

PROFESSIONAL RESPONSIBILITY OF COACHES

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Abstract. *This paper wants to make available to those interested, namely people working in the field of physical education and sport, not exclusively coaches, the knowledge necessary to acquire a specialised legal culture, which is indispensable for the responsible development of coaches' duties at the workplace and outside. It is increasingly obvious that familiarisation with the set of rights and freedoms offered to sport professionals, already considered by the Romanian Civil Code, is a first step towards normality, which mainly consists, in our opinion, in initiating an approach to enact laws in the field. It will be taken into account that the topicality of this paper “depends” on the positive law in the matter, and we refer here to the regulations regarding the deontology of the coaching profession, whose non-violation can partially provide us with the basics of practising clean sports. The legal and legislative factors should consider the management of the institutions in charge of physical education and sport as very important. The training of “sports workers” as well as the management of specialised structures in a society undergoing an intense process of transformation, with a development perspective, requires a kind of training that includes modern general culture and specific knowledge but also legal training. It has to be able to bring about changes in the way of approaching physical education and sport. The considerations regarding the stated topic compel us to support the need to assimilate knowledge regarding the professional deontology, with special regard to the legal culture as an integral and mandatory part in the training of sports coaches.*

Keywords: *coaches, professional responsibility, deontology, professional malpractice, liability.*

Introduction

Nemo censetur ignorare legem (“No one is above the law”, “No one is allowed not to know the law”, lit.: “It is considered that no one ignores the law”, an expression from Roman law, meaning that ignorance of the law is not a justification for non-compliance with it. Ștef, 1995)

First of all, it is necessary to recall some principles of law operating in our society, in direct connection with the liability and responsibility of those who carry out, according to the law, the activity of coaching or those assimilated to this profession.

A. No one is above the law

Romanian Constitution - Equality of rights ARTICLE 16 (1) Citizens are equal before the law and public authorities, without privileges and without discrimination. (2) No one is above the law.

There is no doubt that the regulation contained in paragraph (1) is all-encompassing. It is obviously clear, a constant of the universal and Romanian constitutional tradition, given that even the Declaration of Independence of the United States (1776) proclaimed that all people are created equal. Therefore, regarding paragraph (2), in the sense that no one is above the

law, we must note that we are in the presence of a text that, in a perfect legal technique, may have been missing, of course. However, this text was introduced by the Constituent Assembly, with the intention of strengthening the principle of equality in rights and as a natural echo of the provisions of the Paris Charter (1990) relating to the rule of law. (Muraru & Tănăsescu, 2008)

B. With reference to the Latin adage *Nemo censetur ignorare legem*

This principle expresses the idea that no one can defend themselves by invoking ignorance or error in matters of law. The two notions, namely ignorance and error, are synonymous from this point of view, their legal consequences being the same, although their causes are different. Ignorance is the absence of knowledge of the law, and error is the inaccurate knowledge of it, believing to be true what is false or considering as false what is true.

Under these circumstances, information and being informed become vital for each member of the community because ignorance of the law is not a justification for violating a rule contained in professional ethics and empowered to be exercised by the effect of the law. However, going beyond the opinions of specialists regarding the absolute or relative nature of the presumption of knowledge of the law in any circumstances, we believe that it is, in principle, the regulation according to which legal norms enter into force on the date of their public disclosure (the date when they are published or actually made known). The exception to this principle is the situation where the content of the normative act in which the legal norm appears provides for the entry into force a date other than the publication of the norm (its notification). From the moment of its entry into force, the legal norm fully governs social relations and no one can evade it on the grounds that they do not know it. This rule is explained by the fact that the authority of the legal norm, its compulsoriness would be shaken if the excuse of ignorance were admitted. However, even in the thesis of the absolute character of the presumption, we should know that some exceptions are allowed: thus, when a part of the territory remains isolated from the rest of the country by reason of force majeure, a situation in which ignorance can be objective, as it is not the consequence of a particular cause of personal ignorance, the existence of the presumption of knowledge of the law can no longer be questioned. In the matter of civil conventions, when a person concludes a contract without knowing the consequences that the legal norm causes to derive from the contract, they can request the annulment of the contract invoking the fact that they were in error of law, which vitiates the will... Of course, for “ignorance of the law”, the whole system of training specialists is to blame, too. In some cases, this system is not sufficiently operational to form competencies in connection with the normative legal framework required in the activity of coaches and/or physical education teachers - activities of great social importance for the entire society.

Purpose of the paper

The purpose of this paper is to make available to those interested, namely those working in the field of physical education and sport, not exclusively coaches, the knowledge necessary to acquire a specialised legal culture, which is indispensable for the responsible development of coaches' duties at the workplace and outside. It is increasingly obvious that familiarisation with the set of rights and freedoms offered to sport professionals, already considered by the

Romanian Civil Code, is a first step towards normality, which mainly consists, in our opinion, in initiating an approach to enact laws in the field. It will be taken into account that the topicality of this paper is “dependent” on the positive law in the matter, and we refer here to the regulations regarding the deontology of the coaching profession, whose non-violation can partially provide us with the basics of practicing clean sports.

The authors of this paper aim to make a “communication” (Voicu, 2012) to those interested in the topic as follows: the term “communication” comes from the Latin *communis*, which means to share: communication carries the meaning of contact and connection, creators of communion and community (Prutianu, 2008). Therefore, we will ask ourselves a completely natural question: Do we communicate to inform, to be informed, to understand, to understand each other? (Morin, 2010). The mentioned author explains the relations between information and knowledge, the meanings given, in this context, to the verbs *to explain* and *to understand*, so that finally to remove difficulties at each level of communication, to invoke the importance of the approach to understanding: to understand the meanings of communication, the recognition of paradigms, the structures of thought that govern us and others as well (called “mindscapes” or “mental passages” by Masao Maruyama). It is stated that there are mental landscapes within which we do not communicate at all with each other, thus achieving the intelligibility of the unintelligibility in human relationships, a starting point to understand that understanding is possible only within the same paradigm: an assimilated paradigm can allow us to understand those who do not understand us, which allows us not to be led by thought structures about which we are completely ignorant. This can be the approach to building a meta-point of view. (Morin, 2010) Only in this way will we be able to accept that communication is not merely a specific and limited phenomenon but can be (is) an integrative phenomenon that would help us rethink the relationship between individual and society, between society and culture (Winklin, 2010), as well as the coach’s role in this social system.

Thus, starting with this paper, we aim to “create legislation” in sport and “accountability” of active and passive sport participants, to communicate with readers in a way that brings satisfaction to all, according to the understanding of communication as defined by Weaver (1998/1963), namely “all the procedures by which one mind may affect another” (p. 3), avoiding to conceive it in the absence of subjects, who may or may not be aware of it..., which largely depends on the attachment to the new values attributed to sport (our note) that can overturn the position of the “spiral of silence” in an area with great social impact, which has already become a social phenomenon.

From here, we can deduce and understand the importance of the functions of all trainers of sports excellence (Fournier, 2010), including other communicators who, not infrequently, aim at the function of social control, a source of social pressure on the individual (Noelle-Neumann, 1993). We need to improve our professional culture, including the specialised legal culture (and more than that), to aim for the elite culture which, in the light of the current contemporary sport development, will favour our achievement of excellence in the coaching profession. Coaches in elite sport should “ensure a balance between performance, high pressure and well-being” (Dohsten et al., 2020, p. 48), which has the potential to create sustainable sports practices. However, this is difficult to achieve, given that top-level sport involves competitiveness, therefore the pressure to win due to high expectations around the

result (Vargas-Mendoza et al., 2018). For this reason, coaches try to enhance the performance of their athletes (Petroczi et al., 2008) using ergogenic aids such as medications or dietary supplements (Kavukcu & Burgazli, 2013), prohibited substances or methods (Petroczi & Naughton, 2009) and even advanced technology that often goes one step ahead of antidoping detection methods (Tan et al., 2017).

The foundation of the “spiral of silence” theory lies in one of the functions of public opinion - a form of social control, a source of social pressure exerted upon the individual. Control is manifested by the fact that people are endowed with the ability to “feel” what the prevailing opinions around them are at a given time - unfortunately, also those that concern the professional mentalities of coaches related to mass culture. Professional mentalities detrimental to efficient, effective and legal sport can be generated by the vicious educational circle of modern societies in which many children are educated by people who in turn have not been educated and are trained by trainers who have not been either sufficiently trained or, unfortunately, educated.

Coaches’ professional mentalities can influence the production (training) of sport excellence for better or worse and can shape the athletes’ behaviours, knowing that the “spiral of silence” theory makes it possible to take positions that eliminate obsolescence and obsolete training concepts that have nothing in common with the formation of sport excellence in the practice of clean sports. Therefore, coaches have a huge influence on the physical and psychological development of the athletes they train (Short & Short, 2005; Gustafsson et al., 2017; Barcza-Renner et al., 2016), which is why their cultural and professional backgrounds are important. In terms of a positive influence, supportive social interactions within the athletes’ environment have the potential to enhance their performance and development (Bianco & Eklund, 2001), while negative social interactions with coaches (due to rejecting or neglecting behaviours) can hinder progress and can result in a detrimental athletic experience (Newsom et al., 2005).

Today, the adages and maxims of Roman law are equally valid: *Ubi societas ibi jus* (“Where there is society, there is law”) and *Ubi jus ubi societas* (“Where there is law, there is a society”).

Studying the social phenomenon of sport in order to make it legally and ethically responsible (in the context of the socio-political realities of the time - burdened by the need to adopt mentalities generated by globalisation and distortions caused by some interest groups), involves prior understanding and reporting on some meanings attributed to notions and concepts such as society and globalisation, social system, state, culture, politics, deontology, law, rights and freedoms, social values, interest groups.

Topic Addressed

Normative behavioural order

The core of a society is the normative behavioural order by which the life of a population is organized collectively. In terms of order, it contains both differentiated and customised values and norms, all requiring cultural references to be meaningful and legitimate. As a

community, it manifests a delimited conception of membership, which distinguishes between those individuals who belong and who do not belong to it. (Alexandru, 1999)

Society is constituted by both a normative system of order and statuses, rights and obligations for to its members, which can vary for different community subgroups.

An important issue that can be discussed in this context is the legitimation of the normative order of society because we must recognise the existence of a potential conflict between the pre-programmed elements of human behaviour and the interests of the community in which it manifests (Eibl-Eibesfeldt, 1995). Nevertheless, society is a natural fact, a gift of nature determined by the individual's need to be with their fellows... Aristotle stated that a man, in order to live in isolation, outside society, should be an animal or a God, that is, something less or much more than a man; thus, by their nature, human beings need to associate, to belong to a society, and this happens in fact since birth, not by will but out of necessity - when they become self-conscious, they find themselves embedded in a multiple network of social relations - both selfish and altruistic instincts keep them in society (Del Vecchio, 1997). Even the 10 commandments actually oppose the human nature, not in its totality but against the savage manifestations - in the sense of non-domestication - of prehuman nature, because man is both nature and culture (Wald, 1998). The commandments have moral value and go against the uncontrolled, uncivilised nature of man. They reflect very frequent efforts and oppose to the effort of civilization at the time of their formulation (Wald, 1998). The commandments are not intended to prolong the natural but instead they complement the individual's moral education.

It is widely acknowledged that legitimacy systems define the framework for members' rights and the prohibitions based on them. Above all, the use of power requires legitimacy. The modern concept of legitimation requires involving the moral adjective. (Mennel, 1974)

In any political system, power is mainly exercised through two methods: force and authority. Legitimacy means strengthening the latter method and diminishing the former. It acts as essential force for the civilization of behaviour within a political community and is, above all, a normative concept of political science. The history of political thought realises the close connection between legitimacy and a people's conception of the world; it also testifies that no known legitimising principle can be reduced exclusively to the moral norms of a society or those of law. A principle of legitimacy is a fact of culture and civilization and tells, in its own way, about the conformity between a government system given at a certain time and the 'way of thinking' of a people, as Montesquieu pointed out. As a narrative concept, legitimacy is anchored in the field of fundamental human choices and community values (Colțescu, 2005).

Legal norms are contained in the formal sources of law, are embedded in the so-called objective law. Their observance and guarantee are fulfilled, if necessary, by the coercive force of the state.

If we refer to the rules developed by non-state bodies, their validity has to be "measured". Thus, the validity of the norms (by validity, we understand the quality attached to the norm to satisfy the necessary conditions to produce the legal effects pursued by its authors), the specific way of their existence is not determined exclusively by this formal criterion of their expression in a form accepted as a source of law but results from the combination of three elements: formal, effectiveness and legitimacy. In the modern theory of law, it is considered

that the formal validity of the legal norm gives rise to a presumption of legitimacy and effectiveness, constituting a decisive element for the production of the effects pursued by the respective norm. Thus, the normative acts that are generic, issued by non-state bodies or organizations, such as associations, foundations, sports structures, the Romanian Olympic and Sports Committee, the World Anti-Doping Agency, societies, religious denominations and others, are sources of law. The organization and activity of these bodies or non-state organizations are usually carried out on the basis of their own normative acts - constitutive acts, statutes, regulations, etc. issued on the basis of and in compliance with certain laws or other state normative acts. From the moment the acts of non-state social organizations are recognised by the state power, thus obtaining legal force, they become legal norms. (Ceterchi & Craiovean, 1998)

Responsibility and accountability

Responsibility is perceived as a reprehensible social fact (Fauconnet, 1920), which is summarised in the reaction caused by an action that the society at the place and time of its doing considers condemnable (Eliescu, 1972). For the consequences that the individual suffers as a result of a conduct valued (evaluated) as not in accordance with the social norms, two terms are used in particular: liability and responsibility.

In dictionaries (e.g., *Nouveau Petit Larousse*, 1971) and in the literature (Fauconnet, 1920), it is not always possible to distinguish between the two terms - responsibility and liability - that are usually assigned the meaning of obligation of an individual or communities, which derives from the rules established in society or a particular community at a given time to perform certain actions or refrain from committing others, as well as their obligation to repair the damage caused by their conduct. In this way, the terms responsibility and liability refer to actions or inactions that are imposed on the individual or the community through coercion, from the outside, and do not concern their own attitudes. According to Durkheim (2007/1895), coercion is seen as a general feature in solidarity with the exteriority of the social fact, and its objectivity, in relation to the subjectivity of the individual, understanding that it is coercion in the sense of objectivity that is required, which is independent of individual consciousness (Biriş & Biriş, 1996). Among the norms that regulate human behaviour in society, legal norms are certainly the most important and can be applied by state coercion.

The notion of responsibility, which is ubiquitous in all spheres of social life, acquires the most severe character within legal norms. Regardless of its form, legal liability implies a relationship between society and the individual, more precisely between authority and the individual, through which certain obligations are imposed on them regardless of their willingness to comply with. The institution of responsibility, traditionally considered the central institution of all branches of law, continues to hold this position today. (Anghel et al., 1970) The state is therefore the subject that, through the norms of law elaborated or sanctioned by it, regulates the human behaviour present in different categories of social relations. Therefore, it is no coincidence that non-compliance with the rules of law means that the two terms, responsibility and liability, are especially used in their legal sense.

In order to distinguish between them, an attempt was made to define the notions of obligation and duty. But the notion of obligation does not present any advantage in relation to that of responsibility, it does not have a more delimited content. (Florea, 1976) Moreover, in the field of law, the term obligation expresses a civil legal relationship. As for the term debt, it has a particularly well-defined ethical content, which does not overlap with that of liability. We consider that the main element that can distinguish between the terms legal liability and liability is their social function. While liability aims especially at the preservation of a social system, responsibility concerns the development and improvement of the social system.

It is known that the anti-juridical status or illegality of a fact is preceded by its antisocial character. Antisociality causes certain acts to be criminalised by the rule of law. Antisociality is also based on a deviant behaviour from certain norms, but that are broader than legal norms: moral, religious and political ones. The birth and development of legal responsibility can only be scientifically researched in relation to place and especially to time (Eliescu, 1972).

Legal liability - an institution of the legal system - cannot yet be dissociated and completely isolated from its interdependent relationship with the other types of social responsibility, namely with the moral, ethical, political ones. In fact, when legislators select from the multitude of social relations those that they consider in need of legal protection, they start from the premise that the selection for their valorisation has already been made in the sphere of moral, religious and ethical relations.

After the above, we find that the definition attributed to this institution by Professor Costin (1970), at least in the Romanian society, fully covers the meaning of the notion: legal liability is the complex of rights and related obligations, which - according to law - arises from illegal acts and constitutes the framework for achieving state coercion by applying legal sanctions in order to ensure the stability of social relations and to guide members of society in the spirit of respecting the rule of law.

Defined in this way, legal liability is not reduced and cannot be confused with legal sanctions. The application of legal sanctions is only the final consequence of the exercise of legal liability so, for the existence of liability, there must be some imperative rules that have been violated by the perpetrator.

If the principle of responsibility, as a fundamental principle of law, is understood in relation to a coach's professional responsibility, it refers to the axiological dimension of the professional duties of a sports coach.

In the context in which professional liability has been legalised following the entry into force of the New Civil Code (NCC) and some documents of the European Union, it is necessary to draw some notions regarding the deontology of the coaching profession. Deviations from the rules of ethics may lead to legal sanctions.

Deontology of the coaching profession

When we refer to the issue of the practical ethics of education or a profession with instructive-educational values, we need to refer to aspects regarding the moral profile of the educator-coach, the professional sports coach, the content and quality of their work. In some cases where the coach's professional conscience is not in accordance with the imperatives of

professional responsibility, as part of social responsibility, a state of conflict may occur between professional performance and the normativity of legal conscience. The coach's educational work is not only done in sports organizations but also wherever two or more members of society live, work together or meet, so we refer to the extra-sports space where the coach should be a model of positive behaviour, too. In the field of education, the reality proves that it is not enough for the deviations of athletes' coaches to be sanctioned only morally and ethically: the violation of subjective rights through illicit behaviours also requires legal responsibility. It is therefore necessary to also inform the legal consequences of conduct that does not comply with professional ethics.

Sports trainers - teachers and coaches - should serve the interests of the city and be good citizens. We believe that the meaning of the phrase "good citizen" includes the quality of a valid interlocutor in the city's material and spiritual life, of a subject capable of exercising their rights, respectively of assuming and respecting their obligations in accordance with the existing social order. For example, in terms of concerns regarding the establishment of rules that should be observed in professional activities, we note, first of all, the rule referring to the field of human health protection - *Primum non nocere* ("First, do not harm") by which Hippocrates set a rule of general conduct in the medical field. Today, we use the terms consecrated by Hans Selye, eustress and distress, and it is recommended to induce eustress (moderate stress), an adaptive stimulating element up to the limit of the individual's ability (Derevenko et al., 1992). We can ask ourselves: What is the best dosage of effort in sports activity? We think we can answer with the following now: The optimal dosage of the specific effort in sport for producing excellence is the dosage that can achieve maximum performance without damaging the athlete's body as a whole, both now and in the future. Coaches as well as other trainers (teachers, etc.) should know that an individual is born with genetically determined characters that manifest in time and can be developed through the mastery of trainers/educators up to their genetically determined maximum.

Starting from these, we believe that deontology has emerged as a science of rights and duties that regulate human activity in a given professional field. Violation of the *Primum non nocere* principle and excessive use of distress to obtain the sporting excellence of those trained by the professional coach can be a hypothesis of causing damage that can lead to the application of legal liability.

The term deontology (*deontos* = duty, obligation and *logos* = word, science) was first used by the English jurist and philosopher Jeremy Bentham (1742-1832) in the work *Deontology or the Science of Morality* (1834); the author defined it as "The science of what to do in any circumstance". In the doctrines of English moralists, the term deontology is used, which means the principle of action in accordance with duty. The three ways in which a person can relate to morality are: a. morality, in which the person knows the moral requirements and respects them; b. immorality, in which the person knows the moral requirements but does not respect them; c. amorality, in which the person does not know the requirements of morality and as a result does not respect them.

The deontology of the teaching (pedagogical) profession, like that of any other profession, should be based on a system of norms, rules, requirements, professional moral obligations, as well as on legal, administrative and technical-professional regulations that orient the activity towards correctness and efficiency. In the current sense, deontology includes, in addition to

professional moral duties and various technical norms, basic professional requirements, administrative rules and legal norms that, in structures specific to each profession, will determine the professional deontological conduct (or approach), which is defined as a set of attitudes and actions required by the professional and technical-professional norms, without which it is not possible to exercise the profession at the level of society's requirements. The terms of morality and ethics are operational in any deontology, as they are components of the deontological approach. (Lăscuș, 2002)

1. Morality is, on the one hand, a form of social consciousness, and on the other hand, it consists of the totality of norms, rules, requirements, precepts, duties, ideas, etc. that regulate the relations between people in all social fields; intense interpersonal relations can mainly be identified in the area of professional activities. Work morality regulates people's behaviour during work, as well as everyone's behaviour in relation to their own professional activity. The morality of the profession considers the relations between professionals and between them and the object of the profession.

2. Ethics is the science of morality that has developed within philosophy but has later become an independent science. The science of metaethics - the science of the science of morality - has already emerged and asserted itself. Work ethics deals with the issue of work morality and the ethics of the profession, the issue of profession morality. The relationships between ethics, work ethics and professional ethics are identical to those of their object. The ethics of the profession deals with the moral relations involved in practicing a profession - along with it, the professional deontology adds other imperatives: legal norms, administrative norms, technical-professional norms specific to that profession and whose observance, together with the moral norms of the profession, is strictly necessary for the correct achievement of the objectives of professional work. The sphere of the notion of professional ethics is included in the sphere of the notion of professional deontology.

An approach to preparing excellence

It is unanimously recognised that performance, victory, excellence in a certain field, which entails the laurel wreath, always has an ethical and social function. But it is also known that, not infrequently, in the world of excellence (with reference to either the exact or socio-human sciences, arts, sport, etc.), the protection of subjective rights and legitimate interests of the main actors - students, athletes, are not the main concern. Thus, by fulminantly invoking the values of the field, the interests of the state and so on, some natural or legal persons who have attributions in the preparation of excellence try to justify some conducts that violate the rights of the main actors they train or have trained for integration and social fulfilment, proving, in these cases, immorality or amorality.

Since the activity of preparing excellence in a field is also endowed with educational value, knowing that the selection and preparation of excellence are done in most cases at the age of the minority, we aim to present some aspects that can negatively affect the process of achieving excellence in relation to the social path of the person who covets excellence. Thus, the issue that, in educational work, is put in completely different terms than in any other field of human activity, is that of failure. The object of educational work is the individual. We must admit that, especially when it comes to their social fulfilment, not the slightest

percentage of failure is allowed. In the interwar pedagogical literature, it has been clearly established the gravity of the deviation of an educator who does not take into account the principles and laws of education and who should contribute first of all to the interests of the person educated. In this sense, the opinion has already been expressed that an educator, like any other professional (a teacher, a coach, etc.), is not allowed to practice without a serious and profound knowledge of the principles and laws that guide the realities with which they work, even when this educator is a politician or influential person: they should be considered and treated accordingly as killers of souls: killers that have premeditated their actions, who are dangerous not only for the student's soul but also the community that has entrusted them with the education of the new generation. (Nicolau, 1937) Satisfying the ideal of a person to become excellent, but not at any cost, in order to be socially fulfilled requires that their training activity be scientifically organized by respecting the discipline of teaching, the value of the training model, the manifestation of excellence and the recovery system. Moreover, the teaching approach can be defined as a formative science of man only insofar as it will use the data of anthropology, genetics, physiology, psychology, pedagogy, biomechanics, mathematical sciences, etc., otherwise it remains only a simple limiting practice that, in the current state of progress, can no longer meet the requirements of performance. With the observation that the main role of science is to know reality "as it is", not regardless of the order and importance of the needs of human interests or even against them, we cannot legitimise, only through science that seeks the truth and removes error, the responsibility of those who bear the destinies of people attaining excellence; it can be stated, in agreement with Rabelais, that "Science without conscious is only ruin of the soul". Not only science but also morality and ethics can be a guide to human behaviour.

A possible legal approach to the issue of didactics

The issue of educators' unintentional mistakes in the instructive-educational process by which they can become harmful to those educated by causing the so-called didactogenies should also be revealed. The term didactogeny was introduced in educational sciences by the psychologist Platanov, today being relatively extended to all unintentional errors of those who carry out the educational process. Vasile Pavelescu says that, in medicine, there are "iatrogenic" diseases, namely unintentionally caused by the doctor; similarly, in education, there are "didactogenic" vices caused by the teacher or coach. Didactogeny is a morbid state of reactive type encountered in some students because of the didactic mistakes of educators (teachers, coaches, master trainers, parents and their substitutes), which is not the result of intentional actions but the consequence of gestures, words, insufficiently controlled attitudes in their relationships with students. It is characterised by changes in the upper nervous processes, which are most often accompanied by anxiety and depression, thus promoting the phenomenon of school and/or sports activity maladaptation (Marcu et al., 1995). Didactogens can be generated by any situation created by the educator/trainer, in which negative effects are obtained in terms of atmosphere and development conditions for the child's personality. Among these, we note those related to the attitude without pedagogical tact determined by the insufficient assessment of the student's personality and needs, ignoring their rights. Poor school and vocational orientation of the student is another factor generating didactogenies.

Dictatorial attitude, lack of understanding and respect for the student, rude behaviour, impulsivity, persecution of the child, incorrect examination, insufficient demand or, conversely, overburdening the student/athlete in relation to their possibilities are just a few examples of didactic behaviour that can trigger didactogens. The evaluation of such conduct with negative consequences regarding the social integration of the educated/trained individuals must not only attract public disapproval (which, in fact, sanctions violations of moral norms) but also sanctions from the most important legal institution of any legal system. In a state governed by the rule of law - the institution of legal liability, its functions are much more efficient than the functions of other forms of social responsibility. There is the general framework of common law through which the conduct of educators can be sanctioned in case of damages due to the use of didactogens. For example, the new Romanian Civil Code, in article 1349 entitled “Criminal liability”, provides: (1) Any person has the duty to comply with the rules of conduct imposed by law or local custom and not to infringe, by their actions or inactions, the rights or legitimate interests of others. (2) The one who, having discernment, violates this duty is responsible for all the damages caused, being obliged to repair them in full. (3) In the specific cases provided by law, a person is obliged to repair the damage caused by the deed of another, by the things or animals under their guard, as well as by the ruin of the building. (4) The liability for damages caused by defective products shall be established by special law. Regarding contractual liability, the New Civil Code, in article 1350 entitled “Contractual liability”, provides: (1) Any person must perform the obligations that they have contracted. (2) When, without justification, they do not fulfil this duty, they are liable for the damage caused to the other party and are obliged to repair this damage in accordance with the law. (3) Unless otherwise provided by law, neither party may remove the application of the rules of contractual liability in order to opt for other rules that would be more favourable.

Another problem is that, in the current conditions of organization and development of the didactic approach regarding training, competition and sports manifestations/performance, responsible coaches could invoke in their defence that, in the activity of selection and preparation of excellence, although they give advice and guidance to the athletes entrusted to them, they have not understood that they are compelled to assume responsibility. We believe that their liability cannot be waived if their conduct has caused harm. In fact, the opinion has already been expressed that, in all cases where the professional will give wrong guidance with the intention of causing a third party to accept it, and the guidance will be followed and will have detrimental consequences, regardless of the circumstances in which it was given, the professional’s liability will be committed and will be base for criminal fault (Voicu, 1999). And when it is not clear enough whether the parties are bound or not by a contract, as for example in the case of the coach-athlete relationship (given that the athlete is not a third party but the object of professional work and due to the fact that the coach permanently guides the athlete, their advice is not given only in a certain circumstance but while on duty), the services provided accidentally, with reservations and under circumstances in which the professional does not assume any responsibility will not result in the liability of damages of the professional - the responsibility will be fixed on the idea of criminal fault (Gionea, 1943).

Full professional capacity

We believe that, in order to state that a person has full professional capacity (in a certain field), an analysis is necessary regarding the existence of the two essential and indispensable conditions that must be cumulatively met: 1. specialised knowledge; 2. professional vocation. Professional capacity, in this context, can be defined as the ability to exercise a right, by those who possess this right, to exercise the profession (Marcoux & Doerflinger, 1988) - competence must be a criterion for technical and moral appreciation of professional value (Voicu, 1999). Transferring the above considerations in the field of teaching, we find, as a notoriety fact, that the assessment of specialised knowledge in the field, in the opinion of leaders of the Romanian education system, is in accordance with the requirements of the profession. The problem arises regarding the professional vocation in the field in which the teacher/coach will carry out their activity. The idea is accepted that the maximum chances of achieving a professional status are related to the existence of the vocation, by which we mean calling or predisposition for a certain field of activity or a certain profession. Professional knowledge can be grafted on the vocational field, but the knowledge in the field cannot be capitalised without the existence of the professional vocation.

Considerations regarding the professional training of coaches

It is necessary to reflect on the following: is it indeed necessary to be aware of the factors of responsibility involved in the training of trainers to assess the professional vocation of candidates for the profession of teacher or coach (both at admission and at a certain time frame during the vocational training)?; and in the absence of the vocational attribute of those who are already practicing the profession, how will their professional evaluation be performed? Professional vocation is at the intersection of the requirements of social life with those of the profession. The object of educational work is the individual and, as said before, when it comes to a person, not the slightest percentage of failure is allowed. The rigors imposed by the pedagogical deontology cannot have a favourable ground in the absence of the predisposition for the coach/teacher profession. Deontology also includes legal (imperative) norms, and when we talk about freedom in establishing the purpose of education or achieving sports excellence, we must understand the freedom to formulate and achieve a goal according to the progressive aspirations of society regarding the human ideal. Ethics should not only be concerned with what it is, but it is more important for it to deal with what it should be. Morality needs postulates of reason because democracy can only be achieved in the field of normativity, of the legislature. A great responsibility also belongs to those who carry out the training of trainers in educational work. Any deviation from the exigencies of the scientific and pedagogical contents of both the training and evaluation of future teachers or trainers in the field of sports can become a favouring framework for illicit conducts where the activities of the educational approach are carried out. In the educational approach, the teacher cannot invoke in their defence that they made an unintentional mistake - this cannot be a legal irresponsibility clause - if their mistake has caused a prejudice (didactogeny and its consequences). It is necessary to include in the curricula of the institutions that train coaches who will be trainers of sports excellence the “Deontology of the coaching profession” subject

to explain the elements and norms of the deontological approach - this would be a favourable approach in solidarity with other efforts of Romania to “host and support clean sport” with interest and benefit.

Defining the category of professionals in the New Civil Code

Romania’s NCC, which entered into force on 1 October 2011, marked a major legislative change in the Romanian legal system, achieving the unification of civil and commercial legislation, but with a series of provisions regarding professionals and enterprise. Within the meaning of the New Civil Code, professionals are all those who operate a business. The operation of an enterprise is the systematic exercise by one or more persons of an organized activity consisting of the following activities: the production, administration or alienation of goods or the provision of services whether or not (the enterprise) has a lucrative purpose [article 3, paragraph (3) Civil Code].

Exacerbation of professional liability by establishing its juridical status

In a state governed by the rule of law, no one can be above the law - neither a natural or legal person nor any particular field of activity, in our case, the field of physical education and sport.

It is recognised that participants in the field of sports activities must respect:

1. The state order - that refers to the administration of the economic means of sports services and benefits, to the issue of engaging legal liability under its various criminal, contraventional-administrative, civil and labour forms of law (coaches and teachers are required to respect the provisions of both the Labour Code and professional statutes, as well as of the national and international codes regarding sports and educational activities, which Romania has ratified), thus conferring to the subjects of law, part of the sports relations established in legal relations, the guarantee of protection of subjective rights through the coercive force of the state. The state order also includes the norms belonging to the international agreements to which Romania has acceded and have as object the sports activity. Knowledge of the legal system is necessary for all participants in physical education and sports activities, where values such as life, health, bodily integrity, dignity, justice, equity and freedom must be protected and promoted. Sanctions received as a result of violating legal norms can create major dysfunctions in the management of physical education and sports organizations: the sports area where the sports regulations (and the rules of the game) govern; the area of international sports structures with extension to the area of national sports structures that develop their statutes, regulations, etc. according to the statutes of international sports federations.

In the traditional doctrine, the Civil Code subjected civil liability, at least technically, to different regimes, as civil liability was criminal or contractual. Thus, only these two forms of liability belonged to civil law.

Today, the New Romanian Civil Code and the UE regulations regarding the institution of civil legal liability point out the birth of a third form of civil liability, namely professional liability. Thus, we will be in a position to address the issue of civil liability while tackling the

quality of common law of tortious civil liability, referring to the new form of civil liability, which is professional liability.

By identifying malpractice in the activity of physical education and sport, we will create not only an image of the obligations by establishing damages caused to athletes or third parties but also a particularisation of the professional liability of those involved in sports (and related occupations) including coaches, physicians, physiotherapists, physical education teachers, etc. Thus, we will have the support of some effective attempts to harmonise the Romanian sports legislation with those of the European and Euro-Atlantic structures in which we are integrated.

The new concept of legal ethics (of the sports profession). Professional malpractice

The concept of legal ethics must be imposed on all professionals involved in sports activities. Thus, the concept of ethics, and even more that of legal ethics, is polysemantic. This situation is favoured by the intertwining of morality (ethics), law and professional practices. The study of legal ethics, as part of applied ethics, is an imperative not only for the science of law but also for moral philosophy. For these reasons, moral philosophy has been marked in recent years by the singular development of its subdomain known as “applied ethics”. (Sibana, 2008)

The research of legal ethics as part of professional ethics is incipient in Romania. This explains the very low interest (perhaps for reasons of immorality or amorality) of professionals, the media and politicians in granting juridical status to sports activities. It is true that there are still some possible interpretations that would not make it possible to blame professionals for malpractice because, in the interest of delaying the involvement of the institution of legal liability, the existence of codes of ethics of certain professions is invoked.

Under these circumstances, we will be able to “define” (absolutely theoretically) legal ethics through the effort of understanding and interpreting legal norms, followed by their application in total good faith (Sibana, 2008).

The ethical-legal principle underlying the employment of civil liability was introduced in the regulations of the Civil Code in article 1349: the violation of the general obligation to observe the legal provisions or the rules established by the local custom, if it had as a consequence the violation of the subjective rights and legitimate interests of other persons, obliges the guilty party to full reparation. In contractual matters, this principle is reflected in the provisions of article 1350 of the Civil Code. The universalism of this rule makes it applicable in all cases, establishing the legal framework in which the victim can claim and obtain the payment of compensation.

This principle has deep moral meanings, being equitable the restoration of the social balance destroyed by an illicit act, which ensures the reparation of the damage to the victim by the one who is guilty of the created situation. This dimension of civil liability results from the fact that, by exercising freedom, a person builds their own personality but, at the same time, must also assume responsibility for their actions.

The individual who acts consciously is responsible for personal acts and their consequences, being obliged to restore the distorted social balance. True responsibility is always associated with the order of commutative justice, which tends to establish a legal

reaction meant to remove the consequences of the prejudicial fact. The relationship between ethics, morality and law thus focuses on the idea of guilt of the perpetrator. Freedom and responsibility are two complementary and indispensable concepts that characterise human dignity.

The ethical-legal meanings of civil liability for professional malpractice (Luntraru, 2018)

The legal relationship between the professional (sports profession/structure) and the beneficiary of the service (client, student, performance athlete, spectator, etc.) cannot be entirely subordinated to the rules established by a civil contract or the rules of essentially tort liability. Therefore, the debates on the conditions and foundation of the professional's responsibility aim to detect its specific elements in order to argue the need to harmonise the legal norm with the realities of the contemporary society. All this due to the increasing danger of damage caused to the activity of physical education and sport.

Given the diversity and complexity of the hypotheses of professional civil liability, in the legal plane, it is necessary to establish some abstract rules applicable to all cases of malpractice, which are likely to ensure more effective protection of the victim by supporting the victim in obtaining compensation.

The regulation of tortious and contractual civil liability in the current Civil Code of Romania aims to establish the rules of principle that, in the matter of professional malpractice, are meant to govern the conditions of initiation and success of the action in incurring liability, respectively to lead to restoring the social balance destroyed by committing something that has resulted in the injury of another person. In order to ensure full protection of the victim from the act of malpractice, there is a tendency to objectify the civil liability of the professional, who is engaged in most cases independently of any guilt. Thus, the analysis is transposed into a causal plane, the simple occurrence of the damage triggering the civil liability mechanism. As a special hypothesis of legal liability, civil liability for professional malpractice is that legal relationship that arises from the violation, by certain categories of persons generically called professionals, of the rules of conduct established by law or the professional body to which they belong, causing damage to another person with regard to which the obligation to offer repair arises. (Cimpoeru, 2013)

Analysed as a legal institution, malpractice meets the rules governing this obligation to compensate the victim, related to the contractual or extra contractual act of the professional involved, in our case, in sports and/or related activities (Luntraru, 2018).

As follows from the definitions set out above, the structure of the legal relationship of liability for professional malpractice includes the four classic elements of civil liability in general: damage, unlawful act of malpractice, the causal link between them and the fault of the person responsible. In this context, the coach can be engaged in various forms of legal liability - criminal, civil, administrative, pertaining to the labour law (including those concerning occupational safety and health) - depending on the nature of violated legal regulations. We are in the situation where the person harmed by the acts of the coach, by a crime (criminal act) can become a civil party. Increased attention should be paid to the child protection in sport, respecting both Law no. 272/2004, republished, on the protection and promotion of children's rights and Government Decision no. 75/2015 on the regulation of

remunerated activities performed by children in the cultural, artistic, sports, advertising and modelling fields.

We are also in a situation where the coach, as we have shown, can be engaged in special forms of liability, for example, those contained in anti-doping regulations.

For this, it is necessary to provide information about the Decision of the Constitutional Court of Romania on the Jurisdiction of the Court of Arbitration for Sport in Lausanne regarding doping in sport. Thus, the Decision of the Constitutional Court of Romania no. 560 of May 29, 2012, refers to the exception of unconstitutionality of the provisions of article 61 of Law no. 227/2006 on preventing and combating doping in sport, published in the Official Gazette of Romania, Part I, no. 537 of August 1, 2012, with entry into force from the date of its publication. The Constitutional Court of Romania solved the exception of unconstitutionality of the provisions of article 61 of Law no. 227/2006 on the prevention and combating of doping in sport, an exception raised, *ex officio*, by the Cluj Court of Appeal - Commercial Section, of administrative and fiscal contentious in File no. 131/33/2011. The exception formed the object of the File of the Constitutional Court no. 629D/2011. Thus, the Romanian Constitutional Court, considering the documents of the case, examining the conclusion of the referral, the views of the Government and the Ombudsman, the report prepared by the judge-rapporteur, the claims of the present party, the conclusions of the prosecutor, the criticised legal provisions in reference to the provisions of the Constitution, as well as Law no. 47/1992 retained the following: The Constitutional Court has been legally notified and is competent, according to the relevant legal provisions, to resolve the exception of unconstitutionality. The object of the exception of unconstitutionality is represented by the provisions of article 61 of Law no. 227/2006 on preventing and combating doping in sport, republished in the Official Gazette of Romania, Part I, no. 63 of January 25, 2011, with the following content: - The decisions of the Board of Appeal may be challenged at the Court of Arbitration for Sport in Lausanne, within 21 days from the date of communication. In support of the unconstitutionality of these legal provisions, the author of the exception invoked the constitutional provisions of article 20 regarding the international treaties on human rights, article 21 regarding the free access to justice, article 124 regarding the administration of justice and article 126 regarding the courts. Examining the exception of unconstitutionality, the Court finds that free access to justice is not absolute, but may involve limitations, as long as they are reasonable and proportionate to the aim pursued. In this respect, the European Court of Human Rights has ruled in its case law, for example in the judgment of 21 February 1975 in *Golder v. the United Kingdom*, that the right of access to the courts is not absolute. Being a right that the Convention has recognised without defining it in the narrow sense of the word, there is the possibility of implicitly accepted limitations even outside the limits that circumscribe the content of any right. At the same time, in its Judgment of 28 May 1985 in *Ashingdane v. the United Kingdom*, the Court stated that this right required, by its very nature, regulation by the State, which may vary in time and space, depending on the resources of the communities and the needs of the individuals. In drafting such a regulation, states enjoy a certain margin of appreciation. Regarding the arbitration procedure, the Court, by Decision no. 203 of March 7, 2006, published in the Official Gazette of Romania, Part I, no. 267 of March 24, 2006, has ruled that arbitration is an exception to the principle that the administration of justice is done by the courts and represent an effective legal mechanism

designed to ensure an impartial, faster and less formal, confidential trial completed by judgments liable to enforcement. Moreover, the Court finds that Romania accepted, by Law no. 367/2006, published in the Official Gazette of Romania, Part I, no. 828 of October 9, 2006, the International Convention against Doping in Sport adopted at the General Conference of the United Nations Educational, Scientific and Cultural Organization in Paris on October 19, 2005. The World Anti-Doping Code is an integral part of this convention. Thus, in Part I of the World Anti-Doping Code, article 13 expressly provides for the jurisdiction of the Court of Arbitration for Sport in Lausanne in cases of doping in sport. The Court notes that, in the field of doping in sport, the Court of Arbitration for Sport in Lausanne functions as a disciplinary court, in particular after the adoption of the World Anti-Doping Code, which in this case confers direct jurisdiction to that court. The Constitutional Court, in the name of the law, decided: Rejects as unfounded the exception of unconstitutionality of the provisions of article 61 of Law no. 227/2006 on preventing and combating doping in sport, an exception raised, ex officio, by the Cluj Court of Appeal... Definitive and generally mandatory. Delivered in open court on May 29, 2012, signed by the President of the Constitutional Court. Thus, when examining the facts and legal aspect of a case, all courts, arbitral tribunals and other judicial bodies must take into account and respect the distinct nature of anti-doping regulations in the World Anti-Doping Code.

Future projection of particular hypotheses on damage creation

We believe it necessary to show several particular hypotheses of causing damage in the sports activity, which may attract the professional liability of coaches.

One of the hypotheses is non-compliance with the general framework for regulating and sanctioning the illegal exercise of a profession (Dumitru, 2019). This author notes that currently, in Romania, there are several laws in force that regulate the development of certain professions or trades that establish the conditions to be met, in what form and way of organization that profession/trade can be exercised.

These texts of law refer to the framework norm of incrimination, which is found in the Criminal Code at article 348, with the marginal name “Exercise without right of profession or activity” and the following content: Pursuit without right of a profession or activity for which the law requires authorisation, or its pursuit in other conditions than the legal ones, if the special law stipulates that the perpetration of such deeds shall be sanctioned according to the criminal law, shall be punished by imprisonment from 3 months to 1 year or by a fine. The special laws governing the pursuit of a profession, the pursuit of a trade or the pursuit of an activity requiring a certain professional qualification or attestation contain an almost standard text stating the criminal nature of the act consisting in the pursuit of that activity, which is the subject of its regulation, and with regard to punishment, reference is made to the Criminal Code.

The Constitutional Court, in a decision rejecting an objection of unconstitutionality, ruled that: The criminalisation and sanctioning of the unlawful pursuit of certain professions or activities for which certain training is required and consequently is subject to authorisation express the need to defend social values of particular importance, including the person’s life and physical and mental integrity, as well as the patrimonial interests. The company cannot

allow certain professions, such as that of physician, pharmacist, dentist or nutritionist (our note) to be practiced by persons without qualification and without the necessary liability in case of dangerous or harmful consequences. This is how, even by the Decision of the Constitutional Court, the importance of the social value defended by the incrimination norm is emphasised. It does not remain at the level of the patrimonial interests of the person but rises to the highest level, namely the physical, mental integrity and even the life of an individual. The text of article 348 of the Criminal Code quoted above revolves around two “key” elements: the pursuit “without right” and “under other conditions than the legal ones”. Therefore, in order to determine the content of the crime of pursuing the medical profession without right, it is essential for us to know when a person has the “right” to practice medicine, what this right consists of, what authority and when may recognise it, what are the conditions and the limits within which the right to free practice of the medical profession can be exercised. Article 393 of the Law on Healthcare Reform no. 95/2006 states that the medical profession is one of those that requires a certain form of authorisation and cannot be practised by anyone, otherwise we are in the hypothesis of article 348 of the Criminal Code: The practice of the medical profession by a person who does not have this quality constitutes a crime and is punished according to the Criminal Code with subsequent amendments and completions.

At the conclusion of this last paragraph, if physicians, nurses and paramedical staff are required to comply with rules that state that they do not recommend, prescribe or administer medication and/or dietary supplements containing prohibited substances, do not recommend, prescribe or cooperate in the use of prohibited methods that are included in the prohibited list, except on the basis of an exemption for therapeutic use, then all the more so these prohibitions are addressed to coaches - violations that may lead to (aggravating) sanctions by the Anti-Doping Code, Law no. 143/2000, the Criminal Code, Law no. 96/2006, etc.

Conclusion and Proposals

In our opinion, the legal and legislative factors should consider the management of the institutions in charge of physical education and sport as very important. The training of “sports workers” as well as the management of specialised structures in a society undergoing an intense process of transformation, with a development perspective, requires a kind of training that includes modern general culture and specific knowledge, as well as legal training. It has to be able to bring about changes in the way of approaching physical education and sport.

Thus, we provided the reasons why the sports coach profession, at least in Romania, should be accessed through comprehensive studies able to form useful and necessary skills in accordance with the requirements of the specific professional deontological approach. The considerations regarding the stated topic compel us to support the need to assimilate knowledge regarding the professional deontology, with special regard to the legal culture as an integral and mandatory part in the training of sports coaches.

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