97 - THE EVOLUTION OF BRAZILIAN SPORT LEGISLATION: FROM THE PROTECTIVE GOVERNMENT'S ACTS OF THE 'NEW STATE' REGIME TO THE LIBERALISM OF THE PRESENT GOVERNMENT.

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Literature Review

The colonial and imperial regime

To approach the evolution of the brazilian sportive legislation, it is worthy reviewing the colonial period, marked by inexistence of a sportive standardization, justified by useful practices such as bow and arrow, canoeing, swimming, races, trekking, horsemanship, hunting and fishing, related to war and ones own survival (TUBINO, 2002; 2003). It is no less convenient, reviewing the Imperial period to highlight the obligatory of sportive practices in military academies, such gyms, fencing and swimming, whose regulations were disposed in decrees (TOLEDO, 1978).

The lack of a main standardization is that period, reflected in a national sportive disorder that lasted until the government of President Getúlio Vargas. Although in this period new sport modalities like basketball, tennis, soccer, immerged contributing to the spread of Brazilian sportive activity (PERRY,1973).

In the beginning, sport and physical education were considered as the same thing, and having no theoretical distinction. Although this, sport competitions were happening isolated, and started to receive independent interpretations in relation to the physical education activities (TUBINO, 2002).

The New State

Only in the period of the New State, of President Getúlio Vargas, the government started to regulate sports in general, through the Decree-Law number 3.1999/41, considered the first worthy national sportive norm.

Influenced by the totalitarian political regime of that period, the sportive legislation seemed to be marked by the presence of authoritarism and the protective government action on sport, whose real objectives were strengthening of the body, health and patriotic spirit, influenced by the german and italian orientation (CASTELLANI FILHO, 1994)).

This decree established the organization basis of sports throughout the country, evaluated as a control instrument, by the government, of the sport activities (MELO FILHO, 1994).

In effect, the authorial references aim to point out as characteristics of the sportive legislation published during the New State, the government protectiveness, supported by law to legislate on sport. This tutelary, by itself, could not be considered harmful to the national sport, once based on social, moral and ethical principles, which are essential to sports activity. Nevertheless, historical facts demonstrate the use of government political tutelary to inspect and to repress sporting manifestations that could threaten the stability of a anti democratic regime.

It most be considered, however the positive contribution during the government of President Vargas to the brazilian sport legislation. The constitutional instrument established in the Magna Carta of 1937, obligating all public schools to include the teaching of physical education, represented an important way to make the physical activities worthwhile in schools. No less important was the Decree-Law 3.617/41, that established the foundations and directrixes of the organization of College Sports, creating an organized structure for the sportive activity in the Universities (PERRY, 1973).

From the New State to the military regime

The regimes that succeeded the New State, seemed to have contributed slightly to national sport, considering, however, the period until 1964. In this period stands out the establishment of the Army Sports Commission (ASC), in the government of President Juscelino Kubitschek; regulation of soccer championships (schedules, interval, recess, etc.), proceeded in the government of President Jânio Quadros; and disposal of the profession of soccer player and their participation in the charged or his contract, regulated in government of João Goulart and modified through posterior legislation.

The military regime

The military regime was characterized by a totalitarian political government, marked by authoritarism and continuity of the New State, including the development of sport activities.

The sport legislation was marked by, during President Geisel's Administration, by the Law 6.251/75, which was deserve observation, since it situates itself in a intercession point between the New State's sport politics and contemporary ones at disposal in the Law 9.615/98 (Law Pelé), going through, in this interim the Law 8.672/93 (Law Zico).

The judicial precept in focus (Law 6.251/75) that established norms about physical education and sports, continued in the Vargas' administration, keeping it actions authoritarian and centralized.

These politics were concepted to establish a policy and a national plan of physical education and sport; relocate resources to sport; to provide a unitary vote to sport federations and confederations; and the creation of a national sport system, classified as communitarian sport, student sport, military sport and career sport.

The Law 6.251/75 had as it objectives improvement of the population's physical fitness; elevate sport's levels in all areas; the implantation and intensification of the practice of popular sport, elevate national technical-sport representations; and to diffuse sport as a way to use leisure time (MELO FILHO, 1994). The expressed objectives related to the military regime dictatorship, undoubtedly showed it's real intentions through repressive ways. Soon, the improvement of population's physical fitness, suggested a 'strong' body build, in the biological senses. On the other hand, the elevation of sport levels in all areas, as also the technical sport levels of the nation representations, not withstanding its real importance, reflected in the diffusion of a false and incompatible national image, in comparison with the social and political conjuncture. However the intentions to implant and intensify popular sport practice aimed and often were able to divert the focus of repressive government practices, which tortured thousands of Brazilian citizens.

On the other hand, President Figueredo's administration, was not represented any significantly changes to the Brazilian sport legislation, although, its considered the beginning of the country's return to democratization, characterized by amnesty for political prisoners and other acts that contributed to the return of the “State of Rights”, with consequential benefits for sport legislation's that would follow.

The democratic regime

The country's return to democracy initiated by President Figueiredo, was consolidated with the assumption of power by organized civil society, in the beginning of President Sarney's administration is marked by the promulgation of Brazilian Constitution of 1988, in effect, which shows in its article 24, the competence of Union, the States and the Federal District, to legislate on education, culture, teaching and sport, establishing in article 217, as an obligation of the government and a civilian right, the fomentation of sport activities (DANTAS, 1999; MORAES, 2005).

It is clear the competency attributed to the states and the Federal District, extinguishes unrestricted total control of the government, in elaborating juridical sportive norms. Thus proceeding, the constituent one wanted to decentralize from the union, the right to legislate sports, making viable to states and Federal District regulate their own needs. However, it is worthy to observing the conformity "sine qua non" between local and federal jurisdiction, where the local must obey principles and directrixes established by the federal government.

Aduced by the 'Magna Carta', that it is on obligation of the government, to foment formal and non-formal sport activities as a civil law, respecting the autonomy of each sport entities, their managers and associations, in the way they are organized and working; the remission of federal resources to promote the educational sport and on specific cases, career sports, distinguishing professional and non-professional sport; and protect and promote national's sport demonstrations (DANTAS, 1999; MORAES, 2005).

The present constitutional instrument clearly adduces the government's engagement in to promote the sport, establishing how to do, in fact as social law, defining the State's obligations, to democratize the sport, therefore, the access of population to the sport. On this sense, it is necessary to consider the aspects in agreement with the law.

The autonomy conceded to the sport entities and associations, makes the organizations feasible functional and organizational terms, in agreement with their own statutes, therefore, independents from governmental control. However, some administrative entities on sport activity, in the name of freedom, fear to coming up against some of legal constitutional statements, or another laws, allegating they have been prejudiced. It is relevant to explain that those entities in most cases, are trying to subdue and disrespect the law, looking to obtain advantages for their own interest and autonomy (PARENTE FILHO, MELO FILHO, TUBINO, 1989).

The priority of the transfer of public resources to educational sport, aims to promote sport participation as a means of the individual's personal formation, reducing the exclusivist effects from the career sports, as in the Olympic Games.

The different ways that professional and amateur sports are treated could not be more logical, once the first is considered self-sustained, and on the other hand, amateur demands investments. Otherwise, the benevolence for the amateur athlete seems to have been inserted in the Brazilian Sports Justice Code based on a lesser responsibility related to the professional player.

The national sports manifestations are also protected by a constitutional instrument to insure, protect and promote genuine's Brazilian sports.

The article 217 of the present Constitution, demonstrate the relation between Judiciary Control and Sport's Justice, establishing that the first will be in charge of disciplinary actions and competitions, once the Sports Justice Jurisdiction limit is reached, the Sports Justice has sixty days to deliberate and give its verdict. In this way the Sports Justice has legitimate control and considered capable to judge disciplinary cases related to sports competitions. However it reserves the right to appeal to the Common Justice once the Sports Justice jurisdiction limit is reached, or in case of disregard.

It remains for society and especially sport entities to make it worthwhile that which was proposed under penalty of the law that took years to conquer. In this sense, it is necessary to mention Pontes de Miranda: **nothing is more dangerous than constitute something without putting into practice. Or just put into practice what is convenient, or just obey which is the worst.**

During President Fernando Collor's administration little was done, mainly because of his impeachment. This event started President's Itamar Franco administration that proceeded significant deep changes in the brazilian sport jegislation, after approving the Law 8.672/93, known as Law Zico, because it was elaborated during Arthur Antunes Coimbra's (Zico) administration as Sport's Secretary of the Ministry of Education. The rule above mentioned broke off definitely with the government's centralization, and created a new concept of sport, rescuing educational manifestations, participation and income, so important to sport activity (MELO FILHO et al, 1988; TUBINO, 1992).

Nevertheless, facing difficulties to adapt to brazilian sports' reality, this law was altered during President Fernando Henrique's administration, and created the Law, 9.615/98, that established general norms for sports and other measures, known as Law Pelé, approved during Edson Arantes do Nascimento's (Pelé) administration as Extraordinary Minister of Sports.

Among the legal instrument inserted in the Law Pelé; it is worth reaffirming the sport's concept in all manifestations; to maintain the same principles from the Law Zico; the elaboration of a national sport's plan and policy; the establishment of a brazilian and national systems; define the administrative and practice entities of sport; the origin and application of resources to the sports; the regulation of the Brazilian Sports Justice. There is a special treatment referred in this Law about the sport activity, focused on the soccer player's contract, that was considered conservative and unchangeable in labor relations (AIDAR et all, 2000). However, even though some specialists were considering it as a liberating Law, because it gives the opportunity for the athletes to choose the team they want to work for, it caused insatisfaction for the teams, since they lost their greatest assets.

Subject to modifications according to social needs, the Law Pelé was altered by the Law 9.981/2000 (Law Maguito Vilela) that extinguished the semiprofessional sport activity; becoming facultative to the teams to turn or not commercial enterprises; extending from two to five years professional athlete's contracts; and restoring the Supreme Court of Sport's Justice, and also other judicial applications (MELO FILHO, 1988).

The Law Pelé was once again altered by the Law 10.264/2001 (Law Piva) that promoted the olimpics and paraolimpics sports, allotting to these committees 2 percent of the gross take from prognostic competitions and federal lotteries, in the ratio of 85% and 15%.

Finally, the Law 10.672/2003, also called the sportive moralization; promulgated by President Lula, altered the Law Pelé too, contributing the transparency of the professional management, foreseeing penalties for the directors whose administrations demonstrate irregularities.

Another worthy juridical norm was edited during President Fernando Henrique's administration, attending the claim of a whole professional category. The Law 9.696/98 refers to the Physical Education Professionals and created the regional and federal councils, regulating it as a profession. Although, the inspections executated by the regional councils have obtained modest results, because of its small structure to include the whole area of its jurisdiction, limiting its actions to more structured regions.

Besides the Law, 10.672/2003, already mentioned, president's Lula administration contributed promulgating the Law 10.671/2003, that refers to the Statute in the Defense of Sport's Fans, giving them rights as a common consumer, and on the other hand, give responsibilities such as supplier, to the entities in charge of organizing the competitions.

One most consider, as one of the other important contributions to the present government, the Law 10.981/2004, that established the athletic scholarship, in recognition of sportive talent for a better future results of the national representation, as in the Resolution 01/2003-CNE, that approved the present Brazilian Sports Justice Code BSJC, improving and uniting the revoked Brazilian Juridical and Disciplinary Sports Code, and the Brazilian Disciplinary Soccer Code (MEC, 2003; SION, 2004).

It should be emphasized brazilian expectation for the Projected Law 4.874/2001, being studied by the National Congress, that wants to unite legal instruments in the present sport legislation. Otherwise, it is relevant, based on the government's political action in the First National Sports Conference, that took place in the Federal District last year, that aimed on elaborate national sport plan and policy, supported by 83 thousand people mobilized in 873 cities, 26 states and the Federal District (ME, 2004). In this sense, the "Carta de Brasília", document approved at this event, says:

The theme "Sport, Leisure, and Human development" offered a wide debate about all aspects. From this

debate, it was purposed the creation of a National Sport and Leisure System, based on national policies of participative management and social control, of human sources and financing.

It is clear that other juridical acts, in the period observed, are added to the studied one. But, on remembering part of this history, its intended to establish a chain among main juridical norms, in the sense of make viable a better understanding of the evolution of the brazilian sport legislation.

Methodology

The present study consist on descriptive and documental research, in which were utilized bibliographical references in the sense of investigate, to register, analyze, and interpretate the facts that occurred in a determined time in space, through generalizations, recognize the past, understand the present and establish perspectives for the future (LAKATOS, MARCONI, 2000). In this case the author chose to discourse about the principles about the principal legal instruments related to National Sports, promulgated during the period studied, analyzing it's evolution until the present day.

Conclusion

The fact analysis from the edited juridical norms during the period between New State and the present government, allow us to conclude that impressive changes occurred in the brazilian sport legislation, mainly in the centralizing and protective action that marked Vargas government and military dictatorship.

In this perspective, It is relevant to put in context sport after the Magna Carta of 1988, that is kept connected to the essential rights which are: soberany, sportive autonomy, democracy, freedom, socialization, security and efficiency. About these changes, Melo Filho (2002, p. 42) reports:

Until 1985 the Sportive Legislation was poor and based on the "YOU CANNOT", whereas after this year, the "YOU CAN" philosophy predominated until 1998, when the "YOU CAN ONLY IF THERE IS NO RESTRICTION OR LAW IMPEDIMENT" started.

As you can see, the respect for the fundamental rights, took place in the present Sport Legislation, from the monopoly, authoritarism and repression, that marked the specific norm standardization, in the past. It is up to organized society to erase personal interest and apply the juridical norm, hermeneutic previewed in Dermoval Sarianni's philosophy: **to understand the real significance of Legislation, It is not enough to follow the Law by the book. You have to capture the essence. It is not sufficient to analyze the text. It is necessary to analyze the context. It is not enough to read the lines. You need to read between the lines.**

It is apparent that the present study has no intention to exhaust itself in documentation and effect the legislative acts that marked sport history. Nor set up its opinions as the absolute truth. It is reasonable discernment surely will contribute for a better comprehension of the evolution of Brazilian Sport Legislation.

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THE EVOLUTION OF BRAZILIAN SPORT LEGISLATION: FROM THE PROTECTIVE GOVERNMENT'S ACTS OF THE NEW STATE REGIME TO THE LIBERALISM OF THE PRESENT GOVERNMENT.

Abstract

The sportive movement, as the century's great phenomenon, has been mobilizing millions of people around the Brazil, interfering significantly in the people's habits and the manner which various social classes act. In this way the sport complexity needs a juridical ordering that regulates and disciplines it's relation with the society, in agreement with the definition, objectives, rights and duties, demonstrations, priorities, organization, operation and further aspects according to specific norms. However, the juridical-sportive standardization may produce positive effects or terrible consequences, depending on the hermeneutic and concern given it. However, the Brazilian legislative history demonstrates interferences, not always benefical, either by government organizations, nor by non governmental organizations, opposing legal, moral and ethical national sportive principles. In this perspective, this work at hand is to study the evolution of the brazilian sportive legislation, using as a reference the time between the New State, which was known as the period of the president Getúlio Vargas to the present political conjuncture of the today's president Lula. This study is descriptive and documental in which the author chose to comment about bibliographical and legislative references in a manner to discuss and analyse the effects of the main legal dispositives related to the national sport, promulgated during the studied period, concluding by the significant changes that occurred, mainly the protective state action on sportive activities and practice.

Key words: Legislation, sport, government.

ÉVOLUTION DE LA LÉGISLATION SPORTIVE BRÉSILIENNE : DU POUVOIR TUTÉLAIRE DE L'ÉTAT NOUVEAU AU LIBÉRALISME DE L'ACTUEL GOUVERNEMENT

Résumé

Le mouvement sportif, comme grand phénomène du siècle, a mobilisé des millions de personnes sur tout le territoire brésilien, en intervenant de manière significative sur les habitudes de notre peuple et dans le mode d'agir des diverses couches sociales de la population. De cette forme, la complexité du sport implique la nécessité d'un ordre juridique qui réglemente et discipline ses relations avec la société, ce qui se réfère à la définition, aux objets, droits et devoirs, manifestations, priorités, organisation, fonctionnement et autres aspects sujets à des normes spécifiques. Néanmoins, l'établissement de normes judirico-sportives peut produire des effets positifs ou avoir des conséquences néfastes, qui dépendent de l'herméneutique et de l'intérêt qui lui sont dispensés. De plus, l'histoire législative du Brésil montre des interventions, pas toujours bénéfiques, soit d'organismes relatifs à l'état d'autrefois, soit d'organisations actuelles non gouvernementales, qui contrarient les principes légaux, moraux et éthiques du sport national. Dans cette perspective, le travail en question a pour objectif d'étudier l'évolution de la législation sportive brésilienne, en prenant comme référence l'époque comprise entre l'Etat Nouveau, tel qu'est connu le gouvernement du président Getúlio Vargas, et la conjoncture politique actuelle du gouvernement du président Lula. Il s'agit d'étude de nature descriptive et documentaire, dans laquelle l'auteur a opté pour disserter sur des références bibliographiques et législatives, dans le sens de débatrre et d'analyser les effets des principaux dispositifs légaux qui sont afférents au sport national, promulgués pendant la période étudiée et conclue par le succès de changements accentués, principalement dans l'action tutélaire de l'Etat sur la pratique des activités sportives.

Mots-clés : législation, sport, gouvernement.

EVOLUCIÓN DE LA LEGISLACIÓN DEPORTIVA BRASILEÑA: DEL PODER TUTELAR DEL ESTADO NUEVO AL LIBERALISMO DEL GOBIERNO ACTUAL

Resumen

El movimiento deportivo, como el gran fenómeno del siglo, movilizó millones de personas en todo el territorio brasileño, interfiriendo significativamente en las costumbres de nuestro pueblo y en el modo de actuar de las diversas camadas sociales de la población. De esta forma, la complejidad del deporte implica la necesidad de un ordenamiento jurídico que reglamente y discipline sus relaciones con la sociedad, en lo que se refiere a la definición, objetivos, derechos y deberes, manifestaciones, prioridades, organización, funcionamiento y demás aspectos sujetos a normas específicas. Sin embargo, la normalización jurídica-deportiva puede producir efectos positivos o consecuencias nefastas, dependiendo de la hermenéutica y del interés que le sean dispensados. Además, la historia legislativa de Brasil demuestra interferencias, ni siempre benéficas, ya sea de organismos estatales de antaño o de organizaciones no gubernamentales actuales, contrariando los principios legales, morales y éticos del deporte nacional. Desde esta perspectiva, este trabajo tiene por objetivo estudiar la evolución de la legislación deportiva brasileña, tomando como referencia la época comprendida entre el Estado Novo, nombre que se le da al gobierno del presidente Getúlio Vargas, y la coyuntura política actual del gobierno del presidente Lula. Se trata de un estudio de naturaleza descriptiva y documental, en la cual el autor optó por discurrir sobre las referencias bibliográficas y legislativas, en el sentido de discutir y analizar los efectos de los principales dispositivos legales relacionados con el deporte nacional, promulgados durante el período estudiado, concluyendo por la ocurrencia de cambios acentuados, sobre todo en la acción tutelar del Estado sobre la práctica de actividades deportivas.

Palabras-clave: legislación, deporte, gobierno.

EVOLUÇÃO DA LEGISLAÇÃO DESPORTIVA BRASILEIRA: DO PODER TUTELAR DO ESTADO NOVO AO LIBERALISMO DO GOVERNO ATUAL

Resumo

O movimento desportivo, na condição de grande fenômeno do século, tem mobilizado milhões de pessoas em todo o território brasileiro, interferindo significativamente nos costumes do nosso povo e no modo de agir das diversas camadas sociais da população. Dessa forma, a complexidade do desporto implica a necessidade de um ordenamento jurídico que regulamente e discipline suas relações com a sociedade, no que se refere à definição, objetivos, direitos e deveres, manifestações, prioridades, organização, funcionamento e demais aspectos sujeitos a normas específicas. Todavia, a normatização juríco-desportiva pode produzir efeitos positivos ou conseqüências nefastas, dependendo da hermenêutica e do interesse que lhe são dispensados. Outrossim, a história legislativa do Brasil demonstra interferências, nem sempre benéficas, seja de organismos estatais de outrora, seja de organizações não governamentais atuais, contrariando os princípios legais, morais e éticos do desporto nacional. Nesta perspectiva, o trabalho em apreço tem por objetivo estudar a evolução da legislação desportiva brasileira, tomando como referência a época compreendida entre o Estado Novo, tal qual ficou conhecido o governo do presidente Getúlio Vargas, e a conjuntura política atual do governo do presidente Lula. Trata-se de estudo de natureza descritiva e documental, na qual o autor optou por discorrer sobre referências bibliográficas e legislativas, no sentido de discutir e analisar os efeitos dos principais dispositivos legais relacionados com o desporto nacional, promulgados durante o período estudado, concluindo pela ocorrência de mudanças acentuadas, sobretudo na ação tutelar do Estado sobre a prática de atividades desportivas.

Palavras Chave: legislação, desporto, governo.