89 - CHILDREN AND YOUTH SPORTS LAW: A STUDY OF COMPARATIVE LAW BETWEEN BRAZIL AND FRANCE

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1. INTRODUCTION: OVERVIEW OF THE STUDY

In the case of sport in France, it is possible to identify the establishment of legal boundaries through Law No. 84-610/84, which regulates the organization and promotion of physical activities and sports. The legal system of the country provides a tripartite sports associations structure, thereby establishing the legal regime to which each is subjected according to its nature. These three classifications would be the school associations, sports groups endowed with their own statute, and sports associations.

The first of them, the object of our study, have their legal status regulated by the French Education Code, which provides laws about education in schools, their workload, as well as special cases of children recognized as top athletes or aspiring ones. It is necessary to assert that the French government greatly promotes the development of sports by instituting the practice in effective public service, such as provision of training to sports professionals, not only teachers, but also businessmen and sports entities in the country. Likewise, it is unquestionable the care of the French government for the preparation of their top athletes, as well as for the promotion of research for the development of knowledge in sports.

Through methodological strategy for a comparative study, it is possible to identify in Brazil a difference in the treatment given to sport juvenile. The Brazilian constitutional legislature enshrined in Article 217 of the Constitution in force garantees not only the "right of access" to sport for all citizens, but also made a division in its implementation targeting three different social dimensions: the sports' education, participation, and high performance.

The Brazilian Constitution also provides for the allocation of public resources to the promotion of Education and Sports, and in specific situations to the High Performance Sports. However, we see the need for an increase in funds for the increase of Sport Education in Brazil, considering the current trend of increasing investments in the high performance sport thanks to the context related to the mega sporting events approaching the country.

In this sense, it is possible to note that in France physical activities and sports are a fundamental part of education, culture and social integration and is substantially promoted in schools, consisting of the government's interest to protect children and teenagers, as well as the professionals who deal with these young people. On this sense, a considerable effort is identified in the development of sport practiced by young French people, who are prepared throughout K-12 education to possibly become elite athletes.

2. THE EDUCATION CODE AND SUPPORT FOR THE DEVELOPMENT OF SPORTS

The Education Code of France contemplates various statutes regarding school education, workload, and special situation of children who are either listed as aspiring athletes or already are in the high-level dimension, permitted by the following code even for individuals still in training:

> "Art.L. 331-6. High schools allow, in accordance with appropriate formulas ,preparing students for sporting high level."

Athletes who are studying at a higher education institution are benefited by the scope of Article L. 611-4 of the Company Law:

> "Article L. 611-4. Institutions of higher education allow athletes to build and pursue their sporting careers, making the necessary adjustments in the conduct and organization of their studies. (...) They support the access of athletes, regardless of their academic qualifications, to training and development of learning under the conditions defined in Articles L. 612-2 to L. 612-4 and L. 613-3 to L. 613-5."

The social dimension of Sports Education in Brazil finds support in the Law number 9.394/96, Law of Guidelines and Bases of National Education regarding sports. This law requires schools to offer the practice of physical education in their curricula for primary education. The educational model of sports has the objective of providing the individual a comprehensive education as a human being and citizen and should "materialize as a form of social skills training under the responsibilities of those who coordinate them, such as teachers, trainers, and leaders" (Vargas, 2012).

Despite the public policy effective in the Brazilian system, such as the National Physical Education and Sport Policy, which was replaced by the Diagnosis of Physical Education and Sports in 1975 and the National Plan of Physical Education and Sport (PNED), the achievement of several goals proposed to Physical Education never really occured. It is possible to admit that this phenomenon came about because of the existence of striking features of Brazilian society, such as the marked difference between school entities and the reality sport clubs, coupled with lack of infrastructure.

Regarding the allocation of funds for the development of this important dimension of sport, is established by the French government the benefit of the training service that assists public supporting the national policy for the development of sports and physical activities. Are provided initial and ongoing training to teachers, business executives and leaders of the sports area sports and physical activities, and fostering the creation of ties with sports federations, leagues and departments committees to develop joint actions. It asserting care with the preparation and training of high level athletes, research and dissemination of knowledge in sports and physical activities, as well as monitoring medical and paramedical staff for the sport and the development of sports medicine.

As for the financial support of the Brazilian State, Article 217 of the Higher Law establishes, in its section II, the allocation of public resources to promote priority of Sport and Education, and in specific cases, for High Performance Sport. However, in the current Brazilian context regarding the mega sporting events and the dizzying changes in social values, it

remains unquestionable to highlight the strong trend towards increasing high performance sports due to the high numbers moved in the process.

The promotion of mass sport events has become marketed to all strata of society, and are a lot of times transmitted in real time. There is a need to increase investments for the promotion of Sport Education in Brazil so that it reaches the real purpose exposed by the Constitution, as it is intensily encouraged by the French Government for the growth of this greatly important dimension to world sports and the full development of the human being.

3. THE SPORTS CODE IN FRANCE AND THE CONCERN FOR CHILD PROTECTION

The French Sport Code belongs to a special set of documents and legal instruments that constitute the Civil Law. The Sporting Code includes four books: organization of sports and physical activities, involvement in sport (athletes, referees, coaches/trainers, clubs and teachers from outside the area of education); different forms of practice, safety and hygiene in practice sites, and organizing sporting events and, finally, the financing of sport and implementation of the Code by local authorities.

Physical activity and sports are an important part of education, culture, and social integration. According to Article L100 - 1, sports contribute significantly to the fight against school failure, helps to reduce social and cultural inequalities, and contribute to the health of individuals. The promotion and development of sport and physical activity for everyone, including people with disabilities, is in the general interest of the government. In order to promote access to sports activities in all its forms, sports federations and school associations approved by the Ministry responsible for youth can develop rules adapted to practice that does not endanger the safety of practitioners, as agreed by Article L131 - 7.

The legal statute that deals with the institutionalization of the general rules of the sport and its modalities in Brazil is Law No. 9.615/98, named Pelé Law, enabling the application of Article 217 of Magna Law. According to the aforementioned Law, Educational Sport would be that "in systems of teaching and education in unsystematic ways, avoiding selectivity and hypercompetitiveness of its practitioners in order to achieve the comprehensive development of the individual, and their training for citizenship and leisure practice."

It is important to highlight the government's concern for the suitability of French people who deal with the youth in question. Nobody can teach, lead, or supervise a physical activity or sport with minors if the former had been subjected to some administrative prohibition to participate in any capacity level, the management and supervision of institutions related to the protection of minors.

To ensure protection of the health of athletes and the preservation of sports ethics, the French Government enables Resource, Experience, and Sports Performance Centers mentioned in Article 5 of Decree 112-3. They participate in conjunction with the Regional Offices of Youth, Sports, and Social Cohesion in the National Development Policy of Physical Activity and Sports as well as in training in areas of physical activities or sports. Fundamentally, these centers aim to ensure, together with sports federations, training and preparation of athletes, and to implement the double project to reconcile the pursuit of both athletic, and academic or professional performance.

To initially and continually organize vocational training in the areas of physical activity, they may enter into cooperative arrangements with state agencies and associations to develop training activities that mobilize ways to include these services under the label of "training-associated structures." Resource, Sports Performance, and Experience Centers participate in the national network of high-level sports. As such, they may in particular contribute to the research, observation and development, production and dissemination of knowledge, and action in international relations and cooperation. Under agreements with the Minister of Sports, they ensure the functioning of national resource centers on specific topics in the areas of sports and fitness activities. They may also enter into any agreement for cooperation in their field of action, and carry out actions in connection with their missions.

While individuals under age are targets of substantial protection in France, it is amazing to realize that in the Brazilian sports legislation, particularly in the context of the law governing standards for sport including Law 9.615/98 popularly known as Pelé Law, there is no specific treatment for the educational dimension of sport and no means to prevent criminal behavior and recover youth offenders through education. Thus, the social dimension related to the educational sport, finding support in the Constitution of 1988, in which is mentioned the objectives of the Law of Guidelines and Bases of National Education, unequivocally leaves a significant gap.

Children and teenagers who are victims of physical or mental violence involved in educational competitions, have only the option of resorting to the courts through their legal representatives to give rise to recovery of damages or punishment to another child or teenager. This way of trying to remedy the conflict does not result in the education and awareness of neither the practitioner of the violent act nor the other young people involved, contradicting with the real purpose of Sport Education.

4. FINAL THOUGHTS

Through Resource, Experience, and Performance Sports Centers, characterized by the French Code of Sports, it becomes clear the treatment given by the integration of young people in sports considering their school performance and behavior in society. It is everyone's responsibility to prevent unsportsmanlike attitudes that can hurt not only physically but also morally the individual minor under development.

On this sense, it is essential to portray the words of Fernandes (2003):

> "The fundamental principle of sports for children and young people should always take into account and be guided by the interests of the young man who practices it, in which all agents of socialization and in particular, physical education teachers and coaches should bear the responsibility and obligation to promote and ensure respect for sports figures their intervention."

In Brazil , the specific infra-constitutional protection issues in children and teenagers is guarded by Law No. 8.069/90 from the Child and Adolescent Statue, which offers in its preliminary provisions the realization of the right to the sport as a duty "of the family, the community, society in general, and the government." It is necessary to note the concern portrayed in the national legal system to protect and prioritize the treatment given to children by providing them specific fundamental rights, such as the rights to sports and play, with a view to the full development of these individuals, who are thereby prepares for the exercise of citizenship . However, despite the legislature on various devices highlights the importance of legal sports education and special protection that must be afforded to children and teenagers in training, law 9.615/98 directed to establish standards on sport is not specific about educational dimension as to offer ways to avoid violations of the rights and educate young people involved in their respective competitions.

Grounded in a model of intervention with children and young people involved in sports, such as France, the results presented in this study allow us to point out the necessity of developing a specific law or the addition of a chapter for the educational modality in the Pelé Law, providing for the possibility of creating Pedagogical Sports Commissions. To do so would require the adequacy of protective and socio-educational measures provided by the Statute of Children and Teenagers to apply "sanctions" similar to those applied by the specialized childhood and youth justice, which is responsible for judging and applying penalties compatible with the individual's discernment.

Lastly, on one hand there is in France considerable rigor regarding the development of Sport Education with the intent of preparing children and teenagers since high school, as well as a legal system with laws, codes, and ordinances specific for this sports model; it still occurs in Brazil precariously, showing an undeniable weakness for the realization and the concreteness of the spirit of the Law

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SPORTS LAW CHILDREN AND YOUTH: A STUDY OF COMPARATIVE LAW BETWEEN BRAZIL AND FRANCE

ABSTRACT

The main objective of this study is to make a comparison between the sports legislation, applied to young practitioners, of the Brazil and France. Through preliminary observational research, it became possible to expose the confrontation of the two social realities presented. We shall demonstrate, through the exposure of the education code and the sports code, the strong incentive of france to build a successful career, focused in both the performance and the development of the ethical principles of society, and also paying attention to important health matters. In contrast, although the Brazilian legislator preaches the full distinction between high performance sport and educational sport, which aims for the integral development of the individual and the formation of their citizenship, it's possible to see that our actual reality is very different from what is idealized in the Article 217 of the Federal Constitution of the Federal Republic of Brazil. Finally, taking into account the treatment provided by the French government to the promotion of school sports and caution used for the treatment of young people, we were able to establish our interventional proposal for the cases of physical and symbolic violence within the context of this sport.

KEYWORDS: Sport; Brazil; France.

DROIT DU SPORT ENFANTS ET LES JEUNES: UNE ÉTUDE DE DROIT COMPARÉ ENTRE LE BRÉSIL ET LA FRANCE

RÉSUMÉ

La présente étude a pour objectif central la comparaison entre la législation sportive destinée aux praticiens pour les enfants et les adolescents au Brésil et en France. Grâce à la recherche par observation préliminaire , il est devenu possible d'exposer la confrontation entre les deux réalités sociales présentées. Démontrer, à travers l'exposition de code de l'éducation et le Code du sport , le fort encouragement de la France à construire une carrière réussie à la fois adapté à la performance et à la formation des principes éthiques directeurs de l'entreprise , en plus de se répandre l'idéal santé. En revanche, bien que le législateur brésilien prêcher la distinction complète entre sport de haut niveau et l'éducation sportive comme un commandement qui a le plein épanouissement de l'individu et de la formation de leur citoyenneté , nous nous rendons compte que la réalité actuelle est bien différente de celle mentionnée à l'article 217 de la Constitution de la République fédérative du Brésil. Enfin, la prise du traitement tarifaire accordé par le gouvernement français pour la promotion du sport scolaire et la prudence utilisés pour le traitement des jeunes en question, nous avons établi notre proposition d'intervenir en cas de violence physique et symbolique dans ce cadre sportif.

MOTS-CLÉS: Sport, Brésil, France.

DERECHO DEPORTIVO NIÑOS Y JÓVENES: UN ESTUDIO DE DERECHO COMPARADO ENTRE BRASIL Y FRANCIA

RESUMEN

El presente estudio tiene como objetivo central la comparación entre la legislación deportiva dirigida a los profesionales de los niños y adolescentes en Brasil y Francia. A través de la investigación preliminar , se hizo posible para exponer el enfrentamiento entre las dos realidades sociales que se presentan . Demostraremos a través de la exposición del

Código de Educación y el Código de Deportes, el fuerte impulso de Francia para construir una carrera exitosa tanto para el rendimiento y orientado a la formación de los principios éticos que guían la empresa, además de impregnar el ideal la salud . En cambio, aunque el legislador brasileño predicar la distinción total entre deporte de alto rendimiento y la enseñanza del deporte como un mandamiento que tiene el pleno desarrollo de la persona y la formación de la ciudadanía , nos damos cuenta de que la realidad actual es muy diferente de los contemplados en el artículo 217 del Constitución de la República Federativa del Brasil . Por último , tomando el trato arancelario otorgado por el gobierno francés para la promoción del deporte escolar y de precaución se utilizan para el tratamiento de los jóvenes en cuestión , establecimos nuestra propuesta de intervención en casos de violencia física y simbólica dentro de este marco deportivo .

PALABRAS-CLLAVE: Deporto; Brasil; Francia.

DIREITO DESPORTIVO INFANTO-JUVENIL: UM ESTUDO DE DIREITO COMPARADO ENTRE BRASIL E FRANÇA

RESUMO

O presente estudo possui como objetivo central a comparação entre a legislação desportiva destinada aos praticantes infanto-juvenis no Brasil e na França. Através de pesquisas observacionais preliminares, tornou-se possível expor o confronto entre as duas realidades sociais apresentadas. Demonstraremos, por meio da exposição do Código da Educação e do Código do Esporte, o forte incentivo da França para a construção de uma carreira de sucesso voltada tanto para o desempenho quanto para a formação de princípios éticos norteadores da sociedade, além de perpassar pelo ideal da saúde. Em contrapartida, apesar de o legislador brasileiro pregar a total distinção entre desporto de alto rendimento e o desporto educacional que possui como mandamento o desenvolvimento integral do indivíduo e a formação de sua cidadania, percebemos que a realidade atual é bem distinta da qual trata o artigo 217 da Constituição Federal da República Federativa do Brasil. Por fim, tendo em pauta o tratamento dispensado pelo governo francês ao fomento do desporto escolar e a cautela utilizada para o tratamento dos jovens em questão, pudemos estabelecer nossa proposta interventiva para os casos de violência física e simbólica dentro deste âmbito desportivo.

PALAVRAS-CHAVE: Desporto; Brasil; França.