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Athletic scholarships granted by local government units in the Polish case-law

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Abstract

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Keywords

sports law, athletic scholarships, sports scholarship, local government unit, court decisions, case law

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Athletic scholarships granted by local government units in the Polish case-law

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A Study Design
B Data Collection
C Statistical Analysis
D Data Interpretation
E Manuscript Preparation
F Literature Search
G Funds Collection

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INTRODUCTION

Statutory tasks of Polish local government units include the support for the development of physical culture. Essentially, this task can be implemented in several various ways, as evidenced by the practice. This includes grants for non-governmental organizations, gratuitous lending of sports facilities, or awarding prizes and athletic scholarships. Athletic scholarships constitute a very peculiar form of promoting physical culture. This peculiarity stems from the relationship between local citizens and the local government unit, as opposed to the relationship between the local government unit and sports clubs as it is in other cases. The second important aspect covers applying the administrative procedure in the field of granting athletic scholarships, which entails the need to issue an administrative decision and naturally implies other legal effects, such as granting the right to challenge the decision if disadvantageous to the party concerned. This may result in the situation that the period of waiting for the decision to become final may take even up to nearly two years. Therefore, it is important to define the rules for granting athletic scholarships set out in the resolution of a local government unit's law-making body in a manner preventing any doubts from the perspective of the case-law which is now already abundant.

Since the date of its adoption, the Sports Act currently in force has not changed in terms of the legal basis for granting athletic scholarships by local government units. In this respect, it is worth noting that Article 35 of the Act of 29 July 2005 on competitive sports (Journal of Laws of 2005, No. 155, item 1298, as amended), which had been in force until the adoption of the Sports Act [1, p. 188-189] [2, p. 95], [3, p. 156], [4, p. 364], comprised similar content. The short period of validity of the Act on competitive sports, combined with the poor legal awareness in this area, resulted in a small number of judicial decisions in this matter issued by 2010. The situation under the currently effective Act is clearly different. The abundant case-law has resulted both from the practice of appealing against individual decisions on the refusal to grant athletic scholarships and, above all, from applying for all or part of the provisions of the resolutions of local government unit's law-making bodies be annulled. In this study, I am going to refer to doubts raised in the case-law, and to propose variants of legal solutions that are in line with the current established case-law.

MATERIAL AND METHOD

Article 31 of the Sports Act stipulates that local government units may establish and fund for a specified period of time athletic scholarships payable to natural persons for their sporting achievements, and that the law-making body of such a unit may enact, by way of a resolution, detailed rules, procedures for granting and deprivation of athletic scholarships, their types and amounts paid as athletic scholarships, taking into account the importance of a given sport discipline for this local government unit and the sports results achieved by that person. The analysis of the literature on the subject and the case-law leads to the conclusion that we can distinguish two groups of criteria: subjective and objective.

RESULTS

SUBJECTIVE CRITERIA OF ELIGIBILITY FOR ATHLETIC SCHOLARSHIPS

The subjective criteria may include the following: registered and actual address of residence in the territory of the local government unit, specific

age, person/entity authorised to submit the scholarship application, or the fact of representing a sports club established in the area of a given unit.

It is a common practice that local government units make the scholarship conditional upon registered residence address in the area of the commune. Administrative courts have widely declared such regulations invalid, pointing that it is actual residents of a commune that should be beneficiaries of athletic scholarships (see the judgement of the Regional Administrative Court in Rzeszów of 12 September 2017, II SA/Rz 696/17, LEX No. 2371334; judgement of the Administrative Court in Białystok of 13 October 2017, II SA/Bk 526/17, LEX No. 2391582; judgement of the Supreme Administrative Court in Warsaw of 20 September 2017, II GSK 2861/15, LEX No. 2406590; judgement of the Administrative Court in Warsaw of 5 July 2017, II GSK 2776/15, LEX No. 2351650; judgement of the Regional Administrative Court in Krakow of 19 January 2017, II SA/Kr 1386/16, LEX No. 2240905). Therefore, the requirement should be rather to submit a statement that a given person actually resides in the area of the commune, and this may not be combined with the administrative category of the registered address of residence.

As regards the age criterion, it should be noted that the prevailing line in judicial decisions of administrative courts is that it is impossible to formulate the age criterion as an eligibility criterion to apply for a scholarship. It has been pointed out that according to Article 31 paragraph 1 in conjunction with paragraph 3 of the Sports Act, athletic scholarships are addressed to all individuals, so the legislature does not consider the award of benefits conditional upon the age status (judgement of the Regional Administrative Court in Łódź of 15 November 2017, II SA/Łd 673/17, Lex No. 2408130; judgement of the Supreme Administrative Court in Warsaw of 20 September 2017, II GSK 2861/15, LEX No. 2406590; judgement of the Regional Administrative Court in Krakow of 19 January 2017, II SA/Kr 1386/16, LEX No. 2240905). However, the above-mentioned line of judicial decisions is ambiguous. For example, the Regional Administrative Court in Lublin, in the judgement of 21 September 2017 (II SA/Lu 564/16, LEX No. 2388584), having carried out functional interpretation, found that it was possible to formulate such a constraint, which in my opinion is linked to the analysis of subjective criteria to be discussed further in this study.

An athletic scholarship, in accordance with Article 31 of the Sports Act, is a benefit intended for individuals. In addition, I have already mentioned that it is granted by way of an administrative procedure in which the athlete should enjoy the status of a party. This makes it impossible to apply for a scholarship by an entity other than an athlete, i.e. a sports club, a coach, a sports association, a third party (judgement of the Regional Administrative Court in Białystok of 13 October 2017, II SA/Bk 526/17, LEX No. 2391582). Of course, this does not apply to a situation where an underage athlete is represented by his or her parents or legal guardians. However, a certain diversity in the case-law on the topic should be noticed. The Regional Administrative Court in Bydgoszcz in the judgment of 28 February 2017 (II SA/Bd 1472/16, LEX No. 2284711), having analysed the case in the context of the constitutional principle of equality, did not find any breach of law in the event of the sports club of the athlete concerned or a municipal council committee applying for the scholarship. However, the arguments used to substantiate the judgement failed to define the key problem. In terms of conducting administrative proceedings, this view implies far-reaching consequences. In such a situation, the athlete is a beneficiary while not being the applicant, thus we can theoretically imagine a

situation when the application is submitted against his or her will. A problem also arises about how to define the status of a party to such proceedings. However, this question goes beyond the scope of this study.

The criterion of membership of a sports club should be considered in two ways. First, by laying down a restriction that only a member of a sports club (regardless of the location of the club) may be awarded the athletic scholarship. Administrative courts very rightly have taken the view that depriving non-member athletes of the possibility of being granted an athletic scholarship is not acceptable, especially that the Sport Act allows such athletes to participate in sports competition (judgement of the Regional Administrative Court in Łódź of 15 November 2017, II SA/Łd 673/17, Lex No. 2408130; judgement of the Supreme Administrative Court in Warsaw of 5 July 2017, II GSK 2776/15, LEX No. 2351650; judgement of the Regional Administrative Court in Gliwice of 23 February 2017, III SA/Gl 1206/16, LEX No. 2258453; judgement of the Regional Administrative Court in Gdańsk of 23 February 2017, III SA/Gd 1126/16, LEX No. 2254407; judgement of the Regional Administrative Court in Gdańsk of 16 February 2017, III SA/Gd 1109/16, LEX No. 2239146; judgement of the Regional Administrative Court in Olsztyn of 12 January 2017, II SA/Ol 1382/16, LEX No. 2202346). Depriving non-affiliated athletes of the right to be granted scholarships would unreasonably differentiate the legal situation of these two groups of athletes. As T. Dauerman rightly pointed out, the application of such criteria is contrary to the purpose of the Sports Act and the constitutional principle of equality before the law set out in Article 32 of the Constitution of the Republic of Poland [5]. The second aspect is related to setting out the condition that the sports club concerned must be based in the territory of a given commune. Due to the fact that responsibilities of a local government unit refer to residents thereof, administrative courts have consistently repealed the formulation of such a restriction (see judgement of the Regional Administrative Court in Białystok of October 13, 2017, II SA / Bk 526/17 , LEX No. 2391582; judgement of the Supreme Administrative Court in Warsaw of 20 September 2017, II GSK 2861/15, LEX No. 2406590; judgement of the Regional Administrative Court in Olsztyn of 28 February 2017, II SA/Ol 20/17, LEX No. 2255757; judgement of the Regional Administrative Court in Gdańsk of 2 February 2017, III SA/Gd 1016/16, LEX No. 2220344; judgement of the Regional Administrative Court in Kraków of 19 January 2017, II SA/Kr 1386/16, LEX no. 2240905; judgement of the Regional Administrative Court in Wrocław of 13 January 2017, III SA/Wr 1320/16, *Orzecznictwo w Sprawach Samorządowych* 2017, No. 2, p. 63) [6]. It should be noted that it is impossible to award a scholarship to an athlete who is affiliated with a sports club based in the municipality concerned, while residing in another one.

OBJECTIVE CRITERIA OF ELIGIBILITY FOR ATHLETIC SCHOLARSHIPS

The objective criteria may include as follows: doing a particular sport, results achieved at specific competitions, introduction of an entity to evaluate the application.

For the sake of further analysis, it is important to determine whether each resident is entitled to an athletic scholarship or not. In the abstract sense, they surely are, but they must achieve the sport result specified in a relevant resolution of the body of the local government unit. The resolution should also indicate sport disciplines that allow applying for athletic scholarships [4, p. 366], [7, p. 252-253]. The above directly stems from the provision of Article 31 paragraph

of the Sports Act. Nonetheless, despite such a clear wording of the Act, there are cases where the party questioned such a right of local government units. This issue was unequivocally resolved by the Supreme Administrative Court, which pointed out that it could not be assumed that the provision of Article 31 paragraph 3 of the Sports Act should be interpreted literally, i.e. in a way leading to the conclusion that everyone who practise sport and has sport achievements should be entitled to an athletic scholarship (see: judgement of the Supreme Administrative Court in Warsaw of 19 December 2017, II GSK 4638/16, LEX No. 2434102; judgement of the Supreme Administrative Court in Warsaw of 20 September 2017, II GSK 2861/15, LEX No. 2406590). It should also be noted that the resolution has to list a specific catalogue/group of disciplines deemed to be of particular importance for the local government unit (see: the judgement of the Regional Administrative Court in Bydgoszcz of 29 March 2017, II SA/Bd 1463/16, LEX No. 2283771; judgement of the Regional Administrative Court in Gdańsk of 16 March 2017, III SA/Gd 90/17, LEX No. 2267412). However, the Act does not specify the required number of them. This is within discretion of the bodies of a particular unit of local government. It should be noted, however, that the resolution might list a group of disciplines, e.g. by specifying as follows: "disciplines covered by the programme of the Olympic Games". This criterion refers to a strictly defined list which is widely known in the sports community. This position has been confirmed by judicial decisions of administrative courts, which have recognised that both the textual and teleological interpretation of Article 31 paragraph 3 of the Sports Act leads to the conclusion that the municipality should specify the discipline of its interest, but the legislation did not oblige it to enumerate these disciplines (see: judgement of the Regional Administrative Court in Bydgoszcz of 28 March 2017, II SA/Bd 1455/16, LEX No. 2288580; judgement of the Regional Administrative Court in Gdańsk of 23 February 2017, III SA/Gd 1126/16, LEX No. 2254407; judgement of the Regional Administrative Court in Gdańsk of 2 February 2017, III SA/Gd 989/16, LEX No. 2229989; judgement of the Regional Administrative Court in Gdańsk of 2 February 2017, III SA/Gd 1016/16, LEX No. 2220344; judgement of the Regional Administrative Court in Gliwice of 18 April 2011, III SA/Gl 162/11, LEX No. 994355) [4, p. 366], [7, p. 252]. It must also be added that the Act does not oblige the local government unit to provide detailed grounds to substantiate the selection of disciplines.

Apart from defining the list of disciplines considered to be of importance for a given local government unit, it is also crucial to determine the criterion of sporting achievements. The Act requires such an achievement to be specified in the resolution, but gives the body of that unit discretion how to do that. The literature on the subject points out that "sport achievements" do not mean "the highest" results, so it does not oblige the granting entity to award scholarships solely based on achievements at an international level [5]. The literature rightly notes that this may be a form of support for young athletes who have not yet achieved high sports results [3, p. 156], [4, p. 364-366], [5, p. 251].

As regards the subjective criteria, it is not possible to define a restriction on age or competition status (amateur or professional athlete). Nonetheless, one should consider the legal basis for defining the subjective criteria in this respect. I am referring here to the detailed determination of the sporting achievements, which entitles the applicant to be granted a scholarship. This will be in accordance with Article 31 paragraph 3 of the Sports Act. While it is not possible to set out the age criterion (e.g. 18 years of age), it is admissible to formulate a subjective criterion, such as awarding a scholarship

only for winning a medal at the Polish Championships level in the adults and youth categories, setting aside medals from the Polish Championships in other age categories (younger ones, e.g. cadet/younger junior, or older ones, e.g. masters). The above right has not been contested by administrative courts in any of the analysed judgements.

The decision-making process related to granting athletic scholarships may not involve entities that have an opinion-giving character (such as a sports council at the local government unit). In this regard, one should agree with the case-law which has stated that the Sports Act does not provide for such a body (see: judgement of the Regional Administrative Court in Łódź of 15 November 2017, II SA/Łd 673/17, Lex No. 2408130). Moreover, it should be noted that the provisions of a municipal resolution should be expressed in a precise and legible manner, so that those concerned know when they can apply for scholarships. In my opinion, this also eliminates the possibility of incorporating the requirement of consents, recommendations or opinions of sports clubs or sports associations in the process of granting athletic scholarships. While these entities should be considered legitimate to confirm the achievement of a certain sporting result, the introduction of additional responsibilities, even if in the form of a non-binding opinion, may result in far-reaching legal consequences. I refer here to a situation where the sports club deliberately refuses to give an opinion, which, once the athlete being urged to remedy a formal deficiency in the form of lack of the opinion fails to do so, will result in the scholarship application left unconsidered.

The criteria cited above raise no doubts. However, one can find isolated views in the case-law where administrative courts contested the right to set out the criterion of sport achievements. For instance, the Regional Administrative Court in Rzeszów decided in the judgement of 12 September 2017 (II SA/Rz 696/17, LEX No. 2371334) that the resolution of the local government body wrongly assumed that only medal winners of at least the Championships of Poland in their age category could apply for a scholarship. The court ruled that this was a very disqualifying criterion which only promotes sporting activities at the supralocal level and pointed out that, as a rule, the scholarship would not be available for a person practising the given discipline at the highest level in the area of the municipality. This view is not worth accepting, because under the statutory provision of Article 31 paragraph 3 of the Sports Act, the local government unit is even obliged to define the sporting result for eligibility purposes. Having considered the analysis of the current situation in a given unit and the amount of financial resources held, the law-making body limited the circle of beneficiaries to Polish Championship medal winners. It had the right to do so. It is hard to expect that the local government body unit would set aside (eliminate) the most valuable sports results and would award players at a lower competition level. The above argumentation of the court is not reflected in the provisions of the Act, not to mention the *ratio legis* of the discussed regulations which are intended to reward people who achieve the highest sporting results.

DISCUSSION

As demonstrated in the above analysis, it should be stated that a considerable number of recent judicial decisions relating to athletic scholarships granted by local government units could be found. The established case-law allows an important gap in the scarce literature on the subject to be filled. This is

so because the available literature in the field of sports law is hardly helpful in the interpretation of the basic criteria for granting the scholarships. The views expressed there, while deserving approval, are nonetheless fragmentary and do not form a material for comprehensive research. Therefore, one of the objectives of this study was to examine the matter in question in a comprehensive manner.

The case-law allows for the formulation of subjective and objective criteria that should be considered compliant with the provisions of the Sports Act and which implement the statutory delegation for the bodies of local government units defined in Article 31 paragraph 3 of the Act.

As regards the subjective criteria of eligibility for scholarships, the following should be considered admissible:

1. the condition of actual residence in a given local government unit,
2. introducing the possibility of granting scholarships for both sports club members and non-members,
3. the requirement that the athlete himself/herself submit the application.

On the other hand, the following should be considered unfounded in view of the provisions of the Act and the established case-law:

1. the condition of registered residence address in a given local government unit,
2. criterion of age excluding those who do not meet a certain age limit from the scholarship award procedure,
3. affiliation to a sports club,
4. representing a sports club based in the relevant local government unit,
5. enjoying a specific competition status (amateur, professional athlete).

As regards the objective criteria of eligibility for scholarships, the following should be considered admissible:

1. setting a list of sport disciplines which entitle the applicant to be granted an athletic scholarship, where this list does not necessarily involve indicating a specific discipline and may refer to a group of disciplines (like disciplines included in the programme of the Olympic Games),
2. specifying the sporting result that makes one eligible for the scholarship, and the discretion of the local government unit to define these results (at the local/supralocal/international levels),
3. choosing events in specific age categories that allow awarding a scholarship, e.g. setting aside the youngest age categories.

On the other hand, the following should be considered unfounded in view of the provisions of the Act and the established case-law:

1. awarding scholarships conditional upon a third-party opinion (sports council, sports committee, sports club),
2. granting athletic scholarships for all practised disciplines, as the Act explicitly provides for a narrowing down to disciplines of special importance for a given local government unit.

In the practice of the functioning of local government units, the two following basic scholarship systems can be distinguished. Much more frequent is the system that involves a kind of automatism in awarding scholarships, i.e. wherein a specific amount is assigned to a given result. This system poses one key risk to the local government unit, namely it is very difficult to foresee the

total amount intended for scholarships in the budgetary resolution. Therefore, this may entail the necessity to make amendments in the budgetary resolution during the year. The second system consists in defining a ranking list and rewards people having the highest number of scored sports results. It allows the unit to use a predefined amount of funds, but it does not guarantee that the person who obtained the result specified in the resolution will qualify as entitled on the ranking list. It should be noted that with proper determination of the subjective and objective criteria, and using the above guidelines, both of these scholarship award systems should be considered acceptable in view of Article 31 of the Sports Act.

CONCLUSIONS

Having regard to the above analysis, a general conclusion may be made that it is impossible, under the Polish Sports Act currently in force, to draw up a resolution by a local government unit's law-making body that would fully reflect the intentions of the local government authorities. Based on my own experience, I can state that local government units usually strive to support their "indigenous" sports clubs, i.e. those based in a given locality. They perceive this as an element of the policy of promotion of their commune, such as by showing the name of the club in competition media releases, or their coat of arms/logotype on the sportswear. An athlete who represents a club from elsewhere cannot provide such an advantage.

Detailed conclusions should be divided into two groups. The first group includes comments referring to the law as it is. Although, based on the current wording of Article 31 of the Sports Act, it is impossible to implement the intentions of local government units, it is worth promoting to put in practice the proposed solutions in terms of shaping the subjective and objective eligibility criteria for athletic scholarships. These criteria, if correctly defined, will allow the local government unit to partially meet the assumptions and make the regulations compliant with the sport development strategy of the unit. Thus, it will avoid a quite time-consuming court procedure of examination of the compliance of the resolution with the law. A procedure which, as evidenced in most of the case-law, will not bring positive effects for a given unit.

The second group of conclusions concerns the necessary, in my opinion, change in the provisions of the Act itself, in a way similar to the amendments made in relation to scholarships awarded by the minister competent for physical culture (Article 32 of the Sports Act). By this I mean making local government units absolutely free to define the subjective and objective criteria. This is due to the fact that scholarships are funded from the resources of a given unit, and thus it is the unit who should determine the conditions for benefit granting. The existing regulations and established case-law limit this freedom significantly. In this regard, it is possible to consider the following wording of Article 31 paragraph 3 of the Sports Act: "The law-making body of a local government unit shall define, by way of a resolution, detailed subjective and objective conditions, rules, procedures for granting and deprivation, and the types and amounts of athletic scholarships, prizes and distinctions referred to in paragraphs 1 and 2."

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