. General acts of sports federations are subject to the assessment of constitutionality and legality, while the Constitutional Court decides on the conformity of general acts of citizens' associations with the Constitution and the law (Art. 167, para. 1, Constitution of the Republic of Serbia ('Official Gazette of RS', No. 98/2006 and 115/2021).

LS therefore recognizes the autonomy of sports federations to independently and obligatorily regulate internal relations in sports, of course, within the limits of what is allowed by law. Sports federations can regulate the performance of sports activities with their sports rules. According to the LS, sports activities are activities that provide conditions for performing sports activities, and sports activities include, among other things, propaganda and marketing in sports (Art. 3, para.1, item 2, LC). Therefore, based on the LS, sports federations can adopt sports rules that regulate marketing activities. We shall see below how they can do that and move within the boundaries set by the law.

### **3. CONDITIONS UNDER WHICH SPORTS FEDERATIONS AND THEIR SPONSORS MAY USE THE PERSONALITY RIGHTS OF ATHLETES FOR PROMOTIONAL PURPOSES**

The personality rights are generally protected from violation and unauthorized use by the Law on Obligations (hereinafter referred to as LO), and from unauthorized use for advertising purposes by the Law on Advertising. Thus, the LO prescribes that everyone has the right to demand from the court or other competent body to order the termination of an action that violates the integrity of the human personality, personal and family life and other rights of his personality (Law on Obligations (hereinafter referred to as LO), ('The Official Gazette of the SFRY', No. 29/78, 39/85, 45/89 - Decision of the CCY and 57/89, 'The Official Gazette of the FRY', No. 31/93, 'The Official Gazette of Serbia and Montenegro', No.1/2003 - Constitutional Charter and 'The Official Gazette of RS', No. 18/2020), Art. 157, para. 1). The court, i.e. another body may order the termination of the action under the threat of payment of a certain amount of money, determined in total, or per unit of time, in favor of the offended party (Law on Obligations (hereinafter referred to as LO), ('The Official Gazette of the SFRY', No. 29/78, 39/85, 45/89 - Decision of the CCY and 57/89, 'The Official Gazette of the FRY', No. 31/93, 'The Official Gazette of Serbia and Montenegro', No.1/2003 - Constitutional Charter and 'The Official Gazette of RS', No. 18/2020), Art. 157, para. 1). The Law on Advertising stipulates that if the advertising message contains a personal good on the basis of which the identity of the person can be determined or recognized, the advertising message cannot be published without the prior consent of the person to whom the personal good refers (Law on Advertising ('The Official Gazette of RS', No. 6/2016 and 52/2019 - other law), (hereinafter referred to as the Law on Advertising), Art. 15, para. 1).

Personal property is considered personal data, personal record, record of an image (photographic, cartoon, graphic, film, video



and digital recording), sound recording of the voice and spoken words of a certain natural person (Law on Advertising ("The Official Gazette of RS", No. 6/2016 and 52/2019 - other law), (hereinafter referred to as the Law on Advertising), Art. 15, para. 1). The consent of the person to whom the personal good refers to, given for the use of personal property on another basis, with compensation, or without compensation, and not on the basis of advertising, is not considered automatically consent for its use in the advertising message (Law on Advertising ("The Official Gazette of RS", No. 6/2016 and 52/2019 - other law), (hereinafter referred to as the Law on Advertising), Art. 15, para. 1). If the person whose personal property is used in the advertising message subsequently agrees to that use, he has the right to demand appropriate compensation for the use of his personal property (Law on Advertising ("The Official Gazette of RS", No. 6/2016 and 52/2019 - other law), (hereinafter referred to as the Law on Advertising), Art. 15, para. 1).

Therefore, in order to use the athlete's personality rights for promotional purposes, the sports federation and its sponsors must obtain the athlete's permission. The right to use the athlete's personality rights must be specified in detail, in terms of the duration of the right of use, the territory in which the athlete's personal rights can be used, as well as in terms of the manner of use. As we have seen, it is possible to subsequently authorize the unauthorized use of personality rights with the right to demand appropriate compensation.

If the sports federation concludes a sponsorship contract and promises its sponsor that the athletes will bestow the personality rights for promotional purposes, as well as that the athletes will participate in the promotional activities of the sports federation sponsors, without prior regulation of these issues with athletes, it would be a contract promising the action of a third party (Pajtić, Radovanović & Dudaš, 2018:321). If the sports federation now fails to ensure that athletes grant their personality rights to its sponsor for promotional purposes, as well as for participation in the

promotional activities of the sports federation sponsor (provided that the sports federation does not obtain this by abusing monopolistic position), it would be obliged to compensate its sponsor for the damage.

The issue of the rights to use the athlete's personality rights for promotional purposes from the sports federation and its sponsors, as well as the participation of athletes in promotional activities of the sports federation and its sponsors, would be best regulated by the contract between the sports federation and the athletes. As a rule, Serbian sports federations do not conclude any contracts with athletes. However, there are exceptions in this regard. Thus, the Ski Association of Serbia inevitably concludes contract with the national team (the so-called contract for the national team member) (See, Rulebook on the rights and duties of national team members in the Alpine, Snowboard and Nordic national teams of the Ski Association of Serbia, Art. 2), which regulates, among other things, the rights of the Ski Association of Serbia and its sponsors with regards to using the athlete's personality rights for promotional purposes as well as the participation of athletes in the promotional activities of the Ski Association of Serbia and its sponsors.

This could also be recommended to other sports federations. Especially since the LS opens the possibility of concluding the so-called licensing contracts between sports federations and athletes. Namely, according to the LS, the competent national sports federation can determine the conditions and criteria for participation in the national league sports competition, i.e. professional sports competition as well as the procedure for determining their fulfillment (LS, Art. 100, para. 4). The possibility of concluding a licensing contract between the sports federation and the athlete is practically envisaged. In Western European countries, the sports rules of the competent federations have established a three-way relationship: federation-club, federation-player, federation-club. In order for a club, a member of the federation, to participate in the competition

(championship), it must conclude a license contract with the federation. Likewise, an athlete who wants to compete must enter into a license contract with the federation. In order to conclude a license contract with the federation at all, the club and the athlete must first conclude an employment contract (Đurđević, Mićović & Vuković, 2014:110-111). This license contract could also regulate issues related to the rights of sports federations and their sponsors to use the personality rights of athletes for promotional purposes, as well as the participation of athletes in promotional activities of sports federations and their sponsors.

#### 4. CAN A SPORTS FEDERATION BAN INDIVIDUAL MARKETING ACTIVITIES OF ATHLETES?

Both sports federations and athletes have the freedom to conclude contracts. If a sports federation prohibits athletes from concluding individual equipment contracts and individual testimonial contracts altogether, or conditions them with its prior approval, the freedom to conclude sponsorship contracts shall be either completely terminated or substantially restricted. The question that arises is whether the sports federation is abusing its monopolistic position in that way in order to exclude competition (athletes) from the market of providing marketing services in sports competitions.

The Law on Protection of Competition applies to acts and actions committed on the territory of the Republic of Serbia, i.e. to acts and actions committed outside its territory that affect, or could affect, competition on the territory of the Republic of Serbia (Law on Protection of Competition ('The Official Gazette of RS', No. 51/2009 and 95/2013), (hereinafter referred to as the Law on Protection of Competition), Art. 2). As far as personal application is concerned, the Law on Protection of Competition applies to all legal entities and natural persons who directly or indirectly, permanently, occasionally or on one occasion participate in the trade of goods or services, regardless of their legal status, form of ownership or citizenship or nationality (Law on Protection of Competition

('The Official Gazette of RS', No. 51/2009 and 95/2013), (hereinafter referred to as the Law on Protection of Competition), Art. 2). When sports federations and athletes provide marketing services in sports competitions, they participate in the supply of services, so that the Law on Protection of Competition can be applied to them. The Law on Protection of Competition prohibits the abuse of a dominant position on the market (Law on Protection of Competition ('The Official Gazette of RS', No. 51/2009 and 95/2013), (hereinafter referred to as the Law on Protection of Competition), Art. 2).

So far, our Commission for Protection of Competition has not dealt with the application of the Law on Protection of Competition to sports rules. In order to answer the question of whether sports federations abuse monopolistic positions by adopting sports rules prohibiting individual marketing activities of athletes, we must take a brief look at the case law of the European Court of Justice regarding the application of the EU competition law to sports rules, so as to get some guidelines. In particular, the Republic of Serbia has an obligation under the Law on Ratification of Stabilization and Association Agreement between the European Communities and their Member States, of one part, and the Republic of Serbia, of the other part, to harmonize existing legislation with the Community legislation as well as to ensure gradual harmonization of existing laws and future legislation with the Community legislation (Law on Ratification of the Stabilization and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Serbia, of the other part ('The Official Gazette of RS - International Agreements', No. 83/2008), Art. 72, para. 1).

In its decision in *Walrave and Koch v Association Union Cycliste Internationale*, the European Court of Justice stated for the first time that sport can be the subject of European Union law only when it is an economic activity (CJEU Case C-36/74, *Walrave and Koch v Association Union Cycliste Internationale* [1974] ECR 1405). On the other hand, a distinction was

made between merely sports rules (sports rules on the size of the field, number of players, transition periods...), which were automatically exempted from checking their compliance with the EU Competition Law, as well as sports rules that have economic effect (such as, among other things, sports rules governing marketing activities) and which could be the subject of verification of their compliance with the European Union Competition Law. This division of sports rules was valid until the decision of the European Court of Justice in the case of *Meca-Medina and Igor Majcen v Commission*. Following this decision, any sports rule, whether purely sporting or with an economic impact, may be subject to verification of its compliance with the European Union Competition Law. The decision of the European Court of Justice in this case is, for another reason, relevant to the issue of this paper. Namely, in this judgment, the European Court of Justice states: The compatibility of one rule with the Competition Law of the European Union is not assessed in an abstract way. Not every agreement between companies, or every decision of an association of companies restricting the freedom of action of the parties or one of the parties, automatically falls under the prohibition of Article 101 paragraph 1 of the Treaty on the Functioning of the European Union (restrictive agreements and contractual practice). In applying this Article to an individual case, the overall context in which the disputed decision originated or is having its effects, and in particular of its objectives, must be taken into account. Furthermore, it is necessary to ascertain whether the restrictive effects of that decision on competition are necessarily linked to the achievement of its objectives, and whether the restrictive effects of the decision on competition are proportionate to its objectives (CJEU Case 519/04 *David Meca-Medina and Igor Majcen v. Commission* [2006] ECR I-6991, stated according to Heermann, 2015:1173-1174).

What this means. In particular, if a sport rule is found to have a negative effect on competition within the common market (in the sense that it aims to prevent or restrict or distort competition) and as such can be classified

as a restrictive agreement, it is not automatically void but can be exempted from the ban if it passes the so-called test in 3 steps. The first step is to check whether the goal to be achieved by the disputed sports rule is legitimate. If the answer is yes, the second step is to determine whether competition restrictions are necessary to achieve a legitimate goal. If the answer here is yes as well, we move on to the third step, where it is checked whether the restrictions of competition are proportional to the legitimate goal that is to be achieved by the sports rule. If the answer to this question is also affirmative, the sports rule is exempt from the ban; therefore, it is harmonized with the Competition Law of the European Union.

This 3-step test was originally developed for restrictive contracts. However, according to the opinion in the literature, it could be applied to cases of abuse of a dominant position (Special Rulebook on the organization of the competition of the Sports Car and Karting Association of Serbia, Art. 33, para. 1), and therefore to the case that is the subject of this paper. Therefore, in the following, we will apply this test in 3 steps to the sports rules by which sports federations prohibit athletes from individual marketing activities. In the first step, we need to determine what goal the sports federations intend to achieve with these sports rules, and then assess whether that goal is legitimate. We can establish that by looking at the rules of sports federations. Thus, the Special Rulebook on the organization of the competition of the Sports Car and Karting Association of Serbia states the collection of funds to cover the costs of organizing the competition as the goal of the sports rules on marketing activities (Special Rulebook on the organization of the competition of the Sports Car and Karting Association of Serbia, Art. 33, para. 1). In our opinion, this is a completely legitimate goal, which is also in the interest of the athletes themselves, because if there is no competition, there is not only sport but marketing activities as well, and thus no additional earnings for athletes. German lawyers believe that even an economic goal, such as the



financial stability of a sports federation, which is intended to be achieved by marketing rules, could be classified as legitimate. However, this goal is legitimate only for members of the sports federation (direct and indirect), while for non-members of sports federations, this goal is not legitimate (Heermann, 2015:1174). In the second step, we check whether the restrictions on individual advertising activities of athletes are necessary to achieve the recently established legitimate goal in the form of raising funds to cover the costs of organizing the competition. We will assume they are. Namely, sports federations have the opportunity to raise funds in other ways, such as the sale of television rights, but assuming that in this way they cannot raise enough funds to cover the costs of organizing competitions since there is not much media interest in all sports, we will have to conclude that certain limitations of individual advertising activities of athletes are necessary for the realization of this legitimate goal. We check the third step whether the restrictions are proportional. If it is established that it is enough to limit the individual marketing activities of athletes by 50% in order to cover the costs of the competition, then they cannot be completely banned. Of course, the sports federation could claim that higher revenues can be obtained if sponsorship contracts are concluded from one center, which can be accepted as a valid argument, and in that case, sports federations could completely ban individual marketing activities of athletes only if to enable them to participate in the distribution of such revenues in the amount of 50%. To conclude, we consider complete prohibition of individual marketing activities of athletes to be allowed if sports federations distribute an adequate part of the generated income to athletes.

## 5. EXAMPLES OF SPORTS RULES OF SERBIAN SPORTS FEDERATIONS

The Rulebook on the Rights and Duties of the National Team Members in the Alpine, Snowboard and Nordic National Teams of the Ski Association of Serbia contains rules on concluding equipment contracts and

testimonial contracts, the obligation of athletes to participate in promotional activities for the Ski Association of Serbia and its sponsors, and the use of athletes' personality rights for promotional purposes of the Ski Association of Serbia and its sponsors. The Ski Association of Serbia signs the contract with the national team members, by which the national team members accept all the rules, rights, duties, and obligations included in this rulebook. Otherwise, if he/she does not sign the contract, the competitor does not have the right to participate in the competitions of the World and Continental Cups, the Olympic Games, the World Championships (Rulebook on the rights and duties of national team members in the Alpine, Snowboard and Nordic national teams of the Ski Association of Serbia, Art. 2). Thus, the athlete has an obligation to act with the intention of promoting the name of the Ski Association of Serbia and ski sports, which includes public appearances with the aim of promoting the name of the Ski Association of Serbia, as well as publishing promotional messages of the sponsors of the Ski Association of Serbia as well as the equipment distributors of the Ski Association of Serbia on social networks and portals of athletes at least 4 times a month (Rulebook on the rights and duties of national team members in the Alpine, Snowboard and Nordic national teams of the Ski Association of Serbia, Art. 8).

Then, the Ski Association of Serbia sells the entire advertising space on the equipment of the competitors. The Ski Association of Serbia has the right to dispose of the name and image of the competitors (competitors agree and allow the Ski Association of Serbia to use it without time, location, and essential restrictions) for marketing actions of sponsors, partners, and the Ski Association of Serbia. Exceptions are the personal sponsor on hats and helmets, and the personal sponsor. In case the competitor does not use his right to his own sponsor on the hat or helmet, then the Ski Association of Serbia gets the exclusive right to sell the advertising space on the hat or helmet of the competitor. In the case of joint-group sale of an



advertising space on a hat or helmet, competitors are entitled to compensation determined by the Ski Association of Serbia in the amount equal to or greater than the agreed value of the individual sponsor.

The total value of the compensation for the competitor must not exceed 60% of the sponsorship funds that the Ski Association of Serbia realizes for the position on the cap or helmet. The sponsor on hats or helmets must not be a competition to the official sponsors of the Ski Association of Serbia. Competitors have the right to additionally promote another sponsor (personal sponsor) on the outfits worn in their free time. The personal sponsor must not be a competition to the official sponsors of the Ski Association of Serbia. A competitor may sign a contract with a personal sponsor that is valid for one competition season. Before signing the contract with the personal sponsor, the competitor is obliged to inform the Ski Association of Serbia in writing about the personal sponsor, the conditions of sponsorship, and the marketing activities of personal sponsorship, which must be approved by the Ski Association of Serbia. The Ski Association of Serbia within 14 days, starting from the written notice sent by the competitor to the Ski Association of Serbia, approves the signing of the sponsorship contract in writing, provided that the personal sponsor is not in competition with the official sponsors of the Ski Association of Serbia and provided that all sponsorship conditions, marketing activities and obligations of a personal sponsor have been met. All costs incurred in relation to a personal sponsor shall be borne by the competitor himself. In case the competitor signs a contract with a personal sponsor without the prior approval of the Ski Association of Serbia, he is responsible for any damage caused to the Ski Association of Serbia, and the Ski Association of Serbia may impose other sanctions, including a ban on competitions and training. A competitor may compete in one competition season for a personal sponsor without the trademarks of other sponsors of the Ski Association of Serbia, only in one sales and communication campaign of

the personal sponsor, and he must obtain prior approval of the Ski Association of Serbia for that. The company or brand with which the competitor enters into a business and financial relationship must not be advertised on the outfits used by the sponsors of the Ski Association of Serbia as well as on the clothes used by the competitor for participating in events determined by this rulebook. The competitor is obliged to inform his business partner with whom he enters into a business and financial relationship about the fact that by signing such a contract the business partner does not become a partner of the competitor in terms of a member of the national team of the Serbian Ski Association, but in terms of a public figure. In case the business partner uses the competitor contrary to this rulebook, the competitor is obliged to compensate the possible damage to the Ski Association of Serbia (Rulebook on the rights and duties of national team members in the Alpine, Snowboard and Nordic national teams of the Ski Association of Serbia, Art. 11).

The competitor is obliged to perform all marketing actions of sponsors and partners, and actions of the Ski Association of Serbia for up to 8 days in the competition part of the season and up to 10 days during the preparation period, all with the knowledge and approval of the Ski Association of Serbia. The scope of cooperation and marketing actions is determined by the Ski Association of Serbia for each season separately, and the actions must not exceed the maximum number of days determined by this rulebook and must be harmonized and adjusted to the signed sponsorship contracts, programs of individual competitors and coaches. The competitor must perform together with at least two other competitors in the promotional activities of the sponsor or partner on a rotating basis, unless otherwise agreed between the Ski Association of Serbia and the sponsor. The principle of rotation means that the same competitor cannot appear in all the promotional actions of the same sponsor or promotional actions of all the sponsors. Every sponsor of the Ski Association of Serbia has the

right to conduct a marketing campaign once per season with athletes in neutral clothing, which means that they do not wear clothes, shoes and fashion accessories with the logo of the sponsor of the Ski Association of Serbia, personal sponsor, or any other brands. The Ski Association of Serbia is obliged to coordinate all the marketing actions with the responsible coach of each team, and those actions must not affect the competitive rhythm of the competitors (Rulebook on the rights and duties of national team members in the Alpine, Snowboard and Nordic national teams of the Ski Association of Serbia, Art. 12).

Each competitor must, if necessary, be required to appear in the media as part of a sponsor and partner program. At the same time, the Ski Association of Serbia is obliged to acquaint the competitor with the scenario according to which he will perform at least 3 days before the event. The Ski Association of Serbia does not need special consent of the competitors to publish materials from the mentioned marketing campaigns in the media (Rulebook on the rights and duties of national team members in the Alpine, Snowboard and Nordic national teams of the Ski Association of Serbia, Art. 13). The participation of competitors in all the agreed marketing campaigns of sponsors and partners is without additional fee or compensation of the Ski Association of Serbia. The sponsor or partner is obliged to cover only the material costs of participation (Rulebook on the rights and duties of national team members in the Alpine, Snowboard and Nordic national teams of the Ski Association of Serbia, Art. 14). All other independent marketing campaigns with sponsors and partners or any other natural or legal persons are prohibited to competitors without the written consent of the Ski Association of Serbia (Rulebook on the rights and duties of national team members in the Alpine, Snowboard and Nordic national teams of the Ski Association of Serbia, Art. 15).

Before the start of the competition season, the Ski Association of Serbia must, directly, but in agreement with the equipment suppliers,

provide the competitor with adequate equipment.

The athlete is obliged to wear and use the selected equipment of the Ski Association of Serbia. The competitor must not use or wear other equipment at all trainings, preparations, competitions, public appearances (press conferences and other promotional activities) because he is obliged to wear the selected equipment of the Ski Association of Serbia with trademarks and logos of sponsors clearly visible. The athlete can use the selected equipment of the Ski Association of Serbia in his free time, but also, exceptionally his own equipment, which must be without any promotional trademarks and logos. If the Ski Association of Serbia has not concluded a contract with equipment suppliers, the competitor may conclude a contract with suppliers and manufacturers of equipment for one competition season, informing the Ski Association of Serbia in advance. The competitor should ensure that the agreed emblems (logos) of the sponsor are visible on every occasion, at trainings, public appearances, recordings and photographs. The competitor is obliged to inform the Ski Association of Serbia by registered mail about the intention to conclude a contract for the use of a passenger car. The notice must also contain the conditions of use and basic information about the vehicle. If the sponsor of the Ski Association of Serbia offers the same valuable vehicle to the athletes within 14 days from the day of receiving the notification, the athlete must accept the offer of the partner of the Ski Association of Serbia. The competitor may not engage in any marketing activities for the brand of his vehicle, which is not identical to the sponsor of the Ski Association of Serbia (signature and other markings on the vehicle), unless he obtains prior written consent of the Ski Association of Serbia (Rulebook on the rights and duties of national team members in the Alpine, Snowboard and Nordic national teams of the Ski Association of Serbia, Art. 19).

The special rulebook on the organization of the competition of the Sports Car and Karting Association of Serbia contains the

following provisions on advertising. In order to raise funds for the organization of competitions and participation of drivers in competitions, the organizer and driver may provide interested organizations with advertising in car and karting competitions in the following ways: by carrying advertising signs and drawings on competition and accompanying vehicles as well as on the clothes of drivers, along the suitable track during the competition, in the rules and programs of the competition, in various publications, press, radio, TV and other means. It is the obligation of all the drivers in motorsport to leave free space on the front windshield and above the start numbers (except for rallies) exclusively for advertising provided by the Board of Directors of the Sports Car and Karting Association of Serbia (Special Rulebook on the organization of the competition of the Sports Car and Karting Association of Serbia, Art. 33, para. 1). At the request of the organizers, drivers are obliged to wear advertising stickers handed over to them by the organizer during the admission to the competition, on their vehicles, in the places prescribed by the Appendix to the Rules for that discipline and the Rules of the competition, without the right to demand financial compensation. The organizer of the competition reserves the right to collect the amount provided by the Appendix to the Rules for this discipline, from drivers who refuse to carry advertisements of the organizer on their vehicles during the competition (Special Rulebook on the organization of the competition of the Sports Car and Karting Association of Serbia, Art. 34). The organizers of the competition and drivers must place advertisements provided by the Sports Car and Karting Association of Serbia, and the income from these advertisements goes to the fund for the development of auto and karting sports. The organizers of the competition cannot, according to the Rules of the competition, demand from the competitors and drivers who carry advertisements, inscriptions, drawings, etc. on their vehicles during the competition, certain funds from the collected funds from advertisements (Special Rulebook

on the organization of the competition of the Sports Car and Karting Association of Serbia, Art. 35).

## 6. CONCLUSION

The Law on Sports recognizes the autonomy of sports federations to independently and obligatorily regulate internal relations in sports. Nevertheless, their autonomy has been recognized in order to facilitate the achievement of sports goals. Sports federations cannot abuse the autonomy granted to them to the detriment of athletes, nor can they violate the law with their sports rules. Specifically, as far as the issues we are interested in are concerned, for the use of personality rights of athletes for promotional purposes, sports federations must obtain their permission, and the same applies to sponsors of sports federations. This unequivocally derives from the LO and the Law on Advertising. It is recommended that this issue be regulated by the contract between the sports federation and the athlete. However, sports federations must not obtain the permission of athletes by abusing their monopolistic position. The same applies to the obligation of athletes to participate in the promotional activities of sports federations and their sponsors. As far as the prohibition on individual marketing activities of athletes in sports competitions is concerned, we also consider total bans allowed with the adequate participation of athletes in the distribution of income that sports federations realize on basis of their sponsorship contracts.

Finally, it is clear that the Regulations of the Ski Association of Serbia are much more restrictive for athletes compared to the Regulations of the Sports Car and Karting Association of Serbia. Examining the admissibility of these sports rules would require a detailed analysis of each provision of these regulations, in order to establish their compliance with the LO, the Law on Advertising, and the Law on Protection of Competition.



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## NEKI ASPEKTI ZAŠTITE PRAVA LIČNOSTI I SLOBODE UGOVARANJA SPORTISTA U SRPSKOM PRAVU

**Rezime:** Osim prihoda koje ostvaruju baveći se sportom (plate), sportistima su na raspolaganju i mogućnosti sticanja dodatnih prihoda, koje oni ostvaruju komercijalnom eksploatacijom svojih prava ličnosti, po pravilu zaključivanjem ugovora o sponzorstvu. Na putu do maksimalne realizacije ove mogućnosti dodatne zarade, sportistima su se isprečila sportska pravila sportskih saveza (pravila sadržana u statutima i pravilnicima sportskih saveza) koja oni moraju da poštuju, ili mogu da zaborave na učešće u organizovanom sportu. Sportski savezi svojim sportskim pravilima nameću sportistima značajna ograničenja u pogledu zaključenja ugovora o sponzorstvu, čime se ograničava njihova sloboda ugovaranja. Jesu li ovakva ograničenja slobode ugovaranja sportista u srpskom pravu dopuštena i ako jesu pod kojim uslovima, predmet je pažnje autora u ovom radu.

**Ključne reči:** ugovor o sponzorstvu, prava ličnosti, sloboda ugovaranja, sportska pravila, zloupotreba dominantnog položaja