131 - SPORTS JUSTICE: DICHOTOMY JURISDICTIONAL

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1. SPORTS JUSTICE: DICHOTOMYJURISDICTIONAL

In order to understand Sports Justice, we must first introduce how the access to the Brazilian courts occurs. In this sense, prudent resort to Alexandre de Moraes (2013):

> "Considering the principle of free access to the judiciary, the 1988 Constitution removed the necessity of completing administrative instances before submitting a demand at the Judiciary."

This development is not unique to Brazil, as matter of fact, dictatorial governments tend to try to limit the access of its own population to the judiciary and when such governments fall, arises the urge to defend the free access to justice, as a form of protect democracy.

The right of citizens not to have their claim subject to administrative field is protected by the Constitution, in its article 5º, XXXV:

"The law will not exclude from consideration of the Judiciary injury or threat to a right".

The only exception to this rule is given by the Constitution, in its Article 217, when comes to sports and Sports Justice. In this sense, Martinho Miranda Neves:

> "Single hypothesis admitted at the Constitution that prevents immediate access to the judiciary, forcing interested parties to discuss their conflicts initially at a private institution of trial."

This study proposes understand why this permission occurs when it comes by sports justice.

2. THE AUTONOMY OF THE SPORTS COURTS

Despite the controversy assigning proper jurisdiction, brought to parliamentarians throughout delineating the constitution by sports confederations, the specificity of the sporting world would not be as well achieved by the magistrates, which could generate uncertainty at competitions. In 1988, Álvaro de MeloFilho has brilliantly argued that:

> "The simple fact of the injunction have radical effects, resulting in the change tables in the suspension of matches and championships, causing inconvenience and irreparable harm. And the plaintiffs covered up with the grant of the injunction reached, your goals, or frustrating the holding of competitions, imposing the participation of athletes and sports teams prevented by legislation."

In addition, we quote Luiz Roberto Martins Castro (2013):

> "Due to the issuance of the 1988 Constitution, we noted three facts related to Sports Justice:
> The first, which was to limit the powers of Sports Justice to judge, only cases relating to competition and sporting discipline. The second are the prerequisites for Justice examine cases of original jurisdiction of matters of Sports Justice: prior exhaustion of all instances of Sports Justice when the final decision of Sports Justice is not given within sixty (60) days (. ..).The third is called Zico Law.".

Therefore, it is clear throughout brazilian legislation the autonomy of Sports Justice. We can imagine that maybe Brazil would not be at the epicenter of the sports events if this specific justice was not autonomous.

3.THE INTERFERENCE OF THE JUDICIARY

The Judiciary is one of the pillars of a democratic state, and therefore, cannot be completely removed from the 'Sports Justice'. This separation would be as or more onerous than the previous intervention itself. What the Constitution tried protect was the excessive interference.

Once the principle of the autonomy of sports justice, essential that the right of intervention of the Judiciary only remains to ensure guarantees and fundamental rights to the citizens. In the same article 217 of the Constitution, there is:

> "§ 1º - The judiciary will only permit actions regarding discipline and sports competitions after exhausting the instances of the sports courts, as regulated by law.
> § 2º - The sports courts shall has the maximum period of sixty days, from the commencement of proceedings, to render final judgment."

Thus, more than just provided by law, the intervention of the judiciary is providential for maintain the health of the 'sport justice' itself.

4. CASES OF HARMFUL INTERVENTION AT THE SPORTS JUSTICE DECISIONS

When dealing with the intervention of the Judiciary in sporst, the main case is the legal dispute between the Clube de Regatas do Flamengo and São Paulo FutebolClube by "Taça das Bolinhas", granted to the first club to win three consecutive times or five alternating the largest competition of football in Brazil.

Due to changes in the regulation of the Brazilian Championship at the year of 1987, known as "Taça da União", C.R. Flamengo refused to contest the final of the tournament against Sport Club do Recife, requiring being declared champion by the Brazilian Football Confederation.

Once the non-recognition, initiated a legal battle that has lasted for years. From 2007, also involved the Sao Paulo FutebolClube, which has won its fifth alternate title. If C.R. Flamengo was declared champion of 1987, would have reached such a feat in 1992.

After more than two decades, the legal battle between the clubs is not expected to end. Often there are decisions that only show the importance of non-intervention by the Ordinary Courts in sport matter.

Another case occurred in 2012 when an injunction authorized TrezeFutebolClube to compete in the C Series of the Brazilian Football Championship, which was totally contrary to the constitutional provision that deals with the Sports Justice. This injunction was won because the team that gave away to TrezeFutebolClube was eliminated from the tournament, by having been used a decision issued by the Ordinary Courts.

For Renato Savy (2011):

> "Legal and sportingly, the Rio Branco is wrong, because the current law prohibiting the Clubs seek justice before exhausting all sports bodies.
>
> The Brazilian Football Confederation, based in art. 6 of its Statute, applies severe sanctions in the event of activation of the Common Power to resolve issues between the clubs, athletes and sports administration entities.
>
> Statuteof CBF,
>
> art. 6: The clubs recognize the Sports Justice as competent to resolve the conflicts between them and CBF, waiving the right to appeal to the common law, before expiry of the remedies provided for in sports law, getting, in case of disobedience, subject to the penalties provided in disciplinary legislation sport ...
> That understanding should be the fact that FIFA, in item 1 of Art. 57 of its Statute, prohibits access to common justice, taking exception to the labor or even criminal"
>
> Another case occurred in 2013, before valid soccer match between clubs Coritiba FC and E. C. Sousa for the Copa do Brasil. An injunction issued by the 15ª VaraCível de João Pessoa suspended a decision of the Superior Tribunal de JustiçaDesportiva, which had excluded the Centro SportivoParaibano of the tournament and placed Sousa instead.

In addition to the ordinary justice directly interfere in a decision given by the higher instance at Sports Justice, it caused a huge disruption for fans and clubs.

5.CONCLUSION

We conclude, therefore, that although the judiciary is important for a democratic state that preserves its citizens, the choice of legislator which created an exception to the principle of non-obviation of Judiciary was salutary.

In the case of sports, allow the autonomy and independence of Sports Justice turns the citizen its biggest beneficiary, after all, the fan watches a sporting competition awaiting its end, and any interference that endangers the natural unfolding of the competition is dangerous for the competition and the fans.

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SPORTS JUSTICE: DICHOTOMY JURISDICTIONAL

The importance of sports in Brazil is colonial. Used as a way for disciplinary control labor, political influence, educational and even source of profit, the sports activity was developed through out centuries.

Despite making itself maidenly present in other constitutions, it was the "Citizenin" Constituition 1988 that brought sports to the level it was due. The same. This same device allows exceptional autonomy in § 2º granted to the Legal Organizations: "The Justice will only admit actions related to discipline in sports competitions after exhausting all instances of the sports court, set by law.

However, such autonomy is not complete. The constitution itself admits interventions in legal decisions in sports. The problem, therefore, arises

The study`s objective, thus, is to analyze where the Sports Justice is, in fact, autonomous and how affecting and at the same time fundamental the common Justice `s intervention can be.

SPORT JUSTICE: DICHOTOMIEJURIDICTIONNEL

Colonial estl'importance du sport au Brésil. Utilisécomme un moyen de discipliner le contrôle du travail ,l'influencepolitique , éducatif et même source de profit, l'activité sportive a étédéveloppée au cours des siècles .

Tout en faisanttimidedansd'autresconstitutions ,était la Magna Carta de 1988 a apporté le sport au niveauoùilétaitdû , cemêmedispositifdansleur accorder uneautonomieexceptionnelle en ce qui § 2º concernel'organisationjuridique: «Le pouvoirjudiciaire ne permettra actions en ce qui concerne la discipline et les compétitionssportives après avoirépuisé les instances de la justice sportive , tellequeréglementéepar la loi. ».

Toutefois, cetteautonomien'est pas complète. La Constitution elle-mêmeadmet interventions dans les décisionsjusdeportivas . Se posedonc un problème.

L'objectifestd'analyser comment l'autonomie du sport estnécessaire et comment les interventions de la justice commune peuventêtreconsidérables et nuisibles en même temps.

JUSTICIADEPORTIVA :DICOTOMÍA JURISDICIONAL

Colonial es la importanciadel deporte en Brasil. Se utilizó como medio de control de la disciplina laboral, la influencia política, la educación e incluso fuente de beneficios , laactividaddeportiva se fuedesarrollando durante siglos. Aunque hacerlo de forma enotrasconstituciones , fuela Carta Magna 1988 que llevó deporte al nivel que se ledebe, este mismo dispositivo ensu § 2º llevóautonomía excepcional enrelaciónconlaorganización legal: " El Poder Judicial sólo permitirá accion es respecto a la disciplina y lascompeticionesdeportivasdespués de haberagotadolas instancias de lajusticiadeportiva , según lo dispuesto por laley " . .

Sinembargo, esta autonomía no es completa. La propiaConstituciónreconoce intervenciones endecisiones jusdeportivas . Surge el problema.

Por tanto, el objetivo es analizar hasta vá laautonomíadel deporte y lo quanto és importante y al mismotiempoperjudicial as intevenciones de laJusticia Comum.

JUSTIÇA DESPORTIVA: DICOTOMIA JURISDICIONAL

Colonial é a importância do esporte no Brasil. Utilizado como meio de controle disciplinar laboral, influência política, educacional e até fonte de lucro, a atividade desportiva foi se desenvolvendo ao longo de séculos.

Apesar de se fazer presente timidamente em outras constituições, foi a Carta Magna de 1988 que trouxe o desporto ao patamar que lhe era devido, Este mesmo dispositivo em seu parágrafo segundo concede autonomia excepcional no que se refere à organização Jurídica: “O Poder Judiciário só admitirá ações relativas à disciplina e às competições desportivas após esgotarem-se as instâncias da justiça desportiva, regulada em lei.”.

No entanto, tal autonomia não é completa. A própria constituição admite intervenções nas decisões jusdeportivas. Surge, dessa forma, a problemática.

O objetivo do estudo,portanto, é analisar até que ponto vai a autonomia da Justiça desportiva e o quão lesiva e ao mesmo tempo fundamental podem ser as intervenções do Pode Judiciário Comum

PALAVRAS-CHAVE: Justiça Desportiva; Art. 217 da CRFB; Direito Desportivo