

On the Modification of Sports Law from the Perspective of Legislative Law

Hao CHEN

The School of Policing Studies, Shanghai University of Political Science and Law, Shanghai, China

630309203@qq.com

Keywords: Legislative law, Sport law, The rule of law in sports

Abstract: The revision of the sports law is a major task of the construction of Chinese sports law under the background of the new era. The enactment and implementation of the legislative act of 2000 to the Legislative act of 2015 further modified, making the law of legislation have a great impact on china legislative practice, so amendment of the sports law must follow the legislation law. This paper, using the methods of literature and logic analysis, based on the requirement of legislative practice in the legislation law, probes into the main objectives and revising ideas of the revision of sports law. Research shows the main objective of the revision of sports law is to improve the quality of sports law, to provide legal guarantee for the development of sports in our country, and to lead and promote the reform and development of our country's sports cause. "Sports law" should amend the statutory sports field of the various subjects of the powers, obligations and rights, improve the clarity of the law, targeted, enforceable, and reset the sports arbitration system and the legal provisions of the authorized legislation.

1. Introduction

In the process of implementing the rule of law in the new era, the construction of the rule of law in sports in China faces a new opportunity. The legislative law is an important law related to our legislation and the basic law to regulate the legislative activities. The amendment of the sports law should not only comply with the basic spirit of the legislative law, but also abide by the specific provisions of the legislative law.

2. Legislation and Amendment of the Legislative Law of China

The legal system construction of our country has also begun to develop rapidly since the Third Plenary Session. During this period, the number of legislation is considerable, but there are many problems in the quality that cannot be ignored. For example, some laws and regulations may exceed their authority or conflict with relevant laws, and there are also contradictions between laws and regulations, rules and regulations. In order to solve these problems, the legislative law came into being in 2000 and was revised on March 15th, 2015. The revision focused on the new provisions on authorized legislation, local legislation, tax legislation, departmental rules and local government rules boundary, filing and review, etc. The legislative law will have a positive impact on the revision of the sports law, the legislation of sports administrative regulations, the departmental rules and the local sports legislation^[1].

3. The Study on the Necessity of the Amendment of the Sports Law from the Perspective of the Legislative Law

The sports law of China was promulgated in 1995, which was issued five years before the promulgation of the legislative law, and has not been modified in the past twenty-three years. Therefore, there was no requirement of the legislation law in the process of legislation in the sports law at that time. But now we have started the revision of the sports law again. On the one hand, the amendment of the sports law should abide by the basic spirit of the legislative law^[2]; On the other hand, the amendment of the sports law should comply with the specific provisions of the legislative

law, and should focus on the changes brought about by the new content of the amendment of the legislative law in 2015, especially the contents of some previous provisions which conflict with the legislative law and other laws.

4. The Study on the Main Objective of the Amendment of the Sports Law from the Perspective of the Legislative Law

Before modifying a law, we must consider the goal to be achieved in revising the law. First of all, improving the quality of legislation is one of the main objectives in our country's legislation practice. After the amendment of the legislative law in 2015, Article one of the general provisions specifically adds the expression of “improving the quality of legislation”. The transformation of sports field in China changed from “law” to “good law”, and from “sports law” to “sports rule of law”. Secondly, the amendment of the sports law should play a leading and promoting role in the development and reform of sports in China at present and in the future.

5. The Amendment of the Sports Law from the Perspective of the Legislative Law

5.1 The Amendment of the Sports Law Shall Comply with the Provisions of the Constitution and the Spirit of the Constitution

Constitution is the fundamental law of a country and the main premise of governing the country according to law is to run the country according to the constitution. As far as sports legislation is concerned, China's constitution has related provisions on sports all the time, from 1949 when new China was founded to 1978. It follows that China is a country with clear provisions on Sports in the constitution. In the amendment of the sports law, the terms and contents of the constitution which directly involve sports should be carried out and implemented primarily, followed by embodying the basic spirit of our constitution, and finally constitutionality of the sports law must be taken into account.

5.2 The Amendment of the Sports Law Should Further the Power, Responsibility and Rights and Obligations of Citizens, Legal Persons and Other Organizations in the Field of Sports

Article six of the legislative law clearly shows that legislation stipulates the rights and obligations of citizens, artificial persons and other organizations, and the power and responsibilities of government agencies scientifically and reasonably^[3]. As far as the current sports law is concerned, it only provides some principles on regulations on the management system of sports and the responsibilities of the government sports administrative departments but there is no clear stipulation about power and responsibilities, and even there is no clear range of statutory rights and responsibilities in some aspects.

In the process of the amendment of the sports law, the public affairs management functions of these organizations should be clarified. It is better to list their public affairs in an enumerated way, and stipulate the power and obligations and rights of institutions and organizations. The amendment of the sports law should not only set up special articles on the rights of citizens' sports, but also include the concept of rights protection in various chapters and clauses in the process of legislation^[4].

5.3 The Amendment of the Sports Law Should Further Improve the Clarity, Pertinence and Enforceability of the Law

When the legislative law was revised in 2015, the expression that legal norms should be clear, specific, targeted and enforceable was added in Article six, which was determined as the principle of our legislation. That also meets the internal requirement to improve the quality of legislation.

First, the amendment of the sports law should improve the clarity of the law, follow the new requirements of the state on the legislation, grasp the basic direction of comprehensively deepening the sports reform, and improve the clarity of the provisions on major issues, key concepts and main principles related to the development and reform of sports^[5].

Secondly, the amendment of the sports law should strengthen the pertinence of the law. The revision of the sports law should focus on the practical problems that need to be solved in the development of sports in the new era. Especially, we should grasp the key areas and key links in the comprehensive deepening of sports reform, and make in-depth investigation and research, and make revisions according to the problems, which should be solved by revisions^[6].

Third, the law of physical education must be executable and operable if the law of sports is to be revised. For the amendment of the sports law, we must study the social relations adjusted by the sports law, design the legal norms scientifically and strictly. For those that can be clearly stipulated in the sports law, we should make as detailed as possible, and do not necessarily carry out additional supporting laws, so as to save the legislative costs.

5.4 The Amendment of the Sports Law Requires Reconsidering the Legislation of Sports Arbitration System

The legislative law of 2015 was revised to retain the system of litigation and arbitration which must be legislated by the Standing Committee of the National People's Congress. That is, it is difficult for the State Council to realize the authorization of sports arbitration, which is stipulated in Article 33 of the current sports law on sports. So it is the most advisable plan to establish the sports dispute resolution system in China in the amendment of the sports law and pass through the legislative procedure of the National People's Congress^[7]. The best strategy is to add a new chapter of sports dispute resolution in the sports law, and make specific provisions on the scope of sports disputes, the procedure for sports dispute resolution, and the sports dispute resolution organization, to realize the rule of law in the new era of sports dispute resolution in China.

5.5 The Amendment of the Sports Law Requires Reconsideration of the Establishment of the Legislative Provisions of Authorization

For the amendment of the sports law, it is mainly to pay attention to the requirements of Article ten of the legislative law. In the process of amendment, the provisions on the authorized legislation should clearly define the purpose, matters, scope, period of authorization and the principles that the authorized organ should follow in implementing the authorization decision.

First, the purpose of authorization should be clarified when the amendment of sports law involves the legislative provisions of authorization. Once the purpose of authorization is clear, the legislative provisions of authorization in sports law will help the authorized organs to follow the purpose of authorization to formulate specific rules. In the current sports law, most of the legislative provisions of authorization do not have clear authorization purpose.

Secondly, the sports law should clarify the authorization items and scope when modifying the legislative provisions of authorization. This will be more conducive to promoting the sports law authorized organs to strictly according to the purpose and scope of authorization for relevant legislation, avoid “package authorization”, but also conducive to strengthen the supervision of the legislative activities of the authorized organs^[8].

Third, the period of authorization should be specified when the sports law modifies the legislative provisions of authorization. The legislative act 2015 requires that the period of authorization shall not exceed five years, unless otherwise provided for in the authorization decision. It is worth noting that the current article 32 of the sports law authorizes the State Council to formulate the rules of Sports Arbitration (this article is an “unlimited authorization”, and the State Council has not promulgated specific rules since the implementation of the sports law for 23 years).

6. Conclusion

The amendment of the sports law should follow the legislation law which regulates the legislative practice in China. Specifically, the main goal of the amendment of the sports law should be to improve the quality of the sports law, provide legal guarantee for the development of sports in the new era, and lead and promote the reform and development of sports in China^[9]. In the aspect of the revision of the sports law, we should follow the constitution. First, the power, obligation and

right of the main body in the legal sports field, especially the regulation of the government power and the confirmation of the citizens' sports rights. Secondly, the law of sports law should be more specific, which makes the law of sports enforceable and operable. Third, it is the most advisable plan to establish the sports dispute resolution system in China. Fourth, the purpose, the scope and the period of authorization are clarified^[10].

References

- [1] National Law Office of the legal work committee of the National People's Congress. Interpretation of the legislative law of the people's Republic of China, Beijing: Law Press, 2015, pp.3.
- [2] JIANG Xi. Issues on the Amendment of Sports Law of People's Republic of China Under the Background of Rule by Law. JOURNAL OF SHANGHAI UNIVERSITY OF SPORT, vol.40, no.1, pp.21-29, 2016.
- [3] Ye Xiaochuan, Wan Qigang. Some major issues in the amendment of legislative law. China development observation, no.4, pp.70-73, 2015.
- [4] JIANG Xi. Research on Sports Legislation in China from the Perspective of Comparative Law--Based on the Revision of "China's Sports Law". JOURNAL OF SHANGHAI UNIVERSITY OF SPORT, 2017.
- [5] JIANG Shibo. Judicial Application of Sports Law of People's Republic of China. Journal of TUS, vol.30, no.3, pp.221-227, 2015.
- [6] JIANG Xi. Issues on the Amendment of Sports Law of People's Republic of China Under the Background of Rule by Law. JOURNAL OF SHANGHAI UNIVERSITY OF SPORT, vol.40, no.1, pp.21-29, 2016.
- [7] Standing Committee of the National People's Congress. Sports law of the people's Republic of China. Beijing: Law Press, 2016, pp.13.
- [8] WANG Quan-sheng, QI Jun-di. Authorized legislation of Sports Law. Journal of Wuhan Institute of Physical Education, vol.44, no.11, pp.33-38, 2010.
- [9] TAN Xiaoyong. On the Framework System and Development of the Rule of Law of Sports in China in the New Era. Journal of Beijing Sport University, vol.44, no.2, pp.10-21, 2021.
- [10] JIANG Xi. A study of Basic Law of Sport in Japan-On the Revelation of Amending the Sports Law in China. Journal of Xi'an Physical Education University, vol.38, no.1, pp.32-38, 2021.