

Privatisation and Change of Legal Form of Sports Clubs in Serbia



In September 2013, the Serbian vice-prime minister called for urgent privatisation in sports sector that seems to be without legal basis.

Introduction

In Europe, sports generates annual turnover of EUR 400 bln or 3.7% of the EU gross domestic product and employs 5.4% of the entire workforce. Currently, as one of the fastest growing industries, sports makes up 3% of total world trade. Today's most successful clubs are organised and operate as for-profit organisations.

In Serbia, sport is of great importance as confirmed by the Serbian Constitution (*Ustav Republike Srbije*). The Constitution proclaims sport as a social value under authority of the state that regulates and provides a working system. Democratic changes in Serbia in the year 2000 caused the need for Serbia to adapt to European standards in all aspects of social functioning, including sports.

To align with European standards and values, the privatisation of sports clubs is necessary. The Sports Act (*Zakon o sportu*) came into force in April 2011 and raises many controversial questions, two of which are privatisation and sports clubs' legal form.

Privatisation

Under Article 31 of the Sports Act, a professional sports club (Club) may be organised as an association or a company. In Serbia Clubs are predominantly organised as associations of citizens; there are no state established or owned Clubs.

Under Article 36 of the Association Act (*Zakon o udruženjima*), the Club, as an association, is a civil entity that may acquire assets in ownership. The legal form of association allows a Club to acquire ownership over stadiums and other supporting facilities.

The Privatisation Act stipulates that the subject of the privatisation process may be state (previously social) property.

The greatest attention is drawn to the privatisation of the two most successful sport clubs in Serbia: FC Red Star and FC Partizan; however, not because of their value as a brand, but for the fact that their sports facilities are situated in very attractive locations in Belgrade, where the land price has reached astronomical figures. These two Clubs already own the stadiums and other facilities and, therefore, ownership of these facilities may not be the subject of privatisation since it is not state but private property.

This actually means that the Sports Act manifests pretensions of the state to carry out "privatisation of private property". If it comes to this, instead of privatisation, usurpation of Club property will occur. This would be a direct violation of the constitutional right to private property.

In these particular cases, only the land where the sports facilities are built can be the object of privatisation. This land is owned by the state. Under current Serbian regulations, although this land is a part of the Club's property, only the Club has the right to use it without the ownership title. The privatisation of this part of the Club's property should be conducted through the conversion of the right to use to a right of ownership. But the Sports Act does not provide such a solution.

Change of legal form

Article 55 paragraph 1 of the Serbian Constitution guarantees freedom of association. Members of the Club, exercising this freedom, established the Club as an association and have the right to remain its members as long as they wish. This right cannot be denied by the state. The inherited legal form of the Club will be the starting point (basis) for the change of legal form, respecting the right of members to freely choose their desired legal form. Imposing the choice of legal form by the state would be a breach of the Constitution. The free will of the members expressed in the assembly is of crucial importance for the future status of the Clubs.

Conclusion

The principal goals of the privatisation of sport clubs are (i) increase of economic efficiency; (ii) inflow of fresh capital; (iii) changes in the ownership structure; and (iv) stability. For Serbian sports, the most appropriate solution for privatisation of sport clubs would be the Spanish model, according to which 38 basketball and 40 football clubs were privatised. Precisely, clubs should be transformed from associations to joint stock companies and special rules should be implemented for Red Star and Partizan—similar to Real Madrid and Barcelona, where no natural or legal person can own 100% of the shares and foreigners are not allowed to hold a majority stake.

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