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Legal Aspects of Alternative Dispute Resolution in Sports Law

Doctoral Thesis
for obtaining a doctoral degree (*Ph.D.*)

Sector – Law
Sub-Sector – Civil Law

Rīga, 2021

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Rīga, 2021

Abstract

Doctoral Thesis “Legal Aspects of Alternative Dispute Resolution in Sports Law” is a scientific research where issues that arise from the legal relations of subjects of sports law, specifically the disputes between such subjects and their resolution with the help of alternative dispute resolution methods, are examined.

In the course of the Doctoral Thesis the following concepts have been analysed: the institute of alternative dispute resolution in modern law, the concept of the modern sports law, mediation for resolving sports-related disputes, alternative dispute resolution and mediation by national and international sports institutions, as well as a case study of two high-profile sports cases. As a result, three thematic groups of conclusions arose followed by suggestions regarding the introduction of the concept “sport dispute resolution” in the Latvian law and amending Latvian sport policy.

Given the specific nature of legal relationships in sport, sports disputes should be resolved amicably, promptly, confidentially and, most importantly, should lead to a harmonious and, if possible, non-aggressive relationship between the parties to the dispute, fair outcome, including knowing the possibility of causing harm to other parties not directly involved in the dispute; in other words, conflicts should be resolved within the “family of sport”. For these reasons, the traditional means of dispute resolution, i.e. court, cannot be considered as the optimal and best option, while alternative dispute resolution (ADR) methods can help achieve the desired result, i.e. peaceful, fast, confidential and non-aggressive dispute resolution in sport. Therefore, following the best practices of other countries, a specialised sports disputes resolution body independent of sports federations should be available for Latvian athletes.

The aim of the Doctoral Thesis is to study the possibilities of sports dispute resolution by applying ADR methods, define their topicality and problems, as well as ascertain the practice of other countries and international organisations in this matter and make recommendations for the improvement of the Latvian sports regulation in order to comply with international developments in the resolution of sports disputes.

The Doctoral Thesis consists of the introduction, four chapters divided into sub-chapters, the conclusion containing conclusions and suggestions as well as the list of references and annexes. The structure of the Doctoral Thesis is designed according to the aim it proclaims, with a view to answer the research questions and meet the objectives set. It logically unfolds the core of the researched problem.

The practical significance of the Doctoral Thesis is expressed as a set of practical insights which formulates proposals for the use of ADR methods in Latvian sports disputes proposing specific amendments to the Sports Law. The developed research is the only study on ADR in sport of this scale in Latvia. Neither sports law as a branch of law, nor disputes between parties thereto and types of such disputes have been studied, hence this research may also be used as a basis for further development of the sports law at national level and may lead interested parties to better understanding of the nature of sports disputes, their types and suitable extra-judicial ways to resolve them.

Keywords: sports law, alternative dispute resolution, mediation, sports dispute.

Anotācija

Promocijas darbs “Alternatīva strīdu izšķiršana sporta tiesībās” ir zinātnisks pētījums, kurā tiek aplūkoti jautājumi, kas izriet no sporta tiesību subjektu tiesiskajām attiecībām, jo īpaši pētīti strīdi starp šādiem subjektiem un to risināšana, izmantojot alternatīvas strīdu izšķiršanas metodes.

Promocijas darba gaitā tika analizēti šādi jautājumi: alternatīvas strīdu izšķiršanas institūts mūsdienu tiesībās, mūsdienu sporta tiesību būtība, mediācija ar sportu saistītu strīdu izšķiršanā, alternatīva strīdu izšķiršana un mediācija, ko praktizē nacionālās un starptautiskās sporta institūcijas, kā arī aplūkoti divi augsta līmeņa sporta strīdi. Rezultātā izveidojās trīs tematiskās secinājumu grupas, kurām sekoja priekšlikumi par termina “sporta strīdu izšķiršana” ieviešanu Latvijas likumos un Latvijas sporta politikas pilnveidi.

Apsverot sporta tiesisko attiecību specifisko raksturu, sporta strīdi būtu jāizšķir miermīlīgi, ātri, konfidenciali un, pats galvenais, tiem vajadzētu radīt harmoniskas un, ja iespējams, neagresīvas attiecības starp strīdā iesaistītajām pusēm, nodrošinot taisnīgu iznākumu, un ņemot vērā iespēju nodarīt kaitējumu citām pusēm, kas nav tieši iesaistītas strīdā, citiem vārdiem sakot, konflikti būtu jāizšķir “sporta ģimenes” ietvaros. Respektīvi, tradicionālos strīdu izšķiršanas līdzekļus, t.i., tiesu nevar uzskatīt par optimālu un labāko variantu, savukārt alternatīvās strīdu izšķiršanas (ADR) metodes var palīdzēt sasniegt vēlamo rezultātu, t.i., mierīgu, ātru, konfidencialu un harmonisku sporta strīdu izšķiršanu. Tādējādi, sekojot citu valstu labākajai praksei, Latvijas sportistiem būtu jābūt pieejamai specializētai, no sporta federācijām neatkarīgai, sporta strīdu izšķiršanas institūcijai.

Promocijas darba mērķis ir izpētīt sporta strīdu izšķiršanas iespējas, izmantojot ADR metodes, to aktualitāti un problēmas, kā arī noskaidrot citu valstu un starptautisko organizāciju praksi šajā jautājumā un sniegt ieteikumus Latvijas sporta regulējuma pilnveidei, lai tas atbilstu sporta strīdu izšķiršanas starptautiskajām tendencēm.

Promocijas darbu veido ievads, četras nodaļas, kas sadalītas apakšnodaļās, nobeigums, kurā ietverti secinājumi un ieteikumi, kā arī izmantoto avotu un pielikumu saraksts. Promocijas darba struktūra ir veidota atbilstoši izvirzītajiem uzdevumiem, lai atbildētu uz pētījuma jautājumiem un sasniegtu izvirzīto mērķi. Tas loģiski atklāj pētāmās problēmas būtību.

Promocijas darba praktiskā nozīme ir izteikta kā praktisku atziņu kopums, kurā formulēti priekšlikumi par ADR metožu izmantošanu Latvijas sporta strīdos, piedāvājot konkrētus grozījumus Sporta likumā. Izstrādātais pētījums ir vienīgais šāda veida pētījums Latvijā par alternatīvu sporta strīdu izšķiršanu. Līdz šim Latvijā netika pētītas ne sporta

tiesības kā atsevišķa tiesību nozare, ne strīdi starp sporta tiesību subjektiem, nedz arī šādu strīdu veidi un to izšķiršanas iespējas, tāpēc šo pētījumu var izmantot kā pamatu turpmākai sporta tiesību attīstībai un sporta regulējuma izstrādei valsts līmenī, un tas var sniegt ieinteresētajām pusēm labāku izpratni par sporta strīdu raksturu, dažādību un piemērotiem ārpustiesas risināšanas veidiem.

Atslēgvārdi: sporta tiesības, alternatīva strīdu izšķiršana, mediācija, sporta strīds

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Introduction

Nowadays, sport can be described as a highly commercialised social activity with a great variety of interactions (for instance, rival-rival, athlete-coach, athlete-agent, athlete-federation/club/team, club/team-agent, federation-supporters, club/team-supporters, club-club interactions, etc.) where disagreements and disputes are highly probable. Therefore, international and national regulations have been established to govern sports relations by defining the rights and obligations of the State, different organisations, athletes and other entities in the area.

According to the data provided by Blackshaw back in year 2003, sport already was an important industry accounting for more than 3 % of international trade and 1 % of the gross domestic product of the 15 EU Member States¹. In the EU alone, around 2 million jobs were directly or indirectly linked to sport. In the United Kingdom, annual consumer contributions to the sporting industry amounted to GBP 12bn².

Goodrum notes that a valuable and commercial industry is being built around sporting activities, so the differences that stand out in this regard are diverse and complex, especially given that there is often a conflict between public and private interests in sport³. Regardless whether it is related to player contracts, sponsorship issues, construction, TV broadcasts, or stadium use after the Olympics, etc., a wide range of interests can be violated in any sports dispute.

Topicality of the Doctoral Thesis: commercialisation of the sports sector involves significant investments and growing public interest. Sports science and sports medicine are also evolving rapidly improving athletes' physical abilities to make them modern superhumans and turn sporting events into spectacular entertainment. The combination of these two factors has, due to high rates, also led to a rapid increase in the number of conflicts and media coverage thereof.

The growing number of disputes made apparent the shortcomings, including legal remedy gaps, in the process of resolving them. As Hesse mentions, the usual way of resolving disputes arising out of contracts entered into sports is to refer the dispute to an arbitration tribunal, such as the Court of Arbitration for Sport, or to external committees (commissions)

¹ In 2003, the Member States of the European Union where: Germany, France, Italy, the Netherlands, Belgium, Luxembourg, Denmark, Ireland, United Kingdom, Greece, Spain, Portugal, Austria, Finland and Sweden.

² Blackshaw, I. The Court of Arbitration for Sport: An International Forum for Settling Disputes Effectively 'Within the Family of Sport'. Interventions. Available from: www.entsportslawjournal.com/articles/abstract/10.16997/eslj.139/ [viewed 13.10.2017.].

³ Goodrum, N. Mediation in sports disputes: lessons from the UK. Available from: www.lawinsport.com/articles/regulation-a-governance/item/mediation-in-sports-disputes-lessons-from-the-uk?highlight=WyJnb29kcjVtIl0 [viewed 15.10.2017.].

of national or international federations, such as the FIFA Dispute Resolution Chamber/FIFA Players' Status Committee or public courts. Nevertheless, both of these processes can be time consuming and costly⁴.

Goodrum also adds that while external processes, for instance, through the FIFA's Dispute Resolution Chamber, usually have the advantage of being more confidential and less expensive than court proceedings, they still have disadvantages of being a complicated procedure and of being decided by a third party⁵. When describing the resolution of international sports disputes in public courts, the disadvantage is the likelihood that the dispute will be settled in a jurisdiction foreign to one of the parties and under the law of a foreign country. It means that if a dispute arises out of a contractual obligation and the parties to the contract have not agreed which court is to hear the dispute and according to which national law it will be heard, then, depending on the circumstances of the case and the domicile of the parties, it will have to be determined by Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels Ibis Regulation) (replacing the former Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters) and Regulation (EC) No 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations (Rome I) or by means of conflict of rules of laws. Both, the first and second path, can lead to the said disadvantage which may include a high cost of foreign lawyers' services, publicity and uncertainty in the outcome. At the same time, the resolution of sports disputes is complicated by the interplay between public and private interests, and often by the supranational nature of sporting competitions.

Given the problematics of these circumstances and the specific nature of the legal relationship, sports disputes should be resolved amicably, promptly, confidentially and, most importantly, should lead to a harmonious and, if possible, non-aggressive relationship between the parties to the dispute, fair outcome, including knowing the possibility of causing harm to the other parties not directly involved in the dispute; in other words, conflicts should be resolved within the "family of sport".

⁴ Hesse, V. Is mediation suitable to resolve sport related disputes? Available from: www.lawinsport.com/articles/item/is-mediation-a-suitable-to-resolve-sports-related-disputes?high-light=WyJoZXNzZSJd [viewed 15.10.2017.].

⁵ Goodrum, N. Mediation in sports disputes: lessons from the UK. Available from: www.lawinsport.com/articles/regulation-a-governance/item/mediation-in-sports-disputes-lessons-from-the-uk?highlight=WyJnb29kcjVtIl0 [viewed 15.10.2017.].

For these reasons, traditional means of dispute resolution, i.e. court, cannot be considered as the optimal and best option, while alternative dispute resolution (ADR) methods can help achieve the desired result, i.e. peaceful, fast, confidential and non-aggressive dispute resolution in sport.

For instance, when mediation is chosen, jurisdiction and the law applicable to litigation do not directly address the issue; mediation facilitates dialogue between the parties in order to find a solution in their best interest, and allows creating preconditions for further cooperation/competition.

Respectively, mediation is studied in this Doctoral Thesis as one of the possible alternative methods to resolve sports disputes successfully used by the National Olympic Committees and sports arbitration courts of other countries.

Nevertheless, the Thesis focuses on ADR methods, including mediation, used by sports organisations to resolve sports-related disputes; therefore, the regulation of mediation in the Republic of Latvia is not studied in depth herein since in-depth research in this respect has already been performed in the form of doctoral theses.

The **novelty** of the **research** is expressed in researching, summarising and analysing the dissenting opinions and proposals of many foreign sports law researchers, in defining the concept of sports dispute which is new to the Latvian law, in proposing to improve the regulation of sports dispute resolution, and also in assessing different national practices in the resolution of sports disputes which generally make it possible to find recommendations appropriate to current circumstances and provide the legal basis for them. So far, little research on this issue has been done in Latvia, it was left without due attention which resulted in the situation when a dispute resolution system has not been created for sports entities that would be in line with such contemporary trends in sports as commercialisation and politicisation and the specifics of the sports industry which calls for a comfortable and confidential dispute resolution “within the family of sport”.

The **aim** of the **Doctoral Thesis** is to study the possibilities of sports dispute resolution by applying ADR methods, their topicality and problems, as well as to find out the practice of other countries and international organisations in this matter and to make recommendations for the improvement of the Latvian sports regulation in order to comply with international developments in the resolution of sports disputes.

The objectives set in this Doctoral Thesis are as follows:

- 1) to study the concept of sports law;
- 2) to study the institute for alternative dispute resolution in contemporary law;

3) to recognise the applicability of mediation in solving sports disputes and identify its problems;

4) to examine the practice of international and national sports organisations in resolving sports-related disputes through ADR methods.

The **object** of the research is sports law and the resolution of sports disputes arising from the relations of subjects of sports law.

The **subject** of the research is the regulation and practice of ADR in sports law.

Research questions:

- 1) What is covered by the term “sports law”?
- 2) What are the specifics of ADR and tendencies of its application in sports?
- 3) What are the practices and features of mediating sports disputes?
- 4) What is the experience of other countries’ national and international institutions in resolving disputes between subjects of sports law?

To meet the aim of the Doctoral Thesis and fulfil the objectives thereof, several research **methods** were used: comparative method, historical method, synthetic and analytic method, inductive method, law modelling method, dogmatic method and systematic method. Secondary data obtained from surveys carried out in other countries have been used in the research, i.e. data obtained from empirical research have been integrated.

The **comparative method** was used to examine and investigate the regulation and practice of sports-related disputes in Latvia and other countries. This method allowed locating positive examples, problems and solutions of other countries as well as applying those to improve sports regulation in Latvia. In addition, the method was used to analyse the views on sports law of different authors.

The **historical method** helped explore the development of sports law reflecting the reasons of its origin and conditions of formation. The development of mediation in Latvia was also discussed. The **analytic and synthetic method** was used to study regulatory enactments and other sources of law to identify the cases and rules of use of alternative methods in sports law, problems and the best solutions available. The **dogmatic method** was used to comprehensively and precisely define the term “sports disputes”. Through the **inductive method**, general conclusions from other national sports dispute resolution practices were drawn. The **law modelling method** is suitable to propose certain amendments and clarifications to the Sports Law taking into account EU recommendations and other countries' experience in the field of sports dispute resolution.

Analysing EU recommendations and sports policy planning documents, as well as American and French law, such legal norm **translation methods (interpretative methods)** as **grammatical and teleological methods** were used to evaluate and study both the content and the text of legal norms. In turn, the **systematic method** was used to find out the interaction between sports law and other sectoral laws.

The theoretical basis of the Thesis is formed by the works of contemporary foreign scientists⁶ as well as the findings of Latvian researchers⁷. It should be noted that to date no books on sports law providing insight into the resolution of sports disputes have been published in Latvia. However, there are several articles available. Looking through Jurista Vārds (Eng. Lawyer's Word) No 33 (936) of 16 of August 2016 devoted to sports law, as well as the Proceedings of the 77th International Scientific Conference of the University of Latvia (2019), the Author of the Thesis found some articles on sports law and its interaction with EU law, and on standards of proof in anti-doping cases pending at the Court of Arbitration for Sport.

In general, theoretical basis of the Doctoral Thesis is wide and versatile, and mostly based on foreign and international sources.

The **practical significance** of the Doctoral Thesis is expressed as a set of practical insights which formulates proposals for the use of ADR methods in Latvian sports disputes proposing specific amendments to the Sports Law.

The developed research is the only study on ADR in sport of this scale. Neither sports law as a branch of law, nor disputes between parties thereto and types of such disputes have been studied in Latvia.

The Doctoral Thesis consists of the Introduction, five chapters divided into sub-chapters, the Conclusion containing conclusions and proposals as well as the List of References and Appendices. The structure of the Thesis is based on several directions aimed at answering the research questions and meeting the objectives set.

Chapter 1 studies the institute of sports law, its international elements, European and Latvian regulation.

Chapter 2 provides a general overview of contemporary ADR and trends.

In Chapter 3, the Author analyses the concept of sports dispute and the possibilities of its solution through mediation.

⁶ E.g.: Cassini L., Shropshire K., Gardiner S., Panagiotopoulos D., Ševčenko O., Blackshaw I., Hesse V., Prokopec M., Rogachev D., Wagner F., Jurlov. S., Pogosyan J.

⁷ E.g.: N. Jefimovs, G. Litvins, M. Ābula

Chapter 4 explores ADR procedures and practices of international and foreign sports institutions as well as examines the functions and objectives of the Latvian Olympic Committee and the Latvian Sports Federation Council to determine whether any of them could take on the role in the resolution of sports-related disputes. Additionally chapter 4 deals with two high profile sports disputes.

The results of the research presenting certain problem issues and their possible solutions were approbated at local and international scientific conferences in Latvia and abroad. The Author gave oral presentations at 12 international scientific conferences.

The Author has published 12 research issue-related scientific publications in internationally reviewed collections of scientific articles. Two publications are included in the database of Web of Science, the internationally quoted collection of scientific texts, one – in the SCOPUS database, and one – in ErihPLUS. One publication was submitted for publication in a collection of scientific texts to be included in the SCOPUS database.

1 The Concept of Modern Sports Law

This Chapter is devoted to the notion of sports law. Since this branch of law is rather new to Latvian jurisprudence, the Author supposes it needs an in-depth overview and reflection from different perspectives before analysing what a sports dispute actually is.

1.1 The notion and development of sports law

According to the opinion of well-recognised British sports law scholars, sport is a truly global phenomenon. As a social activity, whether it is in terms of participation as a recreational pastime, competitive playing at amateurs' level, the elite and mainly professional level or in terms of spectating, sport assumes immense cultural significance⁸.

As in every significant cultural process, in sport rules also exist. As it is stated by Grayson (the former President of the British Association for Sport and Law), "the rule of law in sport is as essential for civilisation as the rule of law in society generally. Without it, generally anarchy reigns. Without it in sport, chaos exists."⁹

To analyse the sports law concept, the Author made an overview of the research results of the leading sports law scholars and practitioners.

Lorenzo Cassini in his work *The Making of a Lex Sportiva* by the Court of Arbitration for Sport makes the following statements on the sports law, also referring to other authors:

1. "Sports law is not just international; it is non-governmental as well, and this differentiates it from all other forms of law"¹⁰. Sports rules are genuine "global law", because they are spread across the entire world, they involve both international and domestic levels, and they directly affect private actors: this happens, for instance, in the case of the Olympic Charter, a private act of a "constitutional nature" with which all States comply¹¹; or in the case of the World Anti-Doping Code, a document that provides the framework for the harmonisation of anti-doping policies, rules, and regulations within sports organisations and among public authorities¹².

2. The global dimension of sport is, in the first instance, normative. A "global sports law" has emerged, which embraces the whole complex of norms produced and implemented

⁸ Gardiner, S., James, M., et al. 2006. *Sports Law*. 3rd ed. Cavendish publishing limited.

⁹ Grayson E., former President of the British Association for Sport and Law, in his inaugural presidential address (1993) 1 (1) *Sport and the Law Journal*.

¹⁰ Beloff, M., Kerr, T., Demetriou, M. 1999. *Sports Law*. Hart, Oxford, 5. These authors also note that "the public's limitless enthusiasm for sport and its importance to our cultural heritage makes sports law more than mere private law" (ibidem, p. 4 et seq.).

¹¹ Chappelet, J-L., Kübler-Mabbott, B. 2008. *The International Olympic Committee and the Olympic System: The governance of world sport*. Routledge, Abingdon, and Mestre, A. M. 2009. *The Law of the Olympic Games*. The Hague: T. M. C. Asser.

¹² David, P. 2008. *A Guide to the World Anti-Doping Code. A Fight for the Spirit of Sport*. Cambridge: Cambridge University Press.

by regulatory sporting regimes¹³. It includes not only transnational norms set by the International Olympic Committee (IOC) and by International Federations (IFs) – i.e. “the principles that emerge from the rules and regulations of international sporting federations as a private contractual order” – but also “hybrid” public-private norms approved by the World Anti-Doping Agency (WADA) and international law (such as the UNESCO Convention against doping in sport). Global sports law is made of norms provided by central sporting institutions (such as IOC, IFs and WADA) and by national sporting bodies (such as National Olympic Committees and National Anti-Doping Organisations). Global sports law, therefore, is highly heterogeneous. It operates at different levels and it is produced by several law-makers. Amongst those, there is one very peculiar body, funded in the 1980s, which has become a key actor in the sport legal system: the Court of Arbitration for Sport (CAS)¹⁴, the actor that is probably most prominent in constructing global sports law.

3. In the last two decades, the activity of the CAS has become extraordinarily important. The number of decisions released by the CAS has increased to the point that a set of principles and rules have been created specifically to address sport: this “judge-made sport law” has been called the *lex sportiva*. This formula, which recalls well-known labels like *lex mercatoria* or *lex electronica*, has been readily adopted and, indeed, its meaning has been extended over time: it can be used, in fact, to refer more generally to the transnational law produced by sporting institutions. In spite of this success, the existence of a *lex sportiva* is not universally accepted: in 2001, for instance, the Frankfurt Oberlandesgericht stated that “[E]ine von jedem staatlichen Recht unabhängige *lex sportiva* gibt es nicht”¹⁵, which can be translated as “an independent treatment of this regulation of any state of *lex sportiva* does not exist”.

4. Among the different activities carried out by the CAS, some are especially relevant to the formation of the global sports law. In particular, we can distinguish at least three different functions. First, the CAS has been applying general principles of law to sporting institutions and it has also been creating specific *principia sportiva*. Secondly, the CAS plays a significant role in interpreting sports law, thus influencing and conditioning rulemaking activity by sporting institutions. Thirdly, the CAS greatly contributes to the harmonisation of global sports law, also because it represents a supreme court, the apex of a

¹³ Casini, L. 2012. *The Making of a Lex Sportiva by the Court of Arbitration for Sport. Lex Sportiva: What is Sport Law?* The Hague: ASSER Institute Sports Law Series, 150.

¹⁴ *Ibid.*, p. 151.

¹⁵ *Ibid.* p. 151

complex set of review mechanisms spread across the world: for instance, doping case decisions issued by national anti-doping panels can be appealed to the CAS¹⁶.

Timothy Davis, exploring the position of other authors in the article *What is Sports Law?*, stresses out the following:

1. There are three positions regarding the debate whether sports law constitutes a substantive area of law: 1) no separately identifiable body of law exists that can be designated as sports law and the possibility that such a corpus of law will ever develop is extremely remote; 2) although sports law does not presently represent a separately identifiable substantive area of law, recent developments suggest that in the near future it will warrant such recognition; or 3) a body of law presently exists that can appropriately be designated as sports law.

2. The traditional view is that sports law represents nothing more than an amalgamation of various substantive areas of law that are relevant in the sports context. According to this perspective, the term sports law is a misnomer given that sport represents a form of activity and entertainment that is governed by the legal system in its entirety. “In reality, sports law is nothing more or less than law as applied to the sports industry”¹⁷. In elaborating, these authors state that “the study of ‘sports law’ does not involve an entirely unique or discrete body of special principles divorced from traditional legal concepts”¹⁸. In sum, adherents to the traditional perspective argue that “sports law simply entails the application of basic legal precepts to a specific industry” that are drawn from other substantive areas of the law¹⁹. Consequently, no separately identifiable body of law exists that can be characterised as sports law²⁰.

3. The adherents to the moderate view, for instance, Professor Kenneth Shropshire acknowledges that developments, such as state and federal legislation impacting sports suggest a “growing sports-only corpus” of law²¹. Professor Shropshire concludes, however, that the body of sports-only law has not reached a point of maturation such that a “unique substantive corpus” exists that can be categorised as sports law²². Consequently, he believes it is more appropriate to apply the “sports and the law” rather than the “sports law” designation

¹⁶ Casini, L. *The Making of a Lex Sportiva: The Court of Arbitration for Sport “Der Ernährer”*. Draft paper for the Max Planck Institute International Conference on “Beyond Dispute: International Judicial Institutions as Law-Makers” Heidelberg, June 14–15, 2010.

¹⁷ Cozzillio, M. J., Levinstein, M. S. 1997. *Sports law*, Carolina Academic Press, p. 5.

¹⁸ *Ibid.*, p. 7.

¹⁹ *Ibid.*, p. 7.

²⁰ Davis, T. 2001. *What Is Sports Law?* *Marq. Sports L. Rev.* 11, 211.

²¹ Shropshire, K. L. 1998. Introduction: Sports Law? *Am. Bus. L. J.* 35, 181, 182.

²² *Ibid.*, p. 181-182

to legal matters that arise in the sports context²³. Another adherent to the moderate position is Professor Burlette Carter who argues that sports law is in the midst of an exciting, yet challenging, transformative process²⁴. According to Professor Carter, this process parallels the increased focus by law schools on sports, and the growing significance of sports regulation to participants, organisations and communities. She believes that these developments will better shape the contours of this emerging field of study. This in turn, will eventually transform sports law from “a course without a corpus” to a widely recognised independent substantive area of law²⁵. John Weistart and Cym Lowell writing in late 1970s observed that based upon their research it became clear that there were many areas in which sports-related problems required a specially focused analysis. On some matters, there are legal doctrines which apply in the sports area and nowhere else. This is the case, for instance, with respect to such diverse matters as baseball’s antitrust exemption and some of the tax rules to be applied to the recapture of depreciation on player contracts²⁶. Weistart and Lowell conclude their analysis by emphasising areas in which the factual uniqueness of sports problems require specialised analysis. In this regard, they caution courts to take care in drawing analogies. Thus, while not expressly adopting the position that recognises the existence of a course of study called sports law, Weistart and Lowell strongly suggest that two phenomena, the unique application of legal doctrine to the sports context and the factual uniqueness of sports problems that require the need for specialised analysis, support the notion that a body of law called sports law might exist²⁷.

4. A leading advocate of the perspective that sports law exists as a field of law is a British scholar, Simon Gardiner, who also demonstrates that the “sports law” or “sports and the law” debate has not been confined to the United States. Pointing to the increasing body of judicial and legislative law specific to sports, Professor Gardiner argues that it is true to say that sports law is largely an amalgam of interrelated legal disciplines involving such areas as contract, taxation, employment, competition and criminal law but dedicated legislation and case law has developed and will continue to do so. As an area of academic study and extensive practitioner involvement, the time is right to accept that a new legal area has been born – sports law²⁸. Proponents of the sports law designation and those sympathetic to the view, also argue that reticence to recognise sports law as a specific body of law may reflect

²³ Shropshire, K. L. 1998. Introduction: Sports Law? *Am. Bus. L. J.* 35, 181, 182.

²⁴ Carter, B. 1999. Introduction: What Makes a “Field” a Field? *IVA.J.SPORTS & L.* 234, 245.

²⁵ *Ibid.*, p. 234-245

²⁶ Weistart, J., Lowell, C. 1979. *The Law of Sports*. Charlottesville, Va: Bobbs-Merrill Co., Inc., 18

²⁷ *Ibid.*, p. 19

²⁸ Gardiner, S., et al. 1998. *Sports Law*. London: Cavendish Publishing limited, 74.

attitudes regarding the intellectual seriousness of sports. In this regard, they emphasise the tendency to marginalise the study of sports rather than treat it as any other form of business²⁹. The intellectual marginalisation of sport has been attributed, in part, to the belief that social relations extant in sports were not deemed proper subjects for reconstruction into legal relationships. Thus, private and public law were considered “inappropriate mechanisms for controlling the social norms of sport”³⁰. The competing and increasingly predominant view, however, casts sports as a significant economic activity suitable, like other big businesses, to regulation whether it be self or external³¹.

Another European lawyer researching the subject of sports law is Professor of Sports Law at the University of Athens and President of the International Association of Sports Law Dimitrios P. Panagiotopoulos. Professor Panagiotopoulos in his works concludes the following:

1. The field of sports is organised at international level in a community, which, in the margin and regardless of any state supervision, has developed its own, particular institutions and rules. International Sports Federations (ISF) constitutes private entities governed by the laws of their seat. The ISF regulate the sport, which they have responsibility for, the relationships between people and events that may evolve across state borders. On top of this pyramid is placed the International Olympic Committee (IOC). The Olympic recognition of International Sports Federations and National Olympic Committees is the key, setting in motion the law set by the rules of the Olympic Charter. This recognition is given under certain conditions and has legitimising and transmissive results. The same applies to the International Sports Federations (ISF) whose sports want to be recognised as Olympic ones. The international sport activity has been created alongside the state and formed a sui generis international sports law, the so called *lex sportiva*, which is followed by the national federations³². These sports institutions shape and regulate the relationships being developed, strictly and exclusively, within the framework of *lex sportiva*³³. These rules are not imposed directly on the national (domestic) law, but as an obligation to the competent bodies and federations in the country to harmonise their regulatory function under national law, according to the regulations of the International Federations. This way *lex sportiva* is being imposed within a country, often through its incorporation within national sports law, so that

²⁹ Carter, B. 1999. Introduction: What Makes a “Field” a Field? *IVA.J.SPORTS &L.*, 234.

³⁰ Gardiner, S., et al. 1998. *Sports Law*. London: Cavendish Publishing limited, 45.

³¹ *Ibid.*, p. 45

³² Panagiotopoulos, D. 1999. *Sports Law, a special branch of Sports Science*. In: Gr. Αθλητική Δβκαιο ειδικής κλÜδοç της επιστΡμης in: *Professional Sports Activities*, 1st Sports Law Congress EKEAD Ellin: Athens, p. 38–52.

³³ Panagiotopoulos, D. 2011. *Lex Sportiva & Olympica. Praxis and Theory*. Athens: Ant Sakkoulas, 102–151.

the provisions of this sui generis sport legal order are being applied without conditions and supersede any other national law³⁴.

2. In the field of sports, it is the International Sport Federations (IF) as well as the International Olympic Committee (IOC), for the Olympic Games, which legislate, in a pyramidal hierarchy system, in the context of which the International Federations establish a Sports Legal Order, which does not belong to a State alone, but is international³⁵; *lex sportiva*, being established by private entities, namely the sports federations, presents characteristics which are similar to the ones of the *lex mercatoria*³⁶.

3. At the international level, sports law, and most particularly *lex sportiva*, is, in fact, a private and non-domestic law which is internationally situated out of the framework of legality. It is issued from higher instances and becomes binding and applicable to the parties involved for necessity reasons. Although legal doctrine does not attribute a particular force to the *lex sportiva*, it, nevertheless, internationally constitutes a sui generis sports legal order, since it is imposed by the higher bodies to the lower ones of the sports community, through the international sports organisations, and it is characterised by an utmost subjectivity. It, nonetheless, regulates the relations between the people of various countries who take part in international sports and Olympic events, in a space with no geographic borders, the one of sports competitions, situated outside the legality framework. Some *lex sportiva* rules often include legal rules which govern the individual and financial freedoms of the parties involved. This leads to conflicts between *lex sportiva* and the law applying to the traditional legal order, as well as with the law established by supranational entities, such as the European Union. So far, various countries have not managed to adopt a uniform attitude towards the international sports and Olympic practice. It is so because the States, as it has already been mentioned, are unable or not interested, so far, in regulating the international sports legal relations³⁷.

4. *Lex sportiva* is another kind of law resulting from the synthesis of characteristics of international law (subject, object and content regulations) and internal characteristics of domestic legal orders (effective mechanism of coercion, automatic incorporation norms in national laws exclusive and binding jurisdiction of judicial bodies). This new kind of international law poses necessarily old accepted practices and established organisational

³⁴ Panagiotopoulos, D. Aspects of Sports Law and Lex Sportiva. Available from: <https://ar.ijeditores.com/articulos.php?idarticulo=64965> [viewed 14.08.2019.].

³⁵ Panagiotopoulos, D. 2002. Justica Desportiva na Vida do Desporto Nacional e Internacional. In: *Revista Brasileira de Direito Desportivo*. No 2, p. 8–17. Also in Sports Legal Order national and International Sporting Life. In: *International Sports Law Review*. 4(3–4), p. 227–242.

³⁶ Panagiotopoulos, D. 2014. In Sports Activities when there is Ludica, Lex is Not, but when Lex is, then only Lex Sportiva is!!! As a category of Sports Law. *e-Lex Sportiva Journal*. II(1), p. 12.

³⁷ Panagiotopoulos, D. 2014. In Sports Activities when there is Ludica, Lex is Not, but when Lex is, then only Lex Sportiva is!!! As a category of Sports Law. *e-Lex Sportiva Journal*. II(1), 17.

structures under another perspective that exists in parallel with the international law and constitutes a sui generis sports law international legal order imposed heteronomously on the sporting world from these international organisations³⁸.

It can be seen from the above that the subject of sports law and *lex sportiva* has been occupying the minds of scholars since late seventies (Weistart and Lowell, 1979). And nowadays the whole world debates on doping disputes and CAS decisions. Doping disputes, together with the resolution of disputes between sportsmen and national federations, national federation vs. international federations, and political resolutions of the International Olympic Committee are the best examples of *lex sportiva* where the term *lex sportiva* can be used in a broad sense as a synonym of “global sports law”. The formula “global sports law” thus covers all definitions so far provided by legal scholarship (such as *lex sportiva* or “international sports law”³⁹) in order to describe the principles and rules set by sporting institutions.

With an eye to be part of the global Olympic Movement and have the possibility to protect the rights of homeland sportsmen, the Author suggests that Latvian researchers, lawyers and homeland sport bodies should not neglect the subject of sports law and *lex sportiva*.

Even though authors seem to be very convincing about everything of the above, their approaches are different. The Author adheres to the opinions of Professor Kenneth Shropshire and Professor Burlette Carter, the representatives of the moderate view that the body of sports-only law has not reached a point of maturation, but recent developments suggest that in the near future it will mature and become a separate body of law.

The Author supposes that the main statements characterising modern sports law are as follows:

modern sports law is a complex of norms produced and implemented by the regulatory sporting regimes issued from higher instances and becoming binding and applicable to the parties involved;

modern sports law is an amalgam of interrelated legal disciplines involving such areas as contract, taxation, employment, competition and criminal law.

1.1.1 EU sports law: White Paper on Sport, European Sports Charter

The European Union is based on the rule of law. This means that every action taken by the EU is founded on treaties that have been approved voluntarily and democratically by all

³⁸ *Ibid.*, p. 17.

³⁹ Casini, L. 2012. *The making of a Lex Sportiva by the Court of Arbitration for Sport. Lex Sportiva: What is Sport Law?* The Hague: ASSER Institute Sports Law Series, 151–152.

EU member countries. For instance, if a policy area is not cited in a treaty, the Commission cannot propose a law in that area⁴⁰. In the EC Treaty this was stipulated in Article 5(1) EC, whereas since the entry into force of the Lisbon Treaty this “principle of conferral” is located in Article 5 TEU. Prior to the entry into force of the Lisbon Treaty on 01 December 2009, the EU was equipped with no explicit powers in the field of sport. More than that, the EC Treaty did not mention sport at all. But *ab initio* in *Walrave and Koch*⁴¹, the Court rejected a line of reasoning that would have rigidly separated sports governance from EC law. That would have sheltered a huge range of practices with economic impact from the assumptions of EC law, damaging the achievement of the objectives of the Treaty. Instead the Court has consistently taken the view that in so far as it constitutes an economic activity sport falls within the scope of the Treaty and sporting practices must comply with the rules contained therein⁴².

The Author suggests taking a closer look at the facts of a landmark case *Walrave and Koch*. The International Cycling Union set a requirement that the pacemaker in a race had to be of the same nationality as the stayer. Two pacemakers of Dutch nationality participating in cycling races contended that the rule was discriminatory and directed an action against ICU and the Dutch and Spanish cycling federations. The subject of the case was on the interpretation of Articles 7, 48 and 59 of the EEC Treaty and the provisions of Regulation (EEC) No 1612/68 on freedom of movement for workers within the Community.

The basic question is whether the said articles and the Regulation must be interpreted in such a way that the provision in the rules of the ICU relating to medium-distance world cycling championships behind motorcycles, according to which “l’entraîneur doit être de la même *nationalité* que son *coureur*” (Eng., the pacemaker must be of the same nationality as the stayer) is incompatible with them.

The key findings of the European Court are as follows:

1. The practice of sport is subject to community law only in so far as it constitutes an economic activity within the meaning of Article 2 of the Treaty.
2. The prohibition of discrimination based on nationality in the sphere of economic activities which have the character of gainful employment or remunerated service covers all work or services without regard to the exact nature of the legal relationship under which such activities are performed.

⁴⁰ Available from: <https://europa.eu/european-union/law/treaties> [viewed 15.08.2019.]

⁴¹ Case 36/74 *Walrave and Koch* [1974] ECR-01405 Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61974CJ0036#12> [viewed 15.08.2019.]

⁴² Weatherill, S. EU Sports Law: the effect of the Lisbon Treaty. *University of Oxford, Legal Research Paper Series. Paper No 3/2011*, January 2011.

3. The prohibition of discrimination based on nationality does not affect the composition of sport teams, in particular national teams, the formation of which is a question of purely sporting interest and as such has nothing to do with economic activity.

4. Prohibition of discrimination does not only apply to the action of public authorities but extends likewise to rules of any other nature aimed at regulating in a collective manner gainful employment and the provision of services.

5. The rule on non-discrimination applies to all legal relationships which can be located within the territory of the Community by reason either of the place where they are entered into or where they take effect.

6. The first paragraph of Article 59, in any event in so far as it refers to the abolition of any discrimination based on nationality, creates individual rights which national courts must protect⁴³.

Hence, the imposition of obstacles based on nationality breached the Treaty. In particular, the prohibition of discrimination envisaged by the Treaty in the sphere of economic activities having the character of gainful employment or remunerated service encompassed all work or services – the exact nature of the legal relationship under which the services were provided was not paramount. As such, even if the application was targeting a body which could not be classified as a public authority, it could target the International Cycling Union as that organisation aimed at regulating in a collective manner gainful employment and the provision of services⁴⁴.

The observations of Weatherill regarding EU sports law shall be given below.

The authority of the EC, now EU, to supervise sporting practices was and is rooted on the economic impact of sport. It, therefore, derived from the broad functional reach of the relevant rules of the Treaty (free movement and competition law, most conspicuously, and also the basic prohibition against nationality-based discrimination), but it was denied any specific legislative competence in the field of sport. Sport's "road to Lisbon" is paved by the decisions of the Court, and subsequently those of the Commission, which applied first the free movement provisions and later the competition rules to sport. But the Treaty was never applied to sport as if it were merely a normal industry. Instead a more creative approach was adopted, requiring a significant investment of resources in making sense of the intersection

⁴³ Case 36/74 *Walrave and Koch* [1974] ECR-01405 Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61974CJ0036#12> [viewed 15.08.2019.]

⁴⁴ Summary of Case 36–74 B.N.O. *Walrave and L.J.N. Koch v Association Union cycliste internationale, Koninklijke Nederlandsche Wielren Unie and Federación Española Ciclismo* [1974] ECR 01405 Available from: <http://www.schutze.eu/revisions/case-summaries/page/2/> [viewed 15.08.2019.]

between the demands of EC law and the aspirations of sport in circumstances where the Treaty did not spell out any guidance⁴⁵.

However, although the fact of sport's addition to the list of EU competences is undeniably important, the detailed content of this competence newly granted by the Member States to the EU is far less remarkable. The details, agreed in 2004 and reaffirmed in 2007, are found in Part Three of the TFEU, which is entitled "Union Policies and Internal Actions", specifically in Title XII of Part Three "Education, Vocational Training, Youth and Sport". So, sport is inserted into an amended version of Chapter 3 in Title XI of the old EC Treaty, which was designated "Education, Vocational Training and Youth". Under the post-Lisbon re-numbering, the relevant Treaty Articles are Articles 165 and 166 TFEU.

Article 165 stipulates that the Union "shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function". And, pursuant to Article 165(2), Union action shall be aimed at "developing the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially the youngest sportsmen and sportswomen". Article 165(3) adds that the Union and the Member States "shall foster cooperation with third countries and the competent international organisations in the field of education and sport, in particular the Council of Europe".

Article 165(4) provides that in order to contribute to the achievement of the objectives referred to in the Article, the European Parliament and Council, acting in accordance with the ordinary legislative procedure, after consulting the Economic and Social Committee and the Committee of the Regions, shall adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States; and that the Council, on a proposal from the Commission, shall adopt recommendations⁴⁶.

Weatherill concludes that evolution of sports law in the EU represents a fascinating case study into the interaction of the orthodox rules governing the market-making project and the rules, formally sourced in private organisations, which underpin the global regime of sports governance. The EU law does not compete with sport's own "internal law" – it instead permits it a conditional autonomy. And in fixing the nature of those conditions the institutions

⁴⁵ Weatherill, S. EU Sports Law: The effect of the Lisbon Treaty. *University of Oxford, Legal Research Paper Series, Paper No 3/2011*, January 2011.

⁴⁶ Weatherill, S. EU Sports Law: The effect of the Lisbon Treaty. *University of Oxford, Legal Research Paper Series, Paper No 3/2011*, January 2011.

of the EU, primarily the Court and the Commission, have been forced to develop a concept of legitimate sports governance despite the absence of any directly relevant material in the Treaty itself.

The Treaty of Lisbon⁴⁷ changes everything – and nothing. After Lisbon there is no longer any doubt that the EU has a legitimate, if subordinate, role in the field of sport. There will be legislation (of a supporting nature): there will be a budget. And the Treaty does at last contain material capable of nourishing the Court’s interpretation of the free movement and competition rules in the particular context of sport. The specific nature of sport is now written into the Treaty. One would suppose that sporting bodies would no longer waste time claiming EU law has no application to their activities and instead seek to rely on the wording of the new provisions as a basis for minimising the transformative effect of EU law on their practice. However, since the Court and the Commission have not in the past blindly applied EU law to sport as if it were a “normal” industry, it remains to be seen whether Lisbon really changes anything or whether instead it simply confirms the existing practice. The vague nature of the new provisions delegates considerable power to the Court and Commission to make that choice, but the most likely outcome is – no change. EU law has *always* treated sport as “special”⁴⁸.

Nevertheless, the Author has to mention that there is still a positive change and EU started paying more attention to sports policies. To find evidence, the Author studied progress of the European Parliament’s Sport Intergroup, and there are some facts from the Progress Report on the Intergroup Achievements 2014–2019:

1) 20 events, e.g. ethics, governance and sport; the future of FIFA; match fixing; youth and sport; digital single market and sporting events; international transfer system of players; human rights and Mega-Sport Events ahead of Russia 2018; eSports in Europe, mental health in Elite Sport; sport and regional development; etc.

2) 9 study visits

3) 16 reports and resolutions with the involvement of the Members of the Bureau EP Sport Intergroup, e.g. an integrated approach to Sports Policy; recent revelations of high-level corruption cases in FIFA; implementation of EU Youth Strategy; etc.

4) 53 written questions to the European Commission, e.g. ratification of the Council of Europe’s Convention on the Manipulation of Sports Competitions; child trafficking in

⁴⁷ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007. *Official Journal of the European Union*, 17.12.2007, C 306/1

⁴⁸ Weatherill, S. EU Sports Law: The effect of the Lisbon Treaty. *University of Oxford, Legal Research Paper Series, Paper No 3/2011*, January 2011.

sport and EU migration; future sports policies of the Commission; VAT on sports activities; measures to combat doping; offshore companies involved in football; data protection and athletes; etc.

5) 6 written declarations, e.g. against violence in football and other sporting events; on discrimination in sport; on professional athletes' labour rights; etc.

6) 4 sports activities

7) 13 newsletters.

Hence, for the last five years the role of EU in sport has grown what has undoubtedly led to the formation and development of EU sports law. Notwithstanding the progress of the European Parliament's Sport Intergroup in the previous five years, it was discontinued on 12 December 2019 as it did not collect the necessary number of votes for continuing its functioning. The Author supposes that the sports policy is not in the sphere of interests of the current Members of the European Parliament that does not contribute to the development of the EU sports policy and law in future and indicates that sport needs lobbying in the European Parliament.

EU White Paper on Sport

The policy of the EU regarding sport can be found in the White Paper on Sport (2007)⁴⁹; this document provides the framework for EU action and stresses the importance of sport:

“Sport is a growing social and economic phenomenon which makes an important contribution to the European Union's strategic objectives of solidarity and prosperity. The Olympic ideal of developing sport to promote peace and understanding among nations and cultures as well as the education of young people was born in Europe and has been fostered by the International Olympic Committee and the European Olympic Committees”.

Sport attracts European citizens, with a majority of people taking part in sporting activities on a regular basis. It generates important values, such as team spirit, solidarity, tolerance and fair play, contributing to personal development and fulfilment. It promotes active contribution of EU citizens to society and thereby helps to foster active citizenship. The Commission acknowledges the essential role of sport in European society, in particular when it needs to bring itself closer to citizens and tackle issues that matter directly to them.

⁴⁹ White Paper on Sport {SEC(2007) 932} {SEC(2007) 934} {SEC(2007) 935} {SEC(2007) 936} /* COM/2007/0391 final. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52007DC0391> [viewed 18.05.2019.].

However, sport is also confronted with new threats and challenges which have emerged in European society, such as commercial pressure, exploitation of young players, doping, racism, violence, corruption and money laundering⁵⁰.

Since publication, the Commission has organised a conference on the White Paper held on 08–09 October 2007 and attended by the representatives of the European sporting federations, umbrella organisations for sport (both European and national), representatives of EU institutions and others. The White Paper was also discussed at the Informal Council of Ministers of Sport held in Lisbon on 25 October. Meanwhile, the White Paper has been considered by the European Parliament’s Culture and Education Committee, which agreed the text of the Report on 01 April 2008 for submission to the plenary in the form of a Motion for a Resolution⁵¹.

“The important role of sport in European society and its specific nature were recognised in December 2000 in the European Council’s Declaration on the specific characteristics of sport and its social function in Europe of which account should be taken in implementing common policies (the Nice Declaration). It points out that sporting organisations and Member States have a primary responsibility in the conduct of sporting affairs, with a central role for sports federations. It clarifies that sporting organisations have to exercise their task to organise and promote their particular sports “with due regard to national and Community legislation”. At the same time, it recognises that, “even though not having any direct powers in this area, the Community must, in its action under the various Treaty provisions, take account of the social, educational and cultural functions inherent in sport and making it special, in order that the code of ethics and the solidarity essential to the preservation of its social role may be respected and nurtured”. The European institutions have recognised the specificity of the role sport plays in European society, based on volunteer-driven structures, in terms of health, education, social integration, and culture”⁵².

The below is stated by the UK House of Commons when analysing the White Paper on Sport: “The Football Association (FA) told us that it was encouraged by the new EU

⁵⁰ White Paper on Sport {SEC(2007) 932} {SEC(2007) 934} {SEC(2007) 935} {SEC(2007) 936} /* COM/2007/0391 final. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52007DC0391> [viewed 18.05.2019.].

⁵¹ House of Commons. Culture. Media and Sport Committee. European Commission White Paper on Sport. Seventh Report of Session 2007–08. *Report, together with formal minutes, oral and written evidence. Ordered by The House of Commons to be printed 8 May 2008* HC 347. Published on 14 May 2008 by authority of the House of Commons London: The Stationery Office Limited. Available from: <https://publications.parliament.uk/pa/cm200708/cmselect/cmcmds/347/347.pdf> [viewed 15.08.2019.].

⁵² White Paper on Sport {SEC(2007) 932} {SEC(2007) 934} {SEC(2007) 935} {SEC(2007) 936} /* COM/2007/0391 final. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52007DC0391> [viewed 18.05.2019.].

competence for sport, particularly as it left policy control to Member States; and the Central Council for Physical Recreation (CCPR), a representative body for sport and recreation in the UK, with a membership of over 260 sporting bodies, believed that it would “open up opportunities for sport”. The football Premier League agreed that its findings and recommendations would “provide a good framework for the development of the new EU competence for sport envisaged in the forthcoming Treaty”, but it urged us to keep under review the development of EU sport policy in the wake of the Treaty, particularly to examine the extent to which the White Paper’s core principles are upheld⁵³. Therefore, the Author concludes that European sports society, at least its British representatives, was positive on the creation of the new document framing EU sports policy.

Sport is an area of human activity that greatly interests citizens of the European Union and has enormous potential for bringing them together, reaching out to all, regardless of age or social origin. According to the Eurobarometer survey carried out in November 2004⁵⁴, approximately 60 % of EU citizens participate in sporting activities on a regular basis within or outside approximately 700,000 clubs, which are themselves members of a plethora of associations and federations. The vast majority of sporting activity takes place in amateur structures. Professional sport is of growing importance and contributes equally to the societal role of sport. In addition to improving health of European citizens, sport has an educational dimension and plays a social, cultural and recreational role. The societal role of sport also has the potential to strengthen the Union’s external relations⁵⁵.

The White Paper on Sport consists of two major documents, i.e. the White Paper on Sport (Brussels, 11.7.2007 COM (2007) 391 final) and the action plan “Pierre De Coubertin” – accompanying document to the White Paper on Sport (Brussels, 11.7.2007 SEC (2007) 934). The White Paper contains three policy discussions: the social role of sport, the economic dimension of sport, the organisation of sport.

The number of the above proposed actions is to be implemented or supported by the Commission. These actions are brought together in the Action Plan named after Pierre de Coubertin, the founder of the modern Olympic movement. As stated in the Action Plan, the goal of the Action Plan is to guide the Commission in its sports-related activities during the

⁵³ House of Commons. Culture, Media and Sport Committee. European Commission White Paper on Sport. Seventh Report of Session 2007–08. *Report, together with formal minutes, oral and written evidence. Ordered by The House of Commons to be printed 8 May 2008* HC 347. Published on 14 May 2008 by authority of the House of Commons London: The Stationery Office Limited. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52007DC0391> [viewed 15.08.2019.].

⁵⁴ Special Eurobarometer. 2004. The Citizens of the European Union and Sport.

⁵⁵ White Paper on Sport {SEC(2007) 932} {SEC(2007) 934} {SEC(2007) 935} {SEC(2007) 936} /* COM/2007/0391 final. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52007DC0391> [viewed 18.05.2019.].

coming years while fully taking into account and respecting the principle of subsidiarity and the autonomy of sport organisations.

The United Kingdom House of Commons report claims that it is important to distinguish between the White Paper and the Action Plan which it encompasses. Whereas the White Paper raises some controversial issues, chiefly in relation to the position of sport within EU law, the majority of action points in the Action Plan are not proposals for changes in policy but suggestions for establishing or maintaining dialogues and international networks, or carrying out evaluations and studies, or making better use of existing funding and development programmes, or merely taking sport into account in debates in related subject areas⁵⁶.

The White Paper, in its paragraph regarding the organisation of sport, mentions the principle of good governance in sport that should be promoted at EU and national level. It states that the Commission can play a role in encouraging sharing best practices in sport governance. It can also help to develop a common set of principles for good governance in sport, such as transparency, democracy, accountability and representation of stakeholders (associations, federations, players, clubs, leagues, supporters, etc.)⁵⁷. According to the Author, the principle of good governance is the one that should be analysed in detail in the context of this research as the principle of good governance also includes in itself the presence of proper judicial procedures. This principle is also mentioned in the document entitled Communication on the Promotion of Good Governance in Sport⁵⁸: good governance in sport is a condition for the autonomy and self-regulation of sport organisations. While it is not possible to define a single model of governance in European sport across different disciplines and in view of various national differences, the Commission considers that there are inter-linked principles that underpin sport governance at European level, such as autonomy within the limits of the law, democracy, transparency and accountability in decision-making, and inclusiveness in the representation of interested stakeholders. Good governance in sport is a condition for addressing challenges regarding sport and the EU legal framework. But the most important

⁵⁶ House of Commons. Culture, Media and Sport Committee. European Commission White Paper on Sport. Seventh Report of Session 2007–08. *Report, together with formal minutes, oral and written evidence. Ordered by The House of Commons to be printed 8 May 2008* HC 347. Published on 14 May 2008 by authority of the House of Commons London: The Stationery Office Limited. Available from: <https://publications.parliament.uk/pa/cm200708/cmselect/cmcumeds/347/347.pdf> [viewed 15.08.19.].

⁵⁷ White Paper on Sport {SEC(2007) 932} {SEC(2007) 934} {SEC(2007) 935} {SEC(2007) 936} /* COM/2007/0391 final. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52007DC0391> [viewed 18.05.2019.].

⁵⁸ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Developing the European Dimension in Sport. /* COM/2011/0012 final *. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1389190399614&uri=CELEX:52011DC0012> [viewed 16.08.2019.].

document regarding the good governance policy in EU sports is the EU Work Plan for Sport 2011–2014⁵⁹. The values proclaimed in the EU Work Plan for Sport 2011–2014 were incorporated in the upcoming EU Working Plans for Sport 2014–2017 and 2017–2020 which contain additional topical issues.

The EU Work Plan for Sport 2011–2014 identifies three main categories of sports organisations which can be defined as recipients of the recommendations outlined in the document:

1. Grassroots sport organisations. Grassroots sport covers all sport disciplines practiced by non-professionals; individuals who spend most of their time practising sport or who earn most of their income through sport are therefore excluded from this category. Grassroots sport bodies have specific characteristics that need to be considered when addressing the issue of good governance, namely their reliance on volunteers (in cooperation with limited paid staff) and their focus on participation.

2. National sports governing bodies and national umbrella sports organisations. These are the bodies responsible for the organisation of sport throughout all the layers of a single discipline (from grassroots to the elite) at national level. They are in charge of setting and enforcing rules within a given territory and to oversee that those rules are applied consistently under their jurisdiction. They are part of European (continental) and international federations.

3. European and international federations. These bodies have a special role to play in the field of sport. International federations usually set the rules of the game and are in charge of organising major international tournaments. European federations organise continental competitions and are responsible for organisation of sport within their area. This double role of international bodies implies that the standards of good governance applicable to them should be higher than those at lower levels of the sporting pyramid. Some national governing bodies and some organisers of sports events should also respond to higher governance standards, on grounds of the commercial nature of their activities and of the diversity of stakeholders involved in the events.

Paragraph 7 on Judicial/Disciplinary Procedures delivers the following recommendations to the sport bodies defined above:

1. Need for appropriate judicial/disciplinary framework.

Sports bodies should put in place a suitable judicial/disciplinary framework that meets their particular needs (and any requirements of its international sporting family). The

⁵⁹ EU Work Plan for Sport 2011-2014. Available from: https://ec.europa.eu/assets/eac/sport/library/policy_documents/xg-gg-201307-dlvrb12-sept2013.pdf [viewed 16.08.2019.].

framework should be proportionate to the size, membership and type of cases on which it is required to adjudicate.

2. Need for a separate judicial/disciplinary code.

It is preferable for a separate judicial/disciplinary code to be developed incorporating clear disciplinary rules, sanctions and procedures. Members, stakeholders and all participants should agree to be bound by the code and sanctions imposed.

Members, stakeholders and participants should, where practicable, be educated on key rules and obligations under the code so they are aware of what is expected of them and the consequences of non-compliance. Interactive web-based initiatives can be used for this purpose.

3. Impartiality of adjudicators.

Adjudicators should be impartial.

Sports bodies should monitor legal requirements in this regard as well as any minimum standards imposed by their international, national or regional bodies.

To mitigate the risk of challenge, appropriate codes of practice can be developed for judicial personnel providing guidance on when it may not be appropriate for them to sit in judgment.

4. Skills and expertise of adjudicators.

Adjudicators must possess the necessary skills and expertise to evaluate evidence, assess credibility of witnesses and make reasoned decisions.

To aid transparency, it is preferable if adjudications are supported by written reasons and where possible made public. Training in disciplinary procedures, the application of rules and production of written reasons should where possible be undertaken by adjudicators.

5. Fair trial.

Basic procedures to ensure the right of the defence should be established in accordance with general principles of law.

6. Appropriate appeal framework.

An appropriate appeal framework should be put in place by sports bodies. This supports overall due process and provides a further layer of risk management as erroneous decisions can be rectified.

Where appropriate, a sports body may also consider appointing an ombudsperson.

Where legal challenges to the decisions of governing bodies in national state courts are likely, a sports body may also consider, subject to applicable national and EU laws, adopting

a suitable binding internal arbitration mechanism. Such alternative dispute mechanisms should deliver swift, cost effective, expert sports specific resolutions.

According to the Author, all the regulations of the EU White Paper on Sport and the EU Work Plans on Sport reflect the model of a transparent sport governance system that should be taken as an example by sports bodies in the Member States. Having analysed the recommendations, it is obvious that the EU spreads its policies and influence to the sports sector presumably considering it to be part of the EU economy. The given recommendations regarding the judicial and disciplinary proceedings at the sports bodies are considered to be very important in the context of this Doctoral Thesis as a properly built judicial system in the sports body presumes to have a dispute resolution system that is capable of delivering quick and efficient conflict resolution. Hence, the policies proclaimed in the White Paper on Sports, are the most vivid confirmation that the idea of an alternative dispute resolution in EU sport is existing, has been discussed and is deemed to be a right way to develop sports policy in the Member States.

European Sports Charter

According to Recommendation No R (92) 13 Rev. of the Committee of Ministers to Member States on the Revised European Sports Charter (Recommendations), in 1992, the Committee of Ministers, under the terms of Article 15.b of the Statutes of the Council of Europe, considering that:

1) the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and of facilitating their economic and social progress;

2) sport is a social and cultural activity based on voluntary choice which encourages contacts between European countries and citizens, and plays a fundamental role in realisation of the aim of the Council of Europe by reinforcing the bonds between peoples and developing awareness of a European cultural identity;

3) European Ministers responsible for Sport, meeting at Rhodes for their 7th Conference (1992), the first occasion on which Sports Ministers from all European countries had participated in the work of the Conference, adopted a resolution defining such principles for sport policies under the title of European Sports Charter and undertook to follow and implement them as far as their authority permits;

Bearing in mind

1) its Recommendations No R(80)1, on Sport and Television; No R(81)8 on Sport and Physical Recreation and Nature Conservation in Inland Water Areas; No R(83)6 on Energy-Saving Measures in Sports Facilities; No R(86)18 on Sport for All: Disabled Persons; No R(87)9 on the Eurofit Tests of Physical Fitness; No R(88)8 on Sport for All: Older Persons; which have contributed to the implementation of Sport for All policies;

2) political, economic, social and other changes in Europe since 1976, the rapid pace of such changes, and their impact upon sport, and that a new European Sports Charter is necessary to reflect these changes and to face up to future challenges;

3) the close interrelationship between sound environmental conditions and sporting activities as well as the need to integrate environmental considerations and the principle of sustainable development in sport;

4) the need to accompany, on a wider basis, the European Convention on Spectator Violence and Misbehaviour at Sports Events and in Particular at Football Matches and the Anti-Doping Convention, which have already contributed to safeguarding the values of sport and acknowledging that public authorities should develop reciprocal co-operation with the sports movement as the essential basis of sport, in order to promote the values and benefits of sport, and that in many European States, governmental action in sport is taken in order to be complementary to and support the work of this movement (subsidiarity);

The European Sports Charter also recommends the governments of Member States:

1) to base their national policies for sport, and, when appropriate, any relevant legislation, on the European Sports Charter;

2) to invite their national sports organisations to take account of principles set out in the European Sports Charter in elaboration of their policies;

3) to take steps to ensure a wide dissemination of the European Sports Charter.

It instructs the Secretary General to transmit this Recommendation to:

- a. the governments of States party to the European Cultural Convention not Member States of the Council of Europe;
- b. international organisations and international sports organisations.

The European Sports Charter consists of 13 Articles with two main aims, first being enabling every individual to participate in sport, by the following, to ensure:

1) all young people have the opportunity to receive physical education and instruction and the opportunity to acquire basic sports skills;

2) everyone has the opportunity to take part in sport and physical recreation in a safe and healthy environment;

3) everyone with interest and ability in a particular sport has the opportunity to improve their standard of performance in sport and reach high levels of achievement.

The second aim is to protect and develop the moral and ethical base of sport and human dignity and safety of those involved in sport by safeguarding sport, sportsmen and women from exploitation for political, commercial and financial gain and from practices that are abusive such as drugs and sexual harassment and abuse⁶⁰. The European Sports Charter makes recommendations to sports policy in relation to the following areas: sports movement, facilities and activities, building the foundation, developing participation, improving performance, supporting top level and professional sport, sport and sustainable development, domestic and international cooperation.

One of the latest documents on the EU sports policy based on the values proclaimed in the European Sports Charter, the EU White Paper on Sports and all three EU Working Plans on Sports is Conclusions of the Council and of the Representatives of the Governments of the Member States meeting within the Council on promoting the common values of the EU through sport (2018/C 196/06) (Conclusions).

The Conclusions once again make a focus on the following values:

1) all people should be free to practise sport and feel a part of society, and different sectors related to sport can do what is in their capacity to foster integration as well as provide equal opportunities to engage in sport and avoid discrimination and social exclusion;

2) sport can contribute to building and developing a civil society and social sustainability. There is a need to foster a common sense of belonging among Europeans – political as well as cultural. Since sport is an universal language understood by all, communicating and emphasising common values through sport, using innovative methods of non-formal and informal learning, can contribute to preventing intolerance, social exclusion, including gender stereotyping and misogyny, racism, xenophobia and marginalisation;

3) sport can reinforce values in a natural way and in a positive atmosphere. Values, such as mutual respect, fair play, friendship, solidarity, tolerance and equality should be natural to all those involved in sport in clubs, schools, recreational and professional sport;

4) contribution of sport to social cohesion and building inclusive, strong communities, if infused with the values of equality, can also contribute to the development of an efficient, democratic and just society. Sport instructors and coaches can play a role to reinforce the common values of the EU through sport⁶¹.

⁶⁰ European Sports Charter, Article 1. Available from: <https://rm.coe.int/16804c9dbb> [viewed 13.09.2019.].

⁶¹ EUR-Lex. Available from: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=uriserv%3AOJ.C_2018.196.01.0023.01.ENG [viewed 05.06.2015.].

The Conclusions address the invitation to take action in implementing the common European sporting values to three addressees that are the Member States, European Commission and Sports Movement.

Where, in Paragraph 24, the Member States are asked to encourage and where possible support sport organisations in strengthening good governance, within their organisations and where appropriate address these values in their ethical guidelines or equivalent documents. Moreover, as the Author concluded above, the existence of a dispute resolution body convenient for every sportsman is part of good governance strategy.

Hence, the Author considers that the European Sports Charter is a cornerstone in the development of European sport since its adoption in 1992 and revision in 2001. But, according to the Author, sport has been in the process of transformation since then; therefore, the new challenges that need attention and regulation have arisen. Nowadays, topicalities in sport are: discrimination, racism, high commercialisation, bad governance, etc. All these issues need to be regulated, otherwise it will lead to a decrease in participation, emergence of pronounced leader countries in sports that, altogether, might undermine the positive functions of sport for European society. Therefore, the European Sports Charter needs to be revised and amended in accordance with current challenges.

1.1.2 EU case law on sports: the effect of the “Bosman case”

Article 45 of TFEU (ex Art. 39) grants the freedom of movement for workers that shall be secured within the Union. Hence, EU nationals are eligible to work and reside in any Member State on equal terms with the national of that State. According to EU law, this Article is directly applicable and enforceable by national courts.

Before the “Bosman case” and its ruling in 1995, this Article had no impact on European football clubs, and UEFA rules contained provisions that contradicted this principle.

Prior to the Bosman ruling, a football player could only move between clubs where both clubs were in agreement to this. The way that this agreement would be reached was by the two clubs agreeing on a transfer fee to be paid by one club to gain the services on that player.

This requirement for a transfer fee applied regardless of whether the player was still under contract with the first club. Therefore, even players who were out of contract with their

club were unable to sign a contract with a new club until a transfer fee had been paid or they were granted a free transfer by the first club⁶².

“<...> at the expiry of the contract, the player is free to enter into a new contract with the club of his choice. That club must immediately notify the old club which, in turn, is to notify the national association which must issue an international clearance certificate. However, the former club is entitled to receive compensation from the new club for training and development, to be fixed, failing agreement, by a board of experts set up within UEFA using a scale of multiplying factors, from 12 to 1 depending on the player's age, to be applied to the player's gross income, up to a maximum of SFR 5,000,000”⁶³.

Furthermore, prior to the ruling in this case, quota systems existed throughout European football meaning that only a limited number of players from outside the country which the team is based in could represent their club in European competitions. This was limited to three foreign players and two assimilated players being able to represent their club in European competitions. This did however not apply to domestic leagues⁶⁴.

An interesting fact is that this issue was earlier already surfaced in two rulings Walrave/UCI⁶⁵ of 1973 and Donà/Mantéro of 1976⁶⁶ where the Court had taken the position that nationality clauses in sports could only be justified on sporting grounds, for instance, for national teams.

Following these rulings, the Commission was asked to intervene against football federations restricting the number of EC players who can be recruited. Moreover, the question of transfer fees was also raised. The Commission took the line that, although discriminatory rules on the grounds of nationality were in conflict with Community law, it would be difficult to initiate infringement proceedings.

In 1978, the Commission invited UEFA to make its rules compatible with the Court's rulings. In return, the Commission would allow a transitional period during which it would not take any legal action against the federations. Most national football federations were reluctant to apply the compromise. The rules remained unchanged⁶⁷.

⁶² In Brief. Available from: <http://www.inbrief.co.uk/football-law/bosman-decision-football-transfers.htm> [viewed 20.01.2016.].

⁶³ Judgment of the Court of 15 December 1995. *Union royale belge des sociétés de football association ASBL v Jean-Marc Bosman, Royal club liégeois SA v Jean-Marc Bosman and others and Union des associations européennes de football (UEFA) v Jean-Marc Bosman*. Available from: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:61993CJ0415&from=EN> [viewed 25.01.2016.].

⁶⁴ In Brief. Available from: <http://www.inbrief.co.uk/football-law/bosman-decision-football-transfers.htm> [viewed 20.01.2016.].

⁶⁵ *Walrave and Koch* the case discussed in the previous chapter.

⁶⁶ Judgment of the Court of 14 July 1976. *Gaetano Donà v Mario Mantero*. Case 13–76. *European Court Reports 1976-01333*.

⁶⁷ European Commission. Available from: http://europa.eu/rapid/press-release_IP-95-1411_en.htm [viewed

The Bosman case facts: a Belgium national refused to accept a new contract at a lower wage with his club RC Liege. Bosman wished to move to a French club, US Dunkerque, but RC Liege refused to process the transfer as it doubted the US Dunkerque's ability to process the transfer fee. Bosman failed a suit to Belgian court claiming that the demand for such a transfer fee was unlawful.

As a result, Belgian courts dealing with the Bosman case had asked for preliminary rulings of the Court of Justice regarding the conformity of transfer rules and nationality clauses with the free movement of workers and the competition rules⁶⁸. Having analysed the ruling, the Author obtained the following results:

1) the free movement of workers' principle precludes the application of rules laid down by sporting associations under which a professional footballer who is a national of one Member State may not, on the expiry of his contract with a club, be employed by a club of another Member State unless the latter has paid to the former club a transfer, training or development fee;

2) the same principle precludes the application of rules laid down by sporting associations under which, in matches and competitions they organise, football clubs may field only a limited number of professional players who are nationals of other Member States⁶⁹.

Hence, the Bosman case is a landmark for the European sports law. It is not an exaggeration to tell that this ruling divided the history of European sport and European football to "before" and "after" the Bosman case ruling. The Bosman case gave much more freedom to football players as, firstly, the players were able to freely change their place of work after the expiration of the contract and, secondly, restrictions on the number of foreign legionnaires from EU countries in European clubs were lifted. Small states definitely suffered the most from the Bosman case unlike clubs in larger countries where there is more money and possibility to acquire top players for a longer time.

20.01.2016.].

⁶⁸ *Ibid.*

⁶⁹ Judgment of the Court of 15 December 1995. Available from: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:61993CJ0415&from=EN> [viewed 22.01.2016.].

1.2 Latvian sports law: policy, problematic issues

Paragraph 11 of Recommendation No R (92) 13 of the Committee of Ministers to Member States of the European Sports Charter adopted by the Committee of Ministers on 24 September 1992 states:

“Acknowledging that public authorities should develop reciprocal cooperation with the sports movement as the essential basis of sport, in order to promote the values and benefits of sport, and that in many European States, governmental action in sport is taken in order to be complementary to and support the work of this movement (subsidiarity).”

EU Member States were given a freedom of action on how to implement the above general principles of co-operation and complementarity.

Alongside such European countries as Austria, Belgium, Finland, France, Spain, Portugal, Switzerland, Italy, Cyprus, and Luxembourg⁷⁰, Latvia has a general law on sport – Sports Law (Latvian, *Sporta likums*). This law was passed by the Parliament in October 2002, i.e. two years before officially entering the European Union, as a single document.

One would think that the existence of the Sports Law indicates the presence of well-thought-out sports legislation in Latvia, but the Author suggests analysing the quality of this law and its relevance before asserting this fact.

Also, a few words are to be said on the origins of Latvian sports as the historical events that affected Latvia greatly influenced the development of Latvian sports. Below, the Author has listed the major dates and events from the history of Latvian sports ascertained in the study provided by the Latvian Institute:

1) before World War I, Riga was one of the main sports centres of the Russian Tsarist Empire, along with St. Petersburg, Moscow, Kiev and Revel (Tallinn);

2) on 18 December 1911, the Baltic Olympic Committee was founded with the aim to co-ordinate its activities with the Russian Olympic Committee in selecting athletes from the Baltic provinces for the Olympic Games;

3) on 06 March 1921, after Latvia declared its independence in 1918, the Provisional Union of Latvia's Sports Organisations was established in Riga. Its purpose was to co-ordinate activities of various sports organisations of Latvia and promote the establishment of a unified system for sporting activities;

4) the Ambassador of France in Latvia, Count de Martel, supplied the Latvian Olympic Committee with information about the Olympic Games in Paris in 1924. The

⁷⁰ Council of Europe Publishing. *Study on national sports legislation in Europe*, July 1999, p. 6.

Latvian Olympic Committee was recognised by the International Olympic Committee in 1923;

5) between the two World Wars, Latvian sportsmen took part in seven Olympic Games: four Summer Games and three Winter Games, and many international competitions, while students participated in several World University Games. Latvian athletes won one silver medal (in Los-Angeles, 1932) and two bronze Olympic medals (in Berlin, 1936);

6) from June 1941 till May 1945 Latvia was occupied by the Nazi German armed forces which, in turn, were replaced in 1945 by the Soviet regime. Incorporated into the USSR as one of the fifteen Soviet Socialist Republics, Latvia's sports system was reorganised according to the Soviet centralised model;

7) in the late 1980's, Gorbachov's "Perestroika"⁷¹ relaxed some of the restraints on the republics. The first attempts to change Soviet regulations in Latvian sports took place in 1988 when the Sports Conference of Latvia unanimously voted for the restoration of the Latvian Olympic Committee and adopted resolutions on the democratisation of the sports system at all levels. The Latvian Olympic Academy was founded on 21 March 1989;

8) on 04 May 1990, the newly elected Supreme Council of the Latvian Soviet Socialist Republic, which included majority of pro-independence deputies from the Popular Front of Latvia, adopted a declaration calling for the restoration of an independent Republic of Latvia. Moscow did not accept this declaration;

9) the first meeting between the managers of the International Olympic Committee and the leaders of restored Olympic Committees of the three Baltic States took place in Lausanne in late autumn 1990. The Baltic representatives informed the International Olympic Committee about the restored Olympic Committees and their wish to participate in the next Olympic Games in Albertville in France. A negative answer was given by the International Olympic Committee on grounds that those countries were still under the rule of the USSR;

10) on 21 August 1991, as the USSR began to unravel, Latvia formally restored its legal independence.

This chronology demonstrates the uneven development of sports in Latvia which was significantly influenced by the historical and political events.

After becoming an independent state, Latvian sports trends and programmes envisaged development in three directions:

⁷¹ Russian: "restructuring" programme instituted in the Soviet Union by Mikhail Gorbachev in the mid-1980s to restructure Soviet economic and political policy. Encyclopaedia Britannica. Available from: <https://www.britannica.com/topic/perestroika-Soviet-government-policy> [viewed 30.10.2016.].

- 3) Sports for All, including disabled and handicapped people;
- 4) Children/Youth Sports;
- 5) Elite/Top competition sports⁷².

Up to this day, these three directions are present in the Latvian Sports Policy and are being reflected in the Sports Policy Guidelines for 2014–2020⁷³ which is a policy planning document in the sports industry that determines the sports policy of the State for seven years.

The history of Latvian sports as well as the history of Latvian people were full of search of its true self and struggle for independence which, of course, had a reflection in Latvian legislative acts on sports and explained its possible imperfections.

Raising the topic of research papers on sports-related sciences in Latvia, the Author has to state that the subject of sports-related law is not popular among Latvian legal scholars, although the series of publications regarding sports-related legal subjects in the journal *Jurista Vārds* (Eng., Lawer's Word) is a good tendency. Likewise, there are several BA and MA theses defended on the sports law-related subjects. The Author would like to distinguish one MA thesis (correlating with the theme of this Doctoral Thesis) written by a law student Anna Belēviča in 2019 on the subject of Settlement of Disputes and their Characterisation in the Court of Arbitration for Sport. The Author supposes this research paper to be a decent work as its quality and content testify the student's interest in the subject of dispute resolution in sports-related disputes. Speaking of the Sports Policy in Latvia, the Author would like to highlight a dissertation on the subject of Innovative Latvian Sports Sector Strategic Planning Model written by Signe Luika in 2013 and defended at the Latvian Academy of Sports Pedagogy. Some conclusions made by Signe Luika are mentioned in the upcoming chapters.

1.2.1 Sports-related legislation

To consider the civil aspects of the Sports law in Latvia, two main types of legislative acts are to be analysed, i.e. the laws and regulations of the Cabinet of Ministers adopted on the basis of this Law to support its functioning.

Sports Law framework

The Latvian Sports Law was adopted by the Parliament and proclaimed by the Latvian president in 2002 with the purpose under Article 2 “to specify the general and legal basis for sports organisation and development, mutual relationship of sports organisations, State and

⁷² Latvijas Institūts. Available from: <http://www.li.lv/en/> [viewed 28.10.2016.].

⁷³ POLSIS: Policy planning documents database. Available from: <http://polsis.mk.gov.lv/documents/4599> [viewed 23.08.2019.].

local government institutions and basic tasks in sports development, and the basis for the financing of sport, as well as the principles that shall be observed when taking part in the international sports movement”. It consists of 20 articles regulating the general principles of functioning of the Latvian sports system and its subjects only where the subjects are deemed to be sports federations, sports teams, athletes, sports organisations, etc.

In her Doctoral Thesis, Signe Luika highlights a fact that since 23 November 2006 (when the Law on Amendments to the Sports Law adopted by the Saeima of the Republic of Latvia came into force on 26 October 2006) sport has been recognised as an industry, but until then the Latvian word *nozare* (Eng., sector) was used. The Terminology Commission of the Latvian Academy of Sciences explains that the very composition of the word *nozare* (especially the root of the word *zars* and the prefix *no* which implies separation) indicates that this is about a branch – a separate, more or less independent part of a whole.

Under Article 1(10) of the Sports Law, sport is defined as all types of individual or organised activities in order to maintain and improve physical and mental health, as well as to achieve success in sports competitions. In comparison, the Federal Law On Physical Culture and Sports in the Russian Federation⁷⁴ of Latvia’s neighbour Russian Federation divides sport into five types: sport, children and youth sport, mass sport, sport of high achievements and professional sport, and defines each of them separately. Likewise, *Code du Sport* of the French Republic at its *Titre II: Sportifs*⁷⁵ has two separate definitions of high-level sport and professional sport.

Under Article 3 of the Sports Law, the following basic principles are observed in the field of sport:

- 1) the principle of equality which provides that every person has the right to engage in sport;
- 2) the principle of fair play which determines that care shall be taken that the Olympic ideals and principles of ethics are observed, as well as dishonesty and the use of doping, physical and moral rudeness in sport is fought against in educational, organisational and administrative work related to sport;
- 3) the principle of safety which provides that sports events take place in a safe environment and are organised and conducted by qualified sports employees.

⁷⁴ Российская Федерация. Федеральный закон. Available from: <http://pravo.gov.ru/proxy/ips/?docbody=&nd=102118584> [viewed 20.04.2020.].

⁷⁵ Legifrance. Available from: <https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006071318> [viewed 09.04.2020.].

The realisation of the above principles of safety refer to the criminal aspects of the Sports Law.

The Sports Law also regulates the concepts as follows:

- 1) competence of state and municipal institutions;
- 2) competence of the Latvian National Sports Council;
- 3) characteristics of sports organisations, i.e. sports federation, sports club, etc.;
- 4) competence of the Latvian Olympic Committee;
- 5) allocation of financial resources for sport;
- 6) awarding of monetary prizes for outstanding achievements in sport;
- 7) organisation of and participation in the international sports competitions;
- 8) rights and duties of athletes;
- 9) ban on the manipulation of sports competitions;
- 10) definition of a professional athlete;
- 11) etc.

Having analysed this legislative act, the Author concludes that only one article is devoted to almost every concept, whereas the Sports Law does not cover such important elements of sports law as separate regulation for mass sport, professional sport and sport of high achievements, extra-judicial dispute resolution procedures, special “labour law” for sports contracts, Paralympic sport, etc.

It should be noted that important amendments were made in 2016 when Article 15.1 on the manipulation of sports competitions was added to the Sports Law. It states that manipulation of sports competitions means any action aimed at an improper alteration of the course of a sports competition or making its result unpredictable. Such manipulation is prohibited and all athletes, sports organisations, sports personnel and sports professionals are obliged to take all necessary actions to prevent such manipulation. The responsibility for manipulation is provided in Article 212.1 of the Criminal Law of Republic of Latvia. This amendment is deemed to be the most urgent modification of the Latvian Sports Law.

Nevertheless, the Author suggests that the regulation provided in the Sports Law is insufficient, not specific enough and does not answer the needs and tendencies of the modern sports movement in Latvia. When comparing the Latvian sports law regulation to the sports-related regulation and legal acts of other countries, e.g. France or Russia, the impression is that the Latvian legislator’s aim was only to provide the main guidelines and principles for the sports movement in Latvia.

The Author suggests that the legislator should revise and amend the Sports Law bearing in mind all the recommendations and regulations stated in the White Paper for Sports and European Sports Charter paying special attention to the emerging issues in European sport such as bad governance, racism, high commercialisation etc. Likewise, speaking of the protection of athletes' interests, the Sports Law should provide for a system of dispute resolution available and affordable for Latvian athletes.

Regulations on sport of the Cabinet of Ministers

Regulations of the Cabinet of Ministers are the primary sources of law in Latvia. The Cabinet of Ministers may issue legislation in the form of regulations (Latvian, *noteikumi*) in the following cases:

- 1) on the basis of an authorisation laid down by statute;
- 2) to approve an international agreement or draft thereof, denounce an international agreement or suspend its operations, unless the Constitution or the law provides otherwise;
- 3) if necessary for the application of European Union legislative acts and if the issue in question has not been regulated by statute; these regulations may not impinge on the fundamental rights of private individuals⁷⁶.

At the time of completion of this Doctoral Thesis, altogether there were nine Regulations of the Cabinet of Ministers issued on the basis of the Sports Law. The list of such Regulations of the Cabinet of Ministers and its brief analysis can be found in Appendix 1 to the Doctoral Thesis.

Having analysed the information given in Chapter 1.2.1, the Author concludes that sports law in Latvia is a very new branch of law that situates itself at the very beginning of its evolution because of the non-sequential progress caused by the aspects of the historical development of the Republic of Latvia.

The Author suggests that sports-related legislation in Latvia is insufficient, not specific enough and does not answer the needs and tendencies of the modern sports movement in Latvia. If the Latvian Sports Law is compared to the sports-related legal acts of other countries, e.g. France or Russia, the impression is that the Latvian legislator's aim was only to provide the main guidelines and principles for the sports movement in Latvia specifying the procedures with the regulations of the executive power of the State.

⁷⁶ European Justice. Available from: https://e-justice.europa.eu/content_member_state_law-6-lv-en.do?init=true&member=1 [viewed 22.01.2016.].

Even so, sports law in Latvia is an integral area of law, and the current issues affect:

1. Constitutional law – the constitutional structure of the State and the social system, fundamental principles of the individual;
2. Civil law – property relations and associated personal non-property relations in the field of sports law;
3. Labour law – the labour of workers in the field of physical culture and sports, first and foremost professional athletes;
4. International law – international agreements. International economic relations: organisation and holding international sports competitions; international cooperation and foreign investments in the field of sports; international movement of labour resources in the field of sports; establishment of joint ventures to produce goods for sports and tourism;
5. Criminal law – criminality among athletes; money laundering; organised crime and illegal betting; illegal influence on the results of sports competitions; use of doping; criminal fanaticism and extremism in sports;
6. Administrative law – public administration, public associations, local governments and other non-state entities related to sport and sports activities.

Hence, sports industry is a self-regulated industry and most of the above issues are settled at the level of national federations. Nevertheless, the experience of many countries shows that judicial, financial and security issues should be resolved at the national level⁷⁷.

On the basis of the above, the Author suggests that the Latvian scientific world, in cooperation with the legislator, will have to resolve a number of issues regarding the settlement of various relations in the sports industry. It should be done through amendments to the Sports Law providing, as it was already mentioned, for regulations on professional sport, sport of high-achievements, extra-judicial dispute resolution, etc. The creation of special labour law clauses regarding professional sport should be elaborated thus contributing to the convenience of entry into professional sports contracts and better protection of athletes.

1.2.2 Policy planning documents on sports in Latvia

According to the Policy Planning Guidelines developed for 2001–2006, there was no unified approach to policy planning. Since 1993, there were more than 450 conceptual documents approved by the Government the status of which was not clear due to the underdeveloped system of policy revision, replacement, and cancellation. At the time, the

⁷⁷ Zalcmane, K., Kamenecka-Usova, M. (2018). The Problematics of Sport Law in Latvia: Civil and Criminal Law Statutory Acts Perspective. In: *Proceedings of the International Scientific Conference "Society. Integration. Education"*. Rezekne, May 25–26, Vol. 4, pp. 332–346.

existing Regulations of the Internal Order and Procedure of the Cabinet of Ministers did not provide a precise definition of the policy planning document types and use thereof at various stages of policy-making. At the same time, policy planning within various sectors was developing differently (for instance, policy planning was better developed in the areas that receive EU financing where policy revision takes place). The relation between various policy planning documents also was not clear. Coordination and hierarchy of various policy planning documents was not set. When developing policy planning documents, there was a risk of duplication and competition. Competition can be witnessed when various policy planning documents include similar measures for policy implementation. It also could have been the case that several ministries submit to the Government competing policy documents about the same subject area (for instance, several ministries can propose establishment of identical institutions). In the context of this document, the term “policy” was used to describe a purposeful action by the Cabinet of Ministers and institutions of public administration in the specific spheres of society’s life, for instance, the Government’s economic policy, pension policy, health care policy, equality of genders policy, etc. The process of policy-making usually contains elements such as problem definition, setting of objectives, deciding on allocation of financial resources, planning of activities and carrying out those activities, evaluation of results, and deciding on policy change, if required⁷⁸.

Today, there is a policy-making handbook developed by the Cross-Sectoral Coordination Centre of the Republic of Latvia (CSCC) that manages to solve all the above problems and organise policy planning processes.

The CSCC is the leading institution in national development planning and coordination in Latvia. It is under the direct authority of the Prime Minister and responsible for developing and monitoring the highest national development planning documents: National Development Plan of Latvia for 2014–2020 and the Sustainable Development Strategy of Latvia until 2030, and implementation of the national development planning documents in relation to the EU. It oversees the entire central government planning process, making changes when needed and providing guidance to ministries through consultation, elaborating a Handbook on Development Planning and giving open lectures for government officials on policy planning issues at the School of Public Administration⁷⁹. At present, the

⁷⁸ Policy Planning Guidelines. Available from: https://www.mk.gov.lv/sites/default/files/editor/policy_planning_guidlines.pdf [viewed 23.08.2019.].

⁷⁹ Cross-Sectoral Coordination Center of the Republic of Latvia. Available from: <https://www.pkc.gov.lv/en/about-us> [viewed 23.08.2019.].

main sports policy planning document in Latvia is the Sports Policy Guidelines for 2014–2020.

The Sports Policy Guidelines for 2014–2020⁸⁰ is a policy planning document in the sports industry which determines the Sports Policy of the State for seven years, i.e. for two Olympic cycles⁸¹. This document addresses all target groups of the Sports Policy, i.e. children and youth, Sports for All (including veteran sport, student sport), elite sport, and Paralympics sport.

The Guidelines include the basic principles, objectives, directions, target groups and priorities of the Sports Policy as well as directions of action and tasks to achieve the goals pursued by the Sports Policy and solve the problems thereof. But there are also other policy planning documents that affect the Latvian sports sector policy. Some of them are briefly elucidated below.

The National Development Plan of Latvia for 2014–2020⁸² is the main medium-term planning document in Latvia and the action plan of the Sustainable Development Strategy of Latvia until 2030 (Latvia 2030) intended to serve as the State's medium term development path map. It is aimed to promote an active lifestyle, healthy eating, physical activities (including national sport), reproductive health and injury prevention as well as implementation of targeted measures in society. At this moment, the draft of the upcoming National Development Plan of Latvia for 2021–2027 is available (the version that was submitted for public consultation on 07 October 2019).

The Public Health Policy Guidelines 2014–2020 are a medium-term policy planning document which is based on the World Health Organisation Regional Strategy for Europe “Health 2020” and has been drawn up in order to update the situation description included in the Public Health Policy Guidelines 2011–2017 (i.e. the primary aim of the Public Health Guidelines for 2011–2017⁸³ was to prolong healthy life years of the Latvian population and prevent untimely deaths while maintaining, improving and restoring health. The Guidelines also provided for the measures intended to promote physical activity thus reducing risk factors for non-infectious diseases – adiposity, sedentary lifestyle, etc – in the population of Latvia) formulation of the problems, objectives, policy results, the tasks defined in action

⁸⁰ POLSIS: Policy planning documents database. Available from: <http://polsis.mk.gov.lv/documents/4599> [viewed 30.10.2016.].

⁸¹ Policy planning is connected with the Olympic cycles which are subordinated to the year in which the Summer Olympic Games are held. 2016, 2020.

⁸² POLSIS: Policy planning documents database. Available from: <http://polsis.mk.gov.lv/documents/4247> [viewed 30.10.2016.].

⁸³ POLSIS: Policy planning documents database. Available from: <http://polsis.mk.gov.lv/documents/4965> [viewed 30.10.2016.].

directions, and to align them with the National Development Plan of Latvia 2014–2020 and the new financial planning period⁸⁴.

The Youth Policy Implementation Plan 2016–2020⁸⁵ is a medium-term policy planning document for the next five years aimed at improving the quality of life of young people through the implementation of a coherent youth policy and its coordination at all levels, identifying priority actions and policy outcomes. This document was created when the Youth Policy Guidelines for 2009–2018 were still valid, as significant shortcomings were identified in the Youth Policy Guidelines for 2009–2018⁸⁶ and a new medium-term youth policy planning document needed to be developed addressing the shortcomings identified in the guidelines and incorporating the link between the youth policy and EU-level and national development planning documents. Although the Youth Policy Implementation Plan 2016–2020 incorporates the values of youth's active life style promotion proclaimed in the Youth Policy Guidelines for 2009–2018 as it specified the most essential issues to be solved in the field of youth, identify the directions of action, the main tasks and results of the policy and action to be achieved within 10 years. Said physical activity is one of the most essential factors characterising a life style along with the measures intended to promote physical activity among youth, for instance, development of school sports centres, especially in rural regions, since in rural regions a school sports centre may solve the problem with the pastime of many children, young people and their parents thus facilitating interest of youth in sport and improving their physical health.

The Regional Policy Guidelines for 2013–2019⁸⁷ which, in compliance with the State regional policy priorities and directions, identify the targeted range of public services, including the range of sports services, for different levels of living in Latvia.

As it is stated in the Sports Policy Guidelines, the documents mentioned above and affecting the field of sports policy are the policy planning documents based on the internationally recognised principles, values and norms (whose objective, for the most part, is sports policy development, fair play and availability of sport to everyone) specified in the following international documents regulating to the sports industry:

The European Sports Charter, Olympic Charter, Code of Sports Ethics, White Paper on Sport, Enlarged Partial Agreement on Sport (EPAS), European Convention on Spectator

⁸⁴ *Ibid.*

⁸⁵ POLSIS: Policy planning documents database. Available from: <http://polsis.mk.gov.lv/documents/5549> [viewed 30.10.2016.].

⁸⁶ POLSIS: Policy planning documents database. Available from: <http://polsis.mk.gov.lv/documents/2994> [viewed 30.10.2016.].

⁸⁷ POLSIS: Policy planning documents database. Available from: <http://polsis.mk.gov.lv/documents/2994> [viewed 30.10.2016.].

Violence and Misbehaviour at Sports Events and in particular at Football Matches, Anti-Doping Convention, International Convention against Doping in Sport, International Convention against Apartheid in Sport, European Charter on Sport for All: Disabled Persons, UN Convention on the Rights of Persons with Disabilities, European Disability Strategy (2010–2020).

One more existing legal enactment affecting the Latvian sports policy are the Statutes of the Latvian Olympic Committee that were last updated on 23 March 2018 by the Latvian Olympic Committee's General Assembly and reflects the main Olympic values, sets the rules for the Latvian Olympic movement and governs the functioning of the Latvian Olympic Committee.

At the national level, the Latvian Olympic Committee undertakes to participate in the measures with the aim to facilitate peace, support and promote sports ethics, women's participation in sport, fight against doping in sport and responsibly take care of the environmental issues.

As it is proclaimed, the mission of the Latvian Olympic Committee is to strengthen the role of sport in society through the ideals of the Olympic movement and significance of high performance of Latvia's sportsmen by contributing to the improvement of the quality of life and health of the inhabitants involving and motivating them to do sport on a regular basis⁸⁸.

A significant contribution to the Latvian Olympic movement and also global Olympic movement is the Olympic Encyclopaedia created in 2016 in Latvia by the team led by the Olympic Historian Mr. Genadijs Maricevs, who was collecting and researching facts and figures from all aspects of Olympic Movement for more than 50 years⁸⁹.

As Signe Luika mentioned, a precise definition of the sports policy's purpose is a key condition for the successful functioning of a national sports management system and the efficient use of the necessary resources. At the 3rd Latvian Sports Congress on 14 December 1996, the sports community agreed on the National Sports Guidelines and the main goal of the Latvian National Sports Policy – to develop healthy, physically and mentally developed individuals, united in the state, able to fulfil life and work responsibilities in the family, society and country. In the Guidelines, the goal of the national sports policy is to develop healthy, physically and mentally developed personalities. The purpose is shorter, but also

⁸⁸ Latvian Olympic Committee Charter. Available from: <http://olimpiade.lv/lv/lok/statuti> [viewed 01.11.2016.].

⁸⁹ Olympic Encyclopedia. Available from: <http://www.olimpiade.lv/upload/content/olympic-encyclopedia-buklets-2016.pdf> [viewed 23.02.2020.].

precise because it is consistent with the basic principles and ideal of sport – a harmonious person in a harmonious society⁹⁰.

The Author concludes that the sports-related policy planning documents in Latvia meet the designated aim, i.e. a healthy, physically and emotionally developed nation. Still, there is an acute shortage of clearly formulated policies regarding professional and high-achievement sports. The Author deems the existing policy on elite sports to be insufficient. For instance, the National Sports Policy 2018–2027 of the Government of Ireland⁹¹ contains a separate chapter devoted to high-performance sport where policies regarding elite sports and Olympic goals are proclaimed what shows Ireland's ambitions regarding high results in the international sports arena.

The Author proposes Latvian policy-makers to expand the Sports Policy Guidelines for the upcoming period by adding a more ambitious policy regarding Latvian goals in high-performance sports.

⁹⁰ Luika, S. 2012. *Inovātivs Latvijas Sporta Nozares Stratēģiskās Plānošanas Modelis: promocijas darbs* (Eng. Innovative Latvian Sports Industry Strategic Planning Model: Doctoral Thesis). Rīgā: LSPA

⁹¹ Government of Ireland. National Sports Policy 2018–2027. Available from: <https://assets.gov.ie/15979/04e0f52cee5f47ee9c01003cf559e98d.pdf> [viewed 11.11.2019.].

2 Institute of Alternative Dispute Resolution in Modern Law

2.1 The definition of alternative dispute resolution methods

The term “alternative dispute resolution” (ADR) does not have an agreed definition. Some scholars and lawyers argue that arbitration is not a form of ADR because it is a regulated adjudicative system, and others might say that negotiation is not technically a form of ADR as it involves lawyers and their clients but no third party⁹². For the purpose of this Doctoral Thesis, the Author uses the term ADR to briefly cover the full range of alternatives to litigation that might be used to resolve a sports dispute, but the main emphasis will be placed on mediation as the Author supposes it to carry in itself the very essence of ADR methods. The Author agrees with the statement of Brown and Marriott, “ <...> the ADR universe was initially perceived – certainly by some of its adherents – as being infinitely variable, with different processes and strategies capable of being blended in different permutations into hybrid processes that could be tailored to meet the needs of each individual dispute and situation. Over the years, however, mediation, which was always a major ADR process, has entrenched itself as the most significantly used non-adjudicatory one, with established procedures and expectations. Other hybrid processes, while still used, have not emerged to the extent expected of them⁹³.”

However, the Author supposes that MedArb, a hybrid ADR method, still has a strong potential. In a MedArb process, the parties first reach agreement on the terms of the process itself. Typically, and unlike in most mediations, they must in writing agree on the binding nature of the process outcome. Next, they attempt to negotiate a resolution to their dispute with the help of a mediator. As in traditional mediation, the mediator may suggest caucusing with each party individually to discuss possible proposals in addition to bringing disputants together to air their views and brainstorm solutions. In MedArb, if mediation ends in an impasse, or if issues remain unresolved, the process is not over. At this point, the parties can move on to arbitration. The mediator can assume the role of an arbitrator (if he or she is qualified to do so) and render a binding decision quickly based on his or her judgments, either on the case as a whole or on the unresolved issues. Alternatively, an arbitrator can take over the case after consulting with the mediator⁹⁴.

In legal literature, there are also debates as to whether the term “alternative dispute resolution” should be used at all. Options are to use only the term “alternative” if the use of

⁹² Blake, S., Browne, J., Sime, S. 2014. *A practical approach to Alternative Dispute Resolution*. 3rd ed. Oxford University Press. 5.

⁹³ Brown, H., Marriott, A. 2011. *ADR: principles and practice*. 3rd ed. Sweet & Maxwell. 1.

⁹⁴ Program on negotiation. Harvard Law School. Available from: <https://www.pon.harvard.edu/daily/mediation/what-is-med-arb/> [viewed 16.03.2015.].

litigation is seen as the norm, but statistics show that most cases get settled rather than going to court for a decision, so that settlement rather than litigation is actually the norm. Also, many cases use a mixture of court procedure and ADR rather than relying solely on one “alternative”⁹⁵. A view has been expressed that mediation and other processes that facilitate consensual resolution should be described as the primary processes, and litigation should be viewed as the “alternative”; but this view has no real support⁹⁶ as stated by Brown and Marriott. For such reasons, it has been argued that it may be more accurate to use the term “appropriate dispute resolution”⁹⁷ or even “effective dispute resolution”. The Author has remained with the concept ADR, firstly, because it is an internationally accepted term and, secondly, because it also agrees to the idea that it refers to the ways of avoiding having to have one’s dispute resolved in court and that is what ADR is fundamentally about. However, “appropriate dispute resolution” provides an excellent alternative to “alternative” while retaining the acronym ADR; and “effective dispute resolution” gives a strong and clear message about what its processes offer⁹⁸.

ADR is a term generally accepted to cover the alternatives to litigation where:

- 1) there is a dispute between two (or more) parties;
- 2) the dispute relates to civil legal rights and/or duties;
- 3) the dispute could potentially go to court for resolution;
- 4) the dispute can be resolved through some other process, usually with a more flexible structure;
- 5) the process is essentially confidential;
- 6) the process involves individuals other than the parties in dispute who add some degree of objectivity, be it lawyers, or an independent and normally neutral party.

Alternatives to litigation potentially include the following factors:

- 1) process that is formal (like arbitration), or informal (like negotiation);
- 2) involvement of lawyers and clients only (like negotiation) or third parties (like mediation);
- 3) involvement of specialists or experts;
- 4) process provided or facilitated by a commercial or non-profit organisation;

⁹⁵ Blake, S., Browne, J., Sime, S. 2014. *A practical approach to Alternative Dispute Resolution*. 3rd ed. Oxford University Press. 5.

⁹⁶ Brown, H., Marriott, A. 2011. *ADR: principles and practice*. 3rd ed. Sweet & Maxwell. 1.

⁹⁷ Blake, S., Browne, J., Sime, S. 2014. *A practical approach to Alternative Dispute Resolution*. 3rd ed. Oxford University Press. 5.

⁹⁸ Brown, H., Marriott, A. 2011. *ADR: principles and practice*. 3rd ed. Sweet & Maxwell. 3.

5) processes that operate within this jurisdiction, or are available in this jurisdiction but can operate internationally (with national and international systems for arbitration, and few jurisdictional limits for processes such as mediation);

6) process that is based on meetings, or documents, or that is wholly or partly remote (with growth of online dispute resolution or ODR)⁹⁹.

The greater the individual party's control, power and authority and the more flexible the process, the more consensual they may be regarded; the less their control, power and authority, and the greater the third-party decision-maker's power and the more rigid the procedures, the more adjudicatory they may be viewed¹⁰⁰.

The following table illustrates the position of various selected processes applied in the United Kingdom on the dispute resolution spectrum.

Table 2.1

Dispute resolution spectrum	
<i>Adjudicatory: third-party responsibility</i>	
Litigation	
Private judging	
Administrative or statutory tribunals	
Arbitration	
Expert determination	
Adjudication	
Dispute Board	
Court-annexed arbitration	
Ombudsman	
ArbMed, MedArb	
	Evaluation (early neutral evaluation)
	Neutral fact-finding expert
	Mini-trial (executive tribunal)
	Negotiation (through representatives)
	Collaboration and collaborative practice
	Mediation (involving an evaluative

⁹⁹ Blake, S., Browne, J., Sime, S. 2014. *A practical approach to Alternative Dispute Resolution*. 3rd ed. Oxford University Press. 5.

¹⁰⁰ Brown, H., Marriott, A. 2011. *ADR: principles and practice*. 3rd ed. Sweet & Maxwell. 19.

element)
Mediation (purely facilitative)
Negotiation (by parties personally)
<i>Consensual: parties' own responsibility</i>

Even though the UK's legal system significantly differs from that of Latvia, the Author still supposes that the diagram explicitly reflects the spectrum of existing dispute resolution and ADR methods and its hybrids, showing the diversity.

In Germany, the elements of ADR form part of all civil court proceedings. Otherwise, dispute resolution through ADR is increasing, and mediation is the most common form of ADR. Mediation can take place out of court or be court-annexed. The other form of ADR used includes expert determination (*Schiedsgutachten*) and conciliation (*Schlichtung*). In certain industries, such as in major construction projects, contracts occasionally provide for ADR by a Dispute Resolution Board. Likewise, the parties increasingly include multi-tier clauses in contracts stating a requirement for ADR before litigation or arbitration can be started. Other forms of ADR, such as mini-trials or adjudication are still fairly uncommon¹⁰¹.

There are only two main ADR procedures in Lithuania: arbitration and court mediation. The Law on Commercial Arbitration defines the arbitration procedure, while the Rules of Court Mediation govern court mediation. ADR is used in a small minority of cases only. Court mediation was introduced only in 2011 when the Council of Judges approved the possibility of using mediation in civil cases in all Lithuanian courts. Mediation is conducted in court by special mediators who are judges or assistant judges, or persons with the necessary qualification. The Code of Conduct of European Mediators applies to mediators¹⁰².

In the Russian Federation, the situation with the use of ADR is different since ADR methods are viewed there as impracticable and, therefore, are not widespread. However, mediation is becoming more popular. On 01 January 2011, Federal Law No 193-FZ dated 27 July 2010 On the Alternative Dispute Resolution Procedure with the Participation of a Mediator (Mediation Procedure) entered into force¹⁰³. It is important not to confuse arbitration with Russian specialised commercial courts – *arbitrazh* – that is a type of litigation in Russia's judicial system.

¹⁰¹ Practical Law multi-jurisdictional guide 2012/13. *Dispute resolution Volume I*. Country Q & A Germany, p. 172.

¹⁰² *Ibid.*, p. 253.

¹⁰³ *Ibid.*, p. 305.

Speaking about ADR in modern law, the Author wants to highlight a vast ADR experience of Japan where this concept is traditional and mature.

As stated by Katja Funken, Japan has a tradition of ADR, as opposed to litigious processes. For centuries, the main procedures employed in Japan were conciliation, compromise and mediation. Litigation was not known until occidental countries introduced it in the late 1800s. Up until today, Japan is often referred to as the non-litigious society¹⁰⁴. Based on values of Confucianism and Buddhism, with their emphasis on duty and social harmony¹⁰⁵, disputes were to be resolved in such a way as to preserve “harmonious relationships”¹⁰⁶. This is ensured by means of a compromise and ADR methods rather than by win-lose outcomes of litigation¹⁰⁷. The main ADR methods in contemporary Japan are conciliation (*chotei*), compromise (*wakai*) and arbitration (*chusai*)¹⁰⁸.

In the conciliation procedure, a dispute is settled through negotiation between all of the parties with the aid of a number of impartial facilitators who help the parties to discuss the conflict and devise their own solution¹⁰⁹. The aim of this process is stated in Article 1 of the Civil Conciliation Act¹¹⁰:

“This Act aims at effecting a settlement of a dispute consistent with reason and befitting actual circumstances by mutual concession of the parties concerned, with respect to disputes relating to civil affairs”.

Chotei is the most popular and effective ADR method in Japan¹¹¹. About 55 percent of conciliations are successfully settled¹¹².

Compromise (*wakai*) is a voluntary settlement of a dispute based on a contractual agreement between the parties¹¹³. No restrictions are imposed on the contents of this contract,

¹⁰⁴ Funken, K. Alternative Dispute Resolution in Japan. June 2003. Univ. of Munich School of Law. Working Paper No. 24. Available from: <https://ssrn.com/abstract=458001> or <http://dx.doi.org/10.2139/ssrn.458001> [viewed 11.04.2020.].

¹⁰⁵ Gibbons, D. J. 1990. Law and the Group Ethos in Japan. *3 Int'l Legal Persp.* 98 at 103.

¹⁰⁶ Wren H. G. 1968. The Legal System of Pre-Western Japan. *20 Hastings L.J.* 217 at 221.

¹⁰⁷ Ohta T., Hozumi T. 1973. Compromise in the Course of Litigation 6 Law in Japan 99–102, reprinted in: *Dean M.* 478–479.

¹⁰⁸ Funken, K., Alternative Dispute Resolution in Japan. June 2003. Univ. of Munich School of Law. Working Paper No. 24. Available from: <https://ssrn.com/abstract=458001> or <http://dx.doi.org/10.2139/ssrn.458001> [viewed 11.04.2020.].

¹⁰⁹ *Ibid.*

¹¹⁰ Civil Conciliation Act. Available from: http://www.japaneselawtranslation.go.jp/law/detail_download/?ff=09&id=2732 [viewed 12.04.2020.].

¹¹¹ Iwasaki K. ADR: *Japanese Experience with Conciliation* (1994) 10 *Arbitration International* 91, reprinted in Dean M, op cit at 460; Iwasaki K. 'Japan', *Dispute Resolution in Asia*, Pryles M. ed., Kluwer Law International, The Hague et al., 1997 at 134.

¹¹² Iwai N. The Judge as Mediator: The Japanese Experience, *10 Civ. Just. Q.* 108 at 468.

¹¹³ Port K. L. 1994. The Case For Teaching Japanese Law at American Law Schools, *43 DePaul L. Rev.* 643 at 457.

nor the procedure used¹¹⁴. As it is voluntary, if one party does not want to settle in the manner, no compromise is possible¹¹⁵. *Wakai* is different from conciliation in that it is initiated by a judge during a trial. The judge makes the suggestion at any stage of the trial. However, disputants can apply to a summary court for a compromise without a lawsuit pending. A compromise procedure can be changed back to a lawsuit at any stage of the proceeding. This also has the full force of a binding judgment¹¹⁶.

Wakai involves a combination of litigation and mediation¹¹⁷. The process usually starts with the case being heard in court up to a certain point on which it is transferred to a settlement procedure which uses a combination of mediation, negotiation and some law.

The Japanese system of arbitration is a modern system very similar to arbitration in Australia, Germany or the United States. In practice, Japanese arbitration (*chusai*) can be divided into two categories: (1) arbitration conducted between two Japanese parties and (2) arbitration conducted between a Japanese party and a foreign party¹¹⁸.

Eventually, the Author concludes that Japanese conciliation (*chotei*) has very much in common with what we call mediation; compromise (*wakai*) is similar to court-annexed mediation that ends up with a settlement, and arbitration (*chusai*) is nothing else like arbitration in Europe.

The Author mentioned the example of Japan to show the country where ADR methods are part of culture and social norms; it is a logical continuation of religious beliefs passed from one generation to another, while in Europe ADR has to be introduced, and the conditions for its practicing are to be created.

Hence, ADR methods are used in very different countries and cultures, albeit with a very different popularity and applicability rate. Still, one thing is obvious – arbitration and mediation are the most commonly used methods; and, speaking of ADR methods, mediation is more often presumed to be the main representative of true ADR spirit where arbitration is more close to adjudicatory proceedings. In the chapters below, the concept of mediation will be discussed in more detail bearing in mind the limitation indicated in the Introduction to this Doctoral Thesis.

¹¹⁴ *Ibid.*, p. 457

¹¹⁵ *Ibid.*, p. 457

¹¹⁶ Funken, K. Alternative Dispute Resolution in Japan. June 2003. Univ. of Munich School of Law. Working Paper No. 24. Available from: <https://ssrn.com/abstract=458001> or <http://dx.doi.org/10.2139/ssrn.458001> [viewed 11.04.2020.].

¹¹⁷ Iwai N. The Judge as Mediator: The Japanese Experience. *10 Civ. Just. Q.* 108 at 463.

¹¹⁸ Pardieck A. M. 1997. Virtuous Ways and Beautiful Customs: The Role of Alternative Dispute Resolution in Japan. *11 Temp. Int'l & Comp. L. J.* 31.

To sum up, the term ADR implies a wide range of dispute resolution mechanisms that are alternative to litigation in courts. This term is used to refer to various dispute resolution mechanisms ranging from facilitated settlement negotiations, in which the parties to a dispute encourage direct negotiations before turning to other legal dispute resolution mechanisms, to arbitration, which can be very similar to litigation.

Moreover, the ultimate goal of the parties using ADR is to resolve the conflict at the lowest cost for all of its participants. The costs imply not only financial costs, but also time saving and emotional costs.

2.2 Institute of Mediation

2.2.1 The essence of mediation

Mediation together with arbitration, ombudsman procedures and structured negotiation is deemed to be a type of alternative dispute resolution (ADR)¹¹⁹. The essential features helping distinguish mediation from the other forms of ADR are as follows:

- 1) voluntary nature, i.e. mediation is based on the voluntary participation of the parties;
- 2) neutral intermediary's (mediator's) lack of adjudicatory competence where he or she systematically facilitates communication between the parties with the aim of enabling the parties themselves to take responsibility for resolving their dispute;
- 3) flexible and self-determined approach in which all aspects of the conflict, independent of their legal relevance, may be considered¹²⁰.

Whereas, for example, arbitrators and ombudsmen have the competence to issue (at least partly) binding decisions, in mediation it is up to the parties and not the mediator to decide whether and how to solve the conflict¹²¹.

Taking into account all of the above, the goal of mediation is for the parties to reach a voluntary settlement which is then reduced to writing and becomes a contract¹²². In this process, a neutral third party helps disputants come to consensus on their own¹²³ by assisting the parties to find a resolution to their conflict in a sustainable and self-determined way¹²⁴.

¹¹⁹ According to Katherine V. W. Stone, a professor of law, UCLA School of Law, in American legal system also such mechanisms as fact-finding, mini-trial, summary Jury trials, Med-Arb, Small claim courts and rent-a judge are part of ADR. (Stone, 2004).

¹²⁰ Steffek, F. 2012. *Mediation in the European Union: An Introduction*. Cambridge, June 2012, 1–2.

¹²¹ *Ibid.*, p. 1-2.

¹²² Stone, K. V. W. 2004. *Alternative Dispute Resolution. Encyclopedia of Legal History*. Research Paper 04-30. UCLA School of Law. 1.

¹²³ Program on negotiation. Harvard Law School. *Mediation secrets for better business negotiations*. Harvard Law School Negotiation Special Report #7. p.1. Available from: www.pon.harvard.edu [viewed 16.03.2015.].

¹²⁴ Steffek, F. 2012. *Mediation in the European Union: An Introduction*. Cambridge, June 2012, 1–2.

Bernard Mayer, in his book *Beyond Neutrality*, raises some useful observations about the nature of mediation. The essence of mediation lies in four characteristics:

1. **Impartiality.** Mediators do not see their job as trying to promote one person or group's interests at the expense of another.

2. **Process orientation.** Mediators conduct a process to assist people in communication about the issues that are of concern to them. They do not focus on the issues alone (although the role mediators may play with regard to substance may vary considerably).

3. **Problem solving.** Mediators do not simply try to decide what the law dictates; they endeavor to help solve the problems that underlie the conflict. Often, but not always, this means taking an integrative or interest-based approach. "Integrative bargaining (also called interest-based bargaining, win-win bargaining) is a negotiation strategy in which parties collaborate to find a win-win solution to their dispute. This strategy focuses on developing mutually beneficial agreements based on the interests of disputants. Interests include the needs, desires, concerns, and fears important to each side. They are the underlying reasons why people become involved in a conflict"¹²⁵.

4. **Client-focused.** The mediator's goal is to attain a solution that the disputants will accept rather than to impose one on them. Usually this means focusing on the clients' interaction, communication, emotions, needs, and decision-making process¹²⁶.

Historical appearance of mediation and its road to European Union: as we know from books of history, many conflicts in ancient times were settled by the sword. However, in more peaceful civilisations, they were more often settled by the wise men or elders of each village, or the leaders of the local church. In ancient times, the history of mediation was the history of diplomacy. Villages had at least one leader who was skilled at helping people solve problems. People who followed the Roman example even created professional job descriptions – intercessors, conciliators, etc. – for those who ran back and forth between the bickering parties and traded offers of goods and services for the promise of peace¹²⁷.

Speaking about the 20th century, much of the structuring of the mediation process, which prepared the process to become institutionalised and legitimised as regular part of the legal landscape, began in the divorce context in the mid 1970's with more people seeking the dissolution of marriage and finding the legal process particularly cumbersome. Not

¹²⁵ Spangler, B. 2003. Integrative or Interest-Based Bargaining. Available from: <http://www.beyondintractability.org/essay/interest-based-bargaining> [viewed 16.03.2015.].

¹²⁶ Mayer, B. 2004. *Beyond Neutrality: Confronting the Crisis in Conflict Resolution*. San Francisco: Jossey-Bass

¹²⁷ Johnston E. A short history of Mediation. Available from: <http://cfrmediation.com/a-short-history-of-mediation/> [viewed 10.12. 2015.].

surprisingly, this social phenomenon began in California, which was among the first in the USA, and the world for that matter, to formally include marriage conciliation and mediation as court services. Shortly thereafter, a private market for divorce mediation emerged throughout the USA, based on the work of O.J. Coogler, an Atlanta lawyer, who structured the mediation process so that it could be replicated and taught. The structuring of the process allowed it to spread America wide and abroad by the end of the 1980's. This development of a mediation structure and format allowed the process to be applied and adapted beyond divorce and family matters to many other dispute contexts, and the core of the model remains in use¹²⁸.

Referring to current history, in 2002, UNCITRAL developed the Model Law on International Commercial Conciliation¹²⁹. It should be noted that in this document conciliation is understood broadly to mean a voluntary process controlled by the parties and conducted with the assistance of neutral third persons, whether such a process is referred to by expressions "conciliation", "mediation" or an expression of similar import. The Model Law was prepared with the contribution of 90 States, 12 intergovernmental organisations and 22 non-governmental international organisations representing different legal traditions and different levels of economic development¹³⁰. In its resolution 57/18, the United Nations General Assembly noted that "dispute settlement methods, referred to by expressions such as conciliation and mediation and expressions of similar import, are increasingly used in international and domestic commercial practice as an alternative to litigation" and recommended that "all States give due consideration to the enactment of the Model Law, in view of the desirability of uniformity of the law of dispute settlement procedures and the specific needs of international commercial conciliation practice"¹³¹.

In the same year, the European Commission, presumably relying on the principles of UNCITRAL Model Law, presented a Green Paper on alternative dispute resolution in civil and commercial law taking stock of the existing situation as concerns alternative dispute resolution methods in the European Union and initiating widespread consultations with Member States and interested parties on possible measures to promote the use of mediation¹³².

¹²⁸ Benjamin R. The Natural History of Negotiation and Mediation: The Evolution of Negotiative Behaviors, Rituals and Approches. Available from: www.mediate.com/articles/NaturalHistory.cfm [viewed 02.03.2018.]

¹²⁹ UNCITRAL Model Law on International Commercial Conciliation. 2002. *United Nations Publication*.

¹³⁰ CLOUT Bulletin. Available from: http://cedep.files.wordpress.com/2009/02/clout-bulletin_feb09_final.pdf [viewed 23.08. 2019.]

¹³¹ Resolution adopted by the General Assembly [on the report of the Sixth Committee (A/57/562 and Corr.1)] 57/18.

¹³² EU Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters. *Official Journal of*

As a result, later in 2008, the European Parliament and the Council of the European Union adopted the Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters with the aim to promote the use of mediation in cross-border civil and commercial disputes (the Mediation Directive) and ensure that parties having recourse to mediation can rely on a predictable legal framework. Therefore, the EU Member States were advised, till 21 May 2011, to bring into force the laws, regulation and administrative provisions necessary to comply with the Mediation Directive¹³³. Since then, EU was monitoring the development of mediation in the Member States by providing several researches on its success.

Thus, according to the research study *Rebooting the Mediation Directive: Assessing the Limited Impact of its Implementation and Proposing Measures to Increase the Number of Mediations in the EU*¹³⁴, the mediation process usually takes 43 days on average, thus making litigation much more time-consuming (see figure 2.1):

Figure 2.1 *Duration of mediation vs. litigation*

the European Union, 24.05.2008, L 136. Recital 4.

¹³³ EU Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters. *Official Journal of the European Union*, 24.05.2008, L 136. Recital 12

¹³⁴ European Parliament. Available from: [https://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL-JURI_ET\(2014\)493042](https://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL-JURI_ET(2014)493042) [viewed 15.08.2019.].

Given the fact that mediation processes are confidential, it is difficult to obtain accurate information about their successful resolution. The Swiss Association for Mediation (*Schweizer Dachverband Mediation*), based on a study conducted in 2008, concludes that the success rate of mediation processes is above 70 %. On the other hand, Horstmeier claims that 75–90 % is reported depending on the area where mediation is applied¹³⁵.

According to Hesse's research in the sports sector, interviewees (lawyers, mediators, observers, etc.) were involved in a total of 117 sports-related mediation processes. 69 of those processes were reported to be successful indicating a success rate of over 65 %. It should be noted that after an unsuccessful mediation process the parties still may, in fact, submit their dispute to a court, a federation committee or an arbitral tribunal. It should also be borne in mind that, in the event that the parties are still unable to resolve their conflict completely, mediation can in any case help effectively reduce disagreements and bring positions closer together, thus providing a fertile ground for the next solution.

Speaking about the emergence of the Mediation Law in Latvia, in November 2012, the Ministry of Justice developed a draft Mediation Law and forwarded it to the Saeima Presidium for examination.

On 17 January 2013, at the request of the Legal Affairs Committee, the Saeima approved the draft law Mediation Law in the first reading. In the Judicial Policy Subcommittee of the Legal Affairs Committee of the Saeima, the draft law Mediation Law was examined five times between March and June before the second reading in 2013. On 03 September 2013, after the sixth review and approval of the Subcommittee, the draft law was referred to the Legal Affairs Committee and, on 07 November 2013, the Saeima adopted the draft law Mediation Law in its second reading. Finally, on 22 May 2014, the Saeima adopted the Mediation Law in its third reading and it came into force on 18 June 2014 and was proclaimed by the President of Latvia on 04 June 2014¹³⁶. These are the cornerstone dates in the emergence of mediation in Latvia. The mediation institute in Latvia will be discussed in a separate chapter considering the limitation as declared in the Introduction to this Doctoral Thesis.

2.2.2 Mediation types

Taking into the account the relationship between court proceedings and mediation, four types of mediation are to be distinguished:

¹³⁵ Horstmeier, G. 2013. *Das neue Mediationsgesetz*. München, 3.

¹³⁶ Mediācijas likums. LV likums. *Latvijas Vēstnesis*. 108, 4.06.2014.

1. **Private mediation** is completely independent from judicial proceedings and it often takes place without any subsequent court proceeding.

2. **Court-annexed mediation** is initiated by the court, further taking place without any further involvement of the court.

3. **Judicial mediation** is more intensely connected with the court as an institution in terms of venue and personnel. However, even judicial mediation is not performed by a judge with adjudicatory competence in the specific case¹³⁷. The Mediation Directive states that mediation, in the sense that Directive gives to this term in its Article 3, “may be initiated by the parties or suggested or ordered by a court or prescribed by the law of a Member State. It includes mediation conducted by a judge who is not responsible for any judicial proceedings concerning the dispute in question. It excluded attempts made by the court or the judge seized to settle a dispute in the course of judicial proceedings concerning the dispute in question.”

Therefore, it can be concluded that the terms of the Mediation Directive extend to three types of mediation. Nonetheless, according to the concept “Introduction of Mediation into the Settlement of Civil Disputes” by the Latvian Ministry of Justice, one more type can be distinguished:

4. **Integrated mediation**: in court proceedings, the court seeks to enable the parties to cooperate by using and combining the features of a legal process and a mediation process.

Nevertheless, regardless of the mediation type used, the Author believes there is a list of questions that should be answered and considered in order to determine whether the dispute is mediable:

1. Are the key parties and important decision-makers within the parties willing to participate?

2. Are there any absent parties who could overturn an agreement?

3. Do the parties stand to gain more by mediating than by taking other actions? What are the gains in reaching agreement with other parties versus acting autonomously (BATNA) exploration?

➤ BATNA – the best alternative to a negotiated agreement. A negotiator’s BATNA is the course of action he will pursue if the current negotiation results in an impasse. An evaluation of the best alternative to a deal is critical if a party is to establish the threshold

¹³⁷ Steffek, F. 2012. *Mediation in the European Union: An Introduction*. Cambridge, June 2012, 1–2.

at which it will reject an offer¹³⁸. Therefore, BATNA is the standard against which any proposed agreement should be measured¹³⁹.

4. Are there risks to any of the parties in participating? In not participating?
5. Are there sufficient incentives/motivations to reach agreements?
6. Can the parties agree on the scope of the issues addressed?
7. Is there adequate time for negotiations? Is there a deadline by which a decision must be reached?
8. Does the available mediator have a high degree of credibility and/or authority in the eyes of the parties?
9. How much active hostility exists between the parties?

Therefore, an important research on the parties' motivation and goals should be done before using mediation as a dispute resolution method regardless of whether it is a sports dispute or dispute on the insurance issues. The Author supposes this to be crucial for successful mediation and a consensus reached.

2.2.3 Identifying mediation stages

Mediation is a multi-stage process designed to get results. It is less formal than a trial or arbitration, but there are distinct stages to the mediation process. Having analysed the publications of practicing mediators and professors Scott Van Soye¹⁴⁰, Alain Pekar Lempereu, Alan B. Slifka¹⁴¹, Jessica A. Stepp¹⁴² and Cara O'Neill¹⁴³, the Author supposes that most mediations proceed as follows:

Stage 1: Mediator's Opening Statement

After disputants are seated at a table, a mediator introduces everyone, explains the goals and rules of the mediation, and encourages each side to work cooperatively toward a settlement.

Stage 2: Disputants' Opening Statements

¹³⁸ BATNA Basics: boost your power at the bargaining table. Management Report. Cambridge: *Harvard Law School*. 1.

¹³⁹ Fisher, R., Ury, W. 2012. *Getting to YES. Negotiating an agreement without giving in*. Random House Business Books. 101.

¹⁴⁰ van Soye, S. An Introduction to the Five Stages of Mediation. Available from: <https://www.adrtimes.com/library/an-introduction-to-the-five-stages-of-mediation> [viewed 21.01.2020.]

¹⁴¹ Lempereu, A. P., Slifka, A. B. Identifying Some Obstacles To A Successful Mediation Process. Available from: <https://ssrn.com/abstract=1949463> or <http://dx.doi.org/10.2139/ssrn.1949463> [viewed 09.12.2019.].

¹⁴² Stepp, J. A. How Does The Mediation Process Work? Available from: <https://www.mediate.com/articles/steppJ.cfm> [viewed 25.03.2017.].

¹⁴³ Mediation: The six stages. Available from: <https://www.nolo.com/legal-encyclopedia/mediation-six-stages-30252.html> [viewed 21.11.2019.].

Each party is invited to describe, in their own words, what the dispute is about and how he or she has been affected by it, and to present some general ideas about resolving it. While one person is speaking, the other is not allowed to interrupt.

Stage 3: Joint Discussion

The mediator may try to get the parties talking directly about what was said in the opening statements. This is the time to determine what issues need to be addressed.

Stage 4: Private Caucuses

The private caucus is a chance for each party to meet privately with the mediator (usually in a nearby room) to discuss the strengths and weaknesses of his or her position and new ideas for settlement. The mediator may caucus with each side just once, or several times, as needed. These private meetings are considered the guts of mediation.

Stage 5: Joint Negotiation

After caucuses, the mediator may bring the parties back together to negotiate directly.

Stage 6: Closure

This is the end of mediation. If an agreement has been reached, the mediator may put its main provisions in writing as the parties listen. The mediator may ask each side to sign the written summary of the agreement or suggest they take it to lawyers for review. If the parties want to, they can write up and sign a legally binding contract. If no agreement was reached, the mediator will review whatever progress has been made and advise everyone of their options, such as meeting again later, going to arbitration, or going to court.

Hence, the Author concludes that even though there are no obligatory mediation stages stated in law, mediators have, through practice, worked out an efficient process of successful mediation. The description of the mediation process differs depending on the origin of the author and the legal sphere of practice. Nevertheless, the Author highlighted the six stages that seem to be universal and might be applied in most cases, including sports-related disputes, too. Therefore, the Author does not see any obvious obstacles as to why the well-developed sequence of steps when applying mediation in various areas of civil disputes cannot also be successfully applied in sports disputes.

2.2.4 Confidentiality in mediation

Recital 23 of the Mediation Directive states that confidentiality in the mediation process is important, and this Directive should therefore provide for a minimum degree of compatibility of civil procedural rules with regard to how to protect the confidentiality of mediation in any subsequent civil and commercial judicial proceedings or arbitration. Further on, Article 7 of the same document explicitly specifies:

1. Given that mediation is intended to take place in a manner which respects confidentiality, Member States shall ensure that, unless the parties agree otherwise, neither mediators nor those involved in the administration of the mediation process shall be compelled to give evidence in civil and commercial judicial proceedings or arbitration regarding information arising out of or in connection with a mediation process, except

- a) where this is necessary for overriding considerations of public policy of the Member State concerned, in particular when required to ensure the protection of the best interests of children or to prevent harm to the physical or psychological integrity of a person; or
- b) where disclosure of the content of the agreement resulting from mediation is necessary in order to implement or enforce that agreement.

2. Nothing in Paragraph 1 shall preclude Member States from enacting stricter measures to protect the confidentiality of mediation.

Therefore, we see that the Mediation Directive provides only the minimum regulation regarding the confidentiality rule, giving Member States an opportunity to set a stricter set of rules.

The same policy was initiated six years earlier by the United Nations General Assembly in 2002 in the document UNCITRAL Model Law on International Commercial Conciliation where Article 9 provides that, unless otherwise agreed by the parties, all information relating to the conciliation proceedings shall be kept confidential, except where disclosure is required under the law or for the purpose of implementation or enforcement of a settlement agreement.

The European Code of Conduct of Mediators which, according to its first paragraph, sets out a number of principles to which individual mediators may voluntarily decide to commit themselves, under their own responsibility and which may be used by mediators involved in all kinds of mediation in civil and commercial matters, points out that the mediator must keep all information arising out of or in connection with the mediation confidential, including the fact that the mediation is to take place or has taken place, unless compelled by law or grounds of public policy to disclose it. Any information disclosed in confidence to mediators by one of the parties must not be disclosed to the other parties without permission, unless compelled by law.

Summarising all three sources quoted above, the main rule can be highlighted.

Neither mediators nor those involved in the mediation process are compelled to give evidence in judicial proceedings regarding information obtained during the mediation process. This is permissible only:

- 1) where necessary for overriding considerations of public policy, particularly to protect the physical integrity of a person, etc;
- 2) where disclosure of the content of the agreement resulting from mediation is necessary in order to implement or enforce that agreement¹⁴⁴.

In legal literature, there are two types of research papers regarding the confidentiality rule in mediation; the first one addresses confidentiality of the information discovered during the mediation process if the process has failed, no agreement has been reached and the dispute goes to court trial or arbitration. In this case, as Rau, Sherman and Peppet stress out, someone can attempt to discover what was said in mediation and use it as a testimony in future proceedings¹⁴⁵. The second one addresses confidentiality of the information disclosed by one party to the mediator which was said to be confidential and should not be disclosed to the other party in dispute without permission.

Before analysing what confidentiality in mediation constitutes itself, it is important to understand why the parties choose mediation for resolving their conflicts.

It is said that one of the main reasons why the parties opt for mediation is because they want to avoid publicity that is typical for litigation which makes confidentiality a very essential element of mediation. Rau, Sherman and Peppet also say that many proponents of mediation claim that confidentiality is critical to the success of the process. They maintain that the parties will not speak freely if confidentiality is not guaranteed and that the ability to get to the heart of dispute will be jeopardised. They also argue that the independence of the mediator would be undermined if one should be required to testify about the mediation at some future time¹⁴⁶. In other words, confidentiality allows a mediator to stay independent and neutral which is one of the most important prerequisites for successful dispute resolution.

Another reason why mediation is chosen is because the parties have faith and trust in it. They may choose an alternative mechanism which assists resolution of disputes since they decided to ignore the court of law. As a result, according to Alrashdan, the mediation should provide whatever is acknowledged and expected for the success of such a process. Likewise,

¹⁴⁴ EUR-Lex. The summary of the Mediation Directive. Available from: http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_civil_matters/133251_en.htm on 9.06.2015 [viewed 05.06.2015].

¹⁴⁵ Rau, A. S., Sherman, E. F., Peppet, S. R. 2002. *Mediation and other non-binding ADR processes*. 2nd ed. New York: Foundation Press. 135.

¹⁴⁶ *Ibid.*, 135.

the parties are anticipating a fair, acceptable outcome for the current dispute which means that an unacceptable, unfair end and outcome would destroy the idea of mediation as a successful alternative to litigation¹⁴⁷.

In the context of confidentiality in mediation, in some jurisdictions the following terms are used: “mediation privilege” and “without prejudice rule”. Both terms are very closely connected and stem from each other.

The “without prejudice rule” renders inter-party communications made in aid of settlement both inadmissible in evidence and immune from disclosure, but the court may, however, deviate from this rule in exceptional circumstances. Once the parties have agreed to negotiate on a without prejudice basis, elementary justice requires the law to uphold the consensus that their communications should be inadmissible and privileged¹⁴⁸.

As to the “mediation privilege”, Koo mentions the US Uniform Mediation Act that in its clauses s.2–s.6 creates a mediation communication privilege where communications to initiate and participate in a mediation are protected because they are considered essential for promoting candour of the parties and public confidence, and for balancing the interests of justice against the private needs for confidentiality. Privileged communications are immune from compulsory disclosure and inadmissible in evidence in subsequent court proceedings or other adjudicative processes. Mediators and the parties are eligible to assert the privilege attached to the mediation communication. In addition, mediators and non-party participants are entitled to protect their own communications in the mediation. Under the same Act, the privilege applies unless waived, precluded by reason of prejudicing another party in a proceeding or if it falls within one of the exceptions. The exceptions may be classified in two groups: where societal interest in mediation communication outweighs the private interest in confidentiality; and where the relative strengths of societal and private interests are left for the court to determine on a case-by-case basis¹⁴⁹.

Therefore, it can be seen that, although the Mediation Directive does not use the assessed above terms, still Article 7 refers to the “without prejudice rule”, and the European Code of Conduct of Mediators creates the “mediation privilege”. However, it should be noted

¹⁴⁷ Alrashdan, A. M. The success of mediation: Neutrality, confidentiality, and mediators’ conduct. Available from: <http://ssrn.com/abstract=2152072> [viewed 10.06.2015.].

¹⁴⁸ Alrashdan, A. M. The success of mediation: Neutrality, confidentiality, and mediators’ conduct. Available from: <http://ssrn.com/abstract=2152072> [viewed 10.06.2015.].

¹⁴⁹ Koo, A. K. C. Confidentiality of mediation communications. Available from: <http://ssrn.com/abstract=17389077> [viewed 07.06.2015.].

that the European Code of Conduct of Mediators has a non-obligatory nature and to which mediators “may voluntarily decide to commit themselves”¹⁵⁰.

In common law, there was a series of cases that argued the scope of confidentiality in mediation and settlement negotiations. Thus, as Koo indicates, Hoffmann L. J. in case *Muller v Linsley & Mortimer*¹⁵¹ stated that the “without prejudice rule” only prevented the use of settlement negotiations to prove the truth of the facts admitted. He applied this line of reasoning in *Bradford & Bingley Plc v Rashid*¹⁵², distinguishing acknowledgments from inadmissible admissions¹⁵³.

Yet, Robert Walker L. J. took a different view in the case of *Unilever Plc v Procter & Gamble Co*:

“...they make clear that the Without Prejudice rule is founded partly in public policy and partly in the agreement of the parties. They show that the protection of admissions against interest is the most important practical effect of the rule. But to dissect out identifiable admissions and withhold protection from the rest of without prejudice communications (except for a special reason) would not only create huge practical difficulties but would be contrary to the underlying objective of giving protection to the parties to speak freely about all the issues in the litigation both factual and legal when seeking compromise and for the purpose of establishing a basis for compromise admitting certain facts. Parties cannot speak freely at a without prejudice meeting if they must constantly monitor every sentence with lawyers sitting at their shoulders as minders”¹⁵⁴.

The Author agrees with the reasoning given by Robert Walker L. J. also considering that the “without prejudice rule” should be bountiful in application, although it can bring certain difficulties to a later litigation process if mediation does not succeed.

The principle of confidentiality in mediation is deemed to be one of the cornerstones of successful mediation. If evaluating all pros and cons, still, beyond controversy, there are more advantages. The parties will open up only if they are sure that it will not be used against them. Therefore, as at the heart of successful mediation rests the will of the parties to voluntarily reach binding agreement, the sense of comfort and the opportunity to talk openly and honestly should be guaranteed to the parties.

¹⁵⁰ European Code of Conduct of Mediators. Available from http://euromed-justice.eu/en/system/files/20090128130552_adr_ec_code_conduct_en.pdf [viewed 10.10.2017.]

¹⁵¹ *Muller v Linsley & Mortimer* [1996] P.N.L.R. 74 at 79.

¹⁵² *Bradford & Bingley Plc v Rashid* [2006] UKHL 37; [2006] 1 W.L.R. 2066.

¹⁵³ Koo A. K. C. Confidentiality of mediation communications. Available from: <http://ssrn.com/abstract=17389077> [viewed 07.06.2015.].

¹⁵⁴ *Unilever Plc v Procter & Gamble Co* [2000] 1 W.L.R. 2436 at 2448–2449.

2.2.5 Building bridges between arbitration and mediation

Acknowledging that the recourse to mediation is not very often found in Latvian agreements, the Author would like to bring to the attention a clause that could be used in order to give the parties a chance to use mediation to resolve a dispute. It is necessary to point out that arbitration is frequently a safety net if the parties fail to reach mutually beneficial agreement with the help of mediation. So, the Multi-Tier Clause proposed by six experts of the German Institution of Arbitration (DIS¹⁵⁵) that has developed its rules for both mediation and arbitration is given below.

Escalation (Multi-Tier) Clause:

1. Any dispute or difference arising out of or in connection with this contract shall be settled through good faith negotiations between executives of both parties who have authority to settle the dispute and who are at a higher level of management than the persons with direct responsibility for administration or performance of this agreement. Negotiations begin with a written request to negotiate received by one party from the other party.

2. If a dispute referred to in Subsection 1 above cannot be settled through negotiations as provided for in that Subsection within 14 days after receipt by one party of a written request to negotiate from the other party or any longer period agreed upon by the parties, either side must refer that dispute to mediation according to Mediation Rules of the German Institution of Arbitration.

3. If the mediator notifies both parties in writing that the mediation initiated pursuant to Subsection 2 above has failed or if one party so notifies the other party in writing, each party may – within 20 days after receipt of said written notice – refer the dispute to arbitration according to the Rules of Arbitration of the German Institution of Arbitration (DIS). The Dispute shall be decided by three arbitrators. The seat of the arbitration shall be The language of the arbitration shall be... .

To sum up, the Author believes that mediation, being a rather new concept, is a well-thought-out instrument which, in the presence of systematised rules at both European and national scales, can significantly diversify and facilitate dispute resolution procedures. Especially, considering Article 6 of the Mediation Directive establishing the procedure when a written agreement resulting from mediation can be made enforceable by a court or other competent authority in a judgment or decision in accordance with the law of the Member State where the request is made, this is what, to the Author's mind, makes mediation a full and decent alternative to litigation and arbitration.

¹⁵⁵ German Institution of Arbitration (DIS). Available from: www.dis-arb.de [viewed 06.03. 2019.]

The Multi-Tier Clause given above inherently allows making a logical and soft transition from mediation to arbitration that is similar to the MedArb procedure and can be easily integrated not only to sport contracts, but also adapted to the internal documentation of the sport organisation's rules on dispute resolution.

2.3 Mediation in Latvia

As claimed by Jānis Bolis in his and Zīle Gereiša's book *Mediation and Negotiations*, mediation in Latvia dates back to the mid-1990s when ADR methods were introduced to students by Professor Jānis Bolis from the United States and other lecturers at Riga Graduate School of Law. In 2005–2007, the Ministry of Justice of the Republic of Latvia, in cooperation with German mediation specialists, implemented a twinning project in Latvia where the public was introduced to mediation and its role in dispute resolution, and new mediators were educated¹⁵⁶.

As it is also highlighted in the book *EU Mediation Law and Practice*, at the very beginning Latvia implemented the Mediation Directive by way of making amendments to already existing Latvian laws. The amendments were designed to comply with the Mediation Directive and to follow its main objectives, such as: to facilitate access to ADR and to promote the amicable settlement of disputes by encouraging mediation use and ensuring a balanced relationship between mediation and judicial proceedings¹⁵⁷. Consequently, nowadays the following clauses of the Civil Procedure Law refer to mediation and/or reconciliation by the judge and/or settlement that might be reached by using mediation: 149, 151, 163, 164, 183, 226, 227, 228, and 240. According to the comments to the Civil Procedure Law, settlement is considered to be the most successful way to end a civil case; therefore, the rule of procedure on the settlement is crucial as, firstly, it is aimed at more rapid restoration of legal stability so that uncertainty in civil circulation remains as short as possible; secondly, it is a mechanism created by the legislator to faster ensure the right to a fair trial (not only for the parties to the settlement), to relieve the courts and to save resources; thirdly, it is characterised by the autonomy of subjects inherent in civil law, which is not excluded in civil proceedings (public law)¹⁵⁸. As mentioned above, the Mediation Law was adopted in 2014.

When further drafting and developing the Mediation Law, it was important to take into account the experience of other European countries. The Mediation Directive sets out the

¹⁵⁶ Bolis, J., Gereiša, Z. 2015. *Mediācija un sarunas*. Rīga: Juridiskā koledža, 13.

¹⁵⁷ De Palo, G., Trevor, M. B., eds. *EU Mediation Law and Practice*. 2012. Oxford University Press, p. 204.

¹⁵⁸ Civilprocesa likuma komentāri. I daļa (1.–28. nodaļa). Otrais papildinātais izdevums. Tiesu namu aģentūra, p. 641.

basic principles and the legal framework for promoting the development of mediation in the Member States. Therefore, it gives a great deal of freedom in choosing a regulatory approach with varying degrees of regulation. As far as the European Union is concerned, the regulatory approach to mediation varies considerably between the Member States. Some countries, such as Austria, have opted for a high-level regulatory framework.

The Austrian Civil Mediation Act (*Zivilrechts-Mediations-Gesetz*) contains detailed descriptions of the rules governing the Advisory Council for Mediation, the Register of Mediators, the rights and obligations of registered mediators, the procedure for suspension of the statute of limitations, training institutions and training of mediators¹⁵⁹. Other countries, such as the United Kingdom and the Netherlands, have chosen to allow very little, if any, interference from the legislator so as not to stifle the creativity and adaptability of disciplines under development. For instance, the British civil procedure rules are limited to certain rules, such as those relating to costs. Such important issues as the course of the mediation process, training of mediators, and the legal framework for the mediator profession are left to the discretion of private associations and the self-regulatory forces of the mediation market¹⁶⁰.

The third group of countries tries to resolve the contradiction between the voluntary nature of mediation and the abuse of this freedom by some market players with the help of the regulation chosen. The first drafts of the German Mediation Act (*Mediationsgesetz*) were geared towards this direction. However, in the recent past, there has been debate that more regulation needs to be added to the training of mediators, similar to the Austrian model¹⁶¹. Nevertheless, the Author does not support this idea believing that imposed legal framework will bring mediation and arbitration courts closer together, while the great advantage of mediation is keeping distance from the law and using the tools that can “expand the pie, not cut it in pieces”.

Latvia is likely to belong to the first group of countries, i.e. since the Mediation Law contains a detailed subject-matter regulation it is likely that the legislator has taken the example of Austria as its basis.

The qualification requirements under Article 19 of the Mediation Law set forth for a certified mediator, i.e. absence of higher education in the legal field as a precondition for becoming a certified mediator, is a positive aspect in the Author’s view. For a person to become a certified mediator, the legislator has listed the criteria as follows: (1) a person is to be aged 25 or over; (2) be of good repute; (3) have a state-recognised higher education

¹⁵⁹ Steffek, F. 2012. *Mediation in the European Union: An Introduction*. Cambridge, p. 14–15.

¹⁶⁰ Steffek, F. 2012. *Mediation in the European Union: An Introduction*. Cambridge, p. 14–15.

¹⁶¹ *Ibid.*, p. 15

diploma; (4) be proficient in the state language; (5) have completed a mediator training course; (6) have a mediator certificate.

One of the most debated topics regarding the qualification of mediators is whether it would be desirable for mediators to be lawyers at the same time. The rationale for requiring higher education and work experience in the legal field rests on two assumptions. The first assumption is that mediation is a natural continuation of legal training and that it is a skill that is easily acquired by lawyers. The second assumption is that most disputes involve complex legal issues, and legal expertise is needed to resolve them satisfactorily and to ensure justice¹⁶².

Here, however, one can agree with Cris Currie that mediation is not a natural continuation of legal practice as mediation allows for a broader definition of the conflict and a more complete approach to its resolution¹⁶³. As mentioned above, mediation covers all aspects of the conflict regardless of their legal obligation/relevance, and in this case, the lawyer will not always be able to comprehensively look at the situation regardless of who is right in terms of law.

The Mediation Law can be considered as a quite comprehensive document aiming to include an approach to out-of-court dispute resolution in the implementation of the values set by the European Union. The Author also agrees with Nikolajs Jefimovs' conclusion that the level of mediation prevalence in the modern legal system of the Republic of Latvia is related to the unification of the national legal system with the legal norms of the European Union, as well as the possibilities of adopting foreign positive practice. It must be admitted that the lack of cultural and historical traditions in the field of application of mediation in Latvia seriously hinders the development of this institute¹⁶⁴.

Concerning the theoretical basis of the development of mediation, the following research by lawyers has made a significant contribution to the application of mediation and other ADR in various branches of law in Latvia:

Nikolajs Jefimovs, Doctoral Thesis Perspectives of Mediation Application and Possibilities of Neutralising Its Impacting Factors in the Settlement of Criminal Law Conflicts in Latvia; Gatis Litvins Alternative Law Enforcement and Dispute Resolution Methods in Administrative Proceedings; Marta Ābula Interim Remedies at the International Centre for

¹⁶² Currie, C. Should A Mediator Also Be An Attorney? Available from: <http://www.mediate.com/articles/currie.cfm> [viewed 18.11.2013.].

¹⁶³ *Ibid.*

¹⁶⁴ Jefimovs, N. 2019. *Mediācijas piemērošanas perspektīvas un tās kavējošo faktoru neitralizācijas iespējas krimināltiesisko konfliktu noregulēšanā Latvijā: promocijas darbs* (Eng. Perspectives of Mediation Application and Possibilities of Neutralising Its Impacting Factors in the Settlement of Criminal Law Conflicts in Latvia: Doctoral Thesis). Daugavpils: Daugavpils University.

Settlement of Investment Disputes (ICSID), Inese Druviete Legal Costs as One of the Interim Remedies before the International Commercial Arbitration Court, Ivars Kronis The Main Features and Development Trends of Contemporary Commercial Arbitration in Latvia.

Further, the Author highlights interesting observations from the works of several authors mentioned above that reflect ADR applicability in different law sectors confirming that this concept is universal.

In analysing the development of mediation in contemporary Latvia, Nikolajs Jefimovs points to some important events during the period 2009–2018 which facilitated the development of mediation in Latvia, namely, the adoption of a legal framework for the application of the mediation process in the field of civil conflict resolution: Cabinet Order No121 of 18 February 2009 On the Concept of Introduction of Mediation in the Settlement of Civil Disputes; Mediation Law adopted by the Saeima on 22 May 2014; Cabinet Regulations No 433 of 05 August 2014 Procedure for Certification and Attestation of Mediators.

The informative report Progress and Results of Implementation of the Alternative Tax Dispute Resolution Method – Mediation prepared, in 2016, by the working group consisting of representatives of the academic and scientific environment, cooperation partners (Foreign Investors' Council in Latvia, Latvian Chamber of Commerce and Industry, Latvian Employers' Confederation, Latvian Association of Tax Consultants, and experts of the State Revenue Service, and a Board of Certified Mediators was involved) should be mentioned as a noteworthy event in the development of mediation in Latvia.

Studying the historical origins of mediation, Nikolajs Jefimovs notes that certain elements of mediation originated in the territory of the Republic of Latvia in the 13th to the 16th centuries in the development and adoption of binding rules of conduct by the German nobility and the clergy; it should be reckoned that the use of mediation as a whole was not generally accepted.

As far as farmers' rights are concerned, it seems that alternative dispute resolution processes were not envisaged in them at all. The use of mediation in the settlement of criminal disputes in the 16th to the 20th centuries was closely linked to the national legal system of the state controlling the respective part of the territory of Latvia and to the local legal norms adopted by the local political elite. Thus, the spread of mediation in the territory of Latvia until independence cannot be viewed in isolation from the national legal systems of the dominion states¹⁶⁵. Namely, the Author concludes that the development of mediation in

¹⁶⁵ Jefimovs, N. 2019. *Mediācijas piemērošanas perspektīvas un tās kavējošo faktoru neitralizācijas iespējas krimināltiesisko konfliktu noregulēšanā Latvijā: promocijas darbs* (Eng. Perspectives of Mediation Application and Possibilities of Neutralising Its Impacting Factors in the Settlement of Criminal Law Conflicts in Latvia:

criminal proceedings was facilitated by political factors. It can be presumed that this process has led to the fact that today, under Article 58(2) of the Criminal Law, a person who has committed a criminal offense or a less serious crime, other than crimes resulting in death, can be exempted from criminal liability if there is a settlement with the victim or his or her representative and the person has not been relieved of criminal liability for the intentional commission of the crime during the last year and has completely eliminated or compensated the damage caused by the criminal offense. In criminal theory, settlement is interpreted as a voluntary agreement between the offender and the victim in which the offender admits his or her guilt while the victim admits that he or she has no further claim against the offender. It should be noted that a settlement between a victim and the accused can only be considered legally concluded when it is voluntary¹⁶⁶.

Reflecting on the positive features of ADR and application thereof in administrative proceedings, Gatis Litvins noted that the administrative court is an important legal method for the defence of rights and interests against alleged interference by administrative authorities¹⁶⁷, while alternative methods are equally important¹⁶⁸. It should be possible for the participants in the administrative procedure to defend their rights themselves or through an intermediary and to settle the dispute out of court. The level of development of the alternative methods characterises the strength of the state¹⁶⁹.

The purpose of alternative remedies and dispute resolution in administrative proceedings is to restore rights and, in the absence of infringement, to prevent, as far as possible, submit an application to court. Therefore, the participants in the administrative procedure must first seek to resolve the dispute themselves or through the alternative methods¹⁷⁰.

Reflecting on the parties' non-compliance with ICSID¹⁷¹ judgments, Marta Ābula concludes that it might be beneficial to use a mediation process in negotiations to facilitate a decision on interim measures of protection where a party opposes it. Involvement of the

Doctoral Thesis). Daugavpils: Daugavpils University.

¹⁶⁶ Liholaja, V. 07.07.2009. Izlīgums un taisnīgs krimināltiesisko attiecību noregulējums (Eng. Reconciliation and fair settlement of criminal relations). *Jurista Vārds*. Nr. 27. Available from: <http://www.juristavards.lv/index.php?menu=DOC&id=194386> [viewed 25.03.2020.].

¹⁶⁷ Dišlers, K. 1938. *Ievads administratīvo tiesību zinātnē* (Eng., Introduction to the science of administrative law). Rīga: LU, p. 222.

¹⁶⁸ Lewis, C. 1992. *Judicial Remedies in Public Law*. London: Sweet & Maxwell, p. 297–298.

¹⁶⁹ Рулан, Н. 2005. *Историческое введение в право* (Eng., Historical introduction to law). Марсель: Nota Bene, p. 27.

¹⁷⁰ Litvins, G. 2012. *Alternatīvās tiesību aizsardzības un strīdu risināšanas metodes administratīvajā procesā: promocijas darbs* (Eng., Alternative rights protection and dispute resolution methods in the administrative process: doctoral thesis). Rīga: LU, Faculty of Law.

¹⁷¹ ICSID is the world's leading institution devoted to international investment dispute settlement.

mediator in the negotiations between the parties would facilitate their success by reducing tensions between the parties and agreeing on a future enforcement of the decision on interim measures of protection¹⁷².

Analysing the above, it can be concluded that the concept of mediation can be applied and is applicable in very different branches of law, both at the national level and in disputes with a transnational element. Mediation can be compared to a general clause that can be customised and filled with a feature that is relevant to the specifics of a particular legal field. A similar idea is expressed by Gatis Litvins who argues that the Mediation Law is designed as an umbrella law for all branches of law, but this setting has not been fully implemented. The Mediation Law provides for a general regulation of mediation, thus it is applicable also to disputes not only in civil relations but also in other areas of law¹⁷³.

In addition, Gatis Litvins points out that neither the Mediation Law nor other legal enactments explicitly specify the use of mediation, for instance, in administrative proceedings. Such an additional legal framework is necessary because in private law mediation is based on the principle of private autonomy for individuals, and the rules of law created by the legislator must restrict, as much as possible, the freedom of the participants in mediation to decide on the rules of mediation. In public law, on the other hand, the legislature enjoys a broader discretion in defining the rules of mediation, and the rules on mediation should be laid down in regulatory enactments¹⁷⁴. Namely, it can be agreed that the Latvian mediation institute also needs further development so that its successful application is not limited to criminal law, copyright, commercial law and family law. In other words, in each area of law, in the event of a conflict, litigants should first seek to resolve the differences by themselves trying to reach understanding. If the litigants are unable or unwilling to reach a mutually acceptable solution, and there is a stalemate¹⁷⁵ in negotiating between the parties, there should be a clear mechanism for resolving the dispute with the help of a neutral mediator. Such a mechanism must be tailored to the specificities of each particular area of law.

¹⁷² Ābula, M. 2014. *Tiesību aizsardzības pagaidu līdzekļi Starptautiskajā investīciju strīdu izšķiršanas centrā (ICSID): promocijas darbs* (Eng., Interim Remedies at the International Center for the Settlement of Investment Disputes (ICSID): Doctoral Thesis). Rīga: LU, Faculty of Law.

¹⁷³ Litvins, G. Directions and perspectives of mediation development. Available from: https://www.apgads.lu.lv/fileadmin/user_upload/lu_portal/apgads/PDF/Juridiskas-konferences/LUJFZK-7-2019/iscflul-7_2019_Ties-zin-uzd-noz-nak_23.pdf [viewed 25.03.2020.].

¹⁷⁴ Litvins, G. Directions and perspectives of mediation development. Available from: https://www.apgads.lu.lv/fileadmin/user_upload/lu_portal/apgads/PDF/Juridiskas-konferences/LUJFZK-7-2019/iscflul-7_2019_Ties-zin-uzd-noz-nak_23.pdf [viewed 25.03.2020.].

¹⁷⁵ Bārdiņš, G. Dialoga loma tiesas spriešanā. Available from: https://dspace.lu.lv/dspace/bitstream/handle/7/31321/298-51343-Bardins_Gatis_gb07033.pdf?sequence=1&isAllowed=y [viewed 27.04.2020.].

According to the Author, there are all the prerequisites and the need for the development of such mechanism also in the Latvian sports law by amending the Sports Law and establishing specialised sports dispute resolution bodies.

However, it should be noted that mediation is not the first choice of litigants in Latvia; therefore, to promote a modern method of out-of-court resolution of disputes and to facilitate the amicable settlement of conflicts between parties (which would reduce the burden on the courts), the Ministry of Justice, in cooperation with the Council of Certified Mediators, continued, in 2008, successfully implementing two projects Free Court Consultations for Mediators and Free Mediation in Family Disputes as well as supported the organisation of Mediation Days.

The Project Free Court Consultations for Mediators ensures the availability of the service both in courts in Riga and in the regions. Mediator consultations are provided in the Latgale District Court, Riga District Court, Vidzeme Suburb Court, Riga Regional Court, Riga District Court in Jūrmala and Sigulda, Zemgale District Court in Jelgava and in Aizkraukle. The Project was expanded in early 2018 to include the City of Riga Pārdaugava Court and the Kurzeme Regional Court (also serving the Kurzeme District Court).

In turn, the Project Free Mediation in Family Disputes provided service to 291 families in 2017 and continued successfully in 2018. By the end of October, approximately 250 contracts had been signed. As part of the Project, each family could receive up to five hours of state-paid mediation from certified mediators. Approximately 65 % of all mediation cases in the Project were completed with the agreement of all or part of the parties¹⁷⁶ which, in the Author's view, constituted good practice and statistics in the use of mediation.

The Author should note that the above information and data indicate an interest on the part of the State in the wider introduction of mediation in dispute resolution, especially in family disputes. Likewise, doctoral theses on ADR provide a solid theoretical basis for the application and development of these tools in all areas of law. One of the hindering factors is the poor knowledge of the population about the nature and content of mediation which is also mentioned by Nikolajs Jefimovs.

¹⁷⁶ Kucena, I., Medina, L. 29.01.2019. Būtiskākās izmaiņas tiesu sistēmā un tiesību politikas jomā (Eng., Major changes in the judiciary and legal policy). *Jurista Vārds*. 4(1062).

3 Mediating Sports-Related Disputes: Defining Sports Disputes, Mediators Personality in Sports Disputes

3.1 Sports dispute definition

Sports relations have such a special characteristic feature as dynamism due to the very nature of training and competitive activity. This feature has a fundamental impact on the risk of increased disputes. In sports, this risk is the highest. Therefore, it is extremely important to organise work on quick and effective dispute resolution¹⁷⁷.

Yurlov notes that sports relations should be understood as social relations regulated by the rules of sports law arising from the implementation of the training process (activity) (preparation for competitions) and participation in competitions (competitive activity), as well as other (related) relations arising from the latter¹⁷⁸.

To highlight the subject and object of sports law, it is necessary to analyse what sports relations actually imply.

According to Russian experts in sports law (it should also be considered that Article 5 of the Russian law On Physical Culture and Sports contains a voluminous listing of subjects of physical education and sports in the Russian Federation), the characteristic features of sports relations are as follows:

1. special parties – the subjects of physical culture and sport, including: athletes; trainers; physical education and sports associations (sports clubs, children and youth sports schools, and student sports clubs);
2. norms governing these legal relations are complex (norms of several branches of law – civil, labour, administrative, civil and arbitration processes, etc.);
3. clear temporal certainty and dynamism – sport is subordinated to such a factor as time more than other spheres of society. For instance, in cyclical forms, all legal relations are adjusted to the principle of a four-year cycle, i.e. a training period from one Olympic Games to others. That is why, employment contracts with athletes and coaches, other specialists have their own characteristic features; sports relations are characterised by special means of protecting the rights of athletes and other subjects of physical education, special measures of responsibility for the violation of sports laws and internal regulatory documents of sports federations.

For instance, a means of protection, first of all, of an athlete or other subject of sports relations will be the filing of a protest against the decision of the panel of judges, credentials

¹⁷⁷ Юрлов, С. 2015. *Спортивные споры и их разрешение. Теория и практика* (Eng., Sports disputes and their resolution. Theory and practice). Россия: Инфотропик Медиа, р. 4.

¹⁷⁸ *Ibid.*, p. 11

committee, and resolution of existing disagreements – disputes in the internal (jurisdictional) bodies of the sports federation or the sports arbitration court.

Traditional measures of responsibility in sport will be: warning; withdrawal (disqualification) from the competition (for instance, for a violation of the technical aspects); disqualification for the use of doping and other prohibited substances; withdrawing points from a club (in water polo); penalty seconds (for instance, in underwater sport)¹⁷⁹.

After analysing this broad definition, one can agree with Yurlov that the *subjects* of sports relations can be individuals (organisations), state bodies, international organisations and bodies endowed with a certain legal status, i.e. rights and obligations in connection with the participation in training and competitive relations and other related relations, such as UEFA or the World Anti-Doping Agency.

In defining the purpose of the Latvian Sports Law, Article 2 thereof indirectly specifies the list of subjects: “The purpose of this Law is to establish the general and legal framework for the organisation and development of sport, the interrelationship and mission of sporting organisations, state and municipal institutions, and the fundamentals of sports funding, as well as principles of significant involvement in the international sports movement”.

It is worth noting that this list is not exhaustive; therefore, the Sports Law regulates legal relations between a small part of possible sports law subjects only, delegating the authority to regulate relations between other subjects to sports organisations themselves, i.e. in the context of Article 10 of the Sports Law – sports clubs, sports federations and other institutions referred to in the Law.

However, the absence of a clear listing of other sports law subjects in the Sports Law should not mean that these do not exist and their rights and interests are not taken into account which, in turn, imposes obligations on sports clubs and federations to build a competent system of internal regulations with the aim of achieving the principle of good governance.

The *objects* of sports legal relations are, first of all, intangible benefits relating to physical culture and sports (for instance, sports symbols, honour and good name of an athlete, etc.), and the actions of the subjects of sports themselves (the implementation of the training process, participation in sporting competitions, etc.)¹⁸⁰.

It is worth mentioning that the Latvian legislation does not contain the concept of a sports dispute. Moreover, the Sports Law does not contain a single provision on the resolution

¹⁷⁹ Юрлов, С. 2015. *Спортивные споры и их разрешение. Теория и практика* (Eng., Sports disputes and their resolution. Theory and practice). Россия: Инфотропик Медиа, p. 13.

¹⁸⁰ *Ibid.*, p. 14.

of sports disputes. In addition, the concept “sports dispute” is not found in the internal regulatory documents of most sports federations. But it is the regulatory documents of sports federations, as noted by Yurlov, that should supplement the provisions of the Sports Law thereby closing existing gaps with their internal norms, and other provisions of the Sports Law should be developed in such acts¹⁸¹. According to the Author, the presence of this definition could contribute to the development of sports law in Latvia and would entail the formation of a special sports arbitration court.

In legal literature, there are many definitions of sports disputes, but the Author believes that exhaustive definitions are given by Russian scientists. For instance, for Pogosyan, a sports dispute is a disagreement about the reciprocal rights and obligations of the subjects involved in a sports relationship, as well as a dispute arising outside the sports relationship but affecting the rights and obligations of athletes as the subjects of the sports relationship¹⁸². Alexeyev, for his part, adds that such disputes are referred to a jurisdiction or must be settled in an alternative way¹⁸³.

According to Yurlov, sports-related disputes (depending on the nature of interrelations that have arisen within the sports relations) can be divided into the types as follows:

1. disputes arising from competitions: disqualification, contesting competition results, violation of the technical rules of the specific sport, etc.;
2. disputes related to membership in a sports federation;
3. doping-related disputes;
4. disciplinary conflicts arising out of a breach of the Code of Conduct by an athlete/coach/other member of the federation;
5. ethical disputes arising out of unethical sayings, pranks, inappropriate behavior on public;
6. contractual or civil legal disputes arising out of a breach of an agreement¹⁸⁴.

The Author will add one more sports-related dispute type, i.e. eligibility disputes, the example of which is outlined in Sub-chapter 4.1.1 when analysing the US Olympic Committee.

¹⁸¹ Юрлов, С. 2015. *Спортивные споры и их разрешение. Теория и практика* (Eng., Sports disputes and their resolution. Theory and practice). Россия: Инфотропик Медиа, р. 4.

¹⁸² Погосян, Е. В. 2011. *Формы разрешения спортивных споров: монография* (Eng. Forms of sports dispute resolution: monograph). Россия: Волтерс Клувер, р. 43–44.

¹⁸³ Алексеев, С. В. 2012. *Спортивное право России, Правовые основы физической культуры и спорта* (Eng., Sports law of Russia, Legal bases of physical culture and sports). Россия, р. 967.

¹⁸⁴ Юрлов, С. 2015. *Спортивные споры и их разрешение. Теория и практика* (Eng., Sports disputes and their resolution. Theory and practice). Россия: Инфотропик Медиа, р. 19.

Hence, the notion of a sports dispute is very broad and its types demonstrate the whole variety of possible sports interrelations.

In his article *Sports Mediation: Mediating High-Performance Sports Disputes*, Paul Denis Godin analyses types of National-Level Amateur Sports Disputes in Canada and highlights five main types putting emphasis on the first four:

1. funding disputes (carding disputes);
2. team selection disputes;
3. anti-doping and other non-doping disciplinary cases;
4. administrative, governance, and rules disputes with national sports organisations, internally, or between National Sport Federations and athletes/coaches;
5. contract disputes¹⁸⁵.

Broadly speaking, funding disputes are complaints about the allocation of government funding and services to sports federations or athletes which may arise in various forms around the world. For instance, the Sport Canada organisation provides athlete-specific funding in a variety of ways. One is by issuing a fixed number of “cards” every year to each National Sport Federation. The latter then distributes those cards to some of its elite high-performance athletes in accordance with the pre-set funding selection criteria. Funding conflicts arise when one athlete complains that: the carding criteria were wrongly or unfairly applied; the criteria themselves were unfair, biased, or otherwise inappropriate (e.g. a gender imbalance); and/or an exception to the criteria should be made for the athlete on some grounds (e.g. a medal contender was sick or injured during a qualifying event)¹⁸⁶.

Team selection disputes involve one or more athletes claiming they were wrongly excluded from a given national team¹⁸⁷. In other words, eligibility disputes. An interesting example of this type of dispute is the litigation and arbitration which arose from a dispute as to which of two wrestlers should represent Team USA in Greco-Roman wrestling at the Olympic Games in Sydney. The Sieracki and Lindland case is analysed in detail in Subchapter 4.2 of the case study.

Anti-doping and disciplinary disputes arise out of violations of applicable anti-doping regulations by athletes, coaches, medical professionals, sports officials or related individuals. Most countries have a national body responsible for administering the World Anti-Doping Agency’s Code or their national equivalents¹⁸⁸. In Latvia, such a body is Anti-Doping Bureau

¹⁸⁵ Godin, P. D. 01.2017. *Sport Mediation: Mediating High-Performance Sports Disputes*. *Negotiation Journal*.

¹⁸⁶ *Ibid.*

¹⁸⁷ *Ibid.*

¹⁸⁸ *Ibid.*

of Latvia. Violations include testing positively for the presence of prohibited substances or metabolites from prohibited substances; trafficking, using or possessing a prohibited substance or method; administering a prohibited substance or method to an athlete; and avoiding, refusing, or tampering with sample testing¹⁸⁹. An interesting anti-doping dispute took place in 2012 with a famous Italian figure skater Carolina Kostner:

On 30 July 2012, a Doping Control Officer (DCO) attempted to conduct a doping control on Ms Kostner's then partner, Mr Alex Schwazer (Italian Olympic Champion in race walking) at the home of Ms Kostner. Ms Kostner falsely advised the DCO that Mr Schwazer was not at the premises. Ms Kostner has since recognised that she committed a serious error of judgement by misleading the DCO, and she has accepted that her conduct violated the Italian Anti-Doping Rules. Kostner was banned to compete for 16 months. Ms Kostner herself has appealed the decision, principally seeking its annulment and a declaration that she did not commit any breach of the anti-doping rules.

The second appeal was filed by the Italian National Olympic Committee (CONI) whose Anti-Doping Prosecution Office seeks to increase the period of ineligibility. CAS issued an award to increase the period of ban to 5 more months¹⁹⁰. The Author mentioned this example to show how seriously sports society takes doping disputes and how broad Doping Codes are in their application.

Paul Godin states that a variety of non-doping disciplinary allegations may generate disputes as well, including violations of codes of conduct, athlete agreements, federation policies, rules of play, etc. Such violations will generally be governed by the applicable rules and regulations of the relevant national or international sports organisation.

Also, a variety of other disputes can arise between a National Sports Federation/Organisation (NSO) and its many internal and external stakeholders – administrative, governance and rules disputes. Typical examples include complains:

that NSO policies, such as athlete agreements, code of conduct, or bylaws, are unfair; that administrative decisions made by NSO, such as board elections, changing sponsors, etc. are inappropriate or biased; that NSO appointments to various posts, such as a national team coaching position, are inappropriate; and that NSO staff have acted inappropriately or corruptly¹⁹¹. A famous case that reflects this kind of dispute arose between the Football Association of England and Wales (FA) and the Arsenal manager, Arsene Wenger, when the

¹⁸⁹ World Anti-Doping Code Articles 2.1–2.10. Available from https://www.wada-ama.org/sites/default/files/resources/files/wada_anti-doping_code_2018_english_final.pdf [viewed 15.09.2019.].

¹⁹⁰ Court of Arbitration for Sport. Available from: https://www.tas-cas.org/fileadmin/user_upload/Media_Release_3940.pdf [viewed 07.11.2015.].

¹⁹¹ Godin, P. D. 01.2017. Sport Mediation: Mediating High-Performance Sports Disputes. *Negotiation Journal*

FA banned the latter from the touchline for twelve matches and fined him four weeks' wages for an alleged confrontation with an official. Wenger was found guilty by the FA of "threatening behaviour and physical intimidation". He pleaded not guilty at a disciplinary commission hearing and said he would appeal the FA's decision. He was the first person to be charged under the FA's new hard-hitting disciplinary code of conduct, the fine alone amounts to approx. 100,000 British pounds plus the ban. As stated by Christopher Newmark, one can perhaps envisage a negotiation where the competitor pledges better behaviour in return for a lighter sentence. But ultimately it remains a disciplinary matter where a point of principle is concerned and the governing body cannot be seen to compromise its own rules. Hence, mediation is considered inappropriate, because the FA needs to make a public example of a case in order to deter others¹⁹².

Likewise, the Russian scholar Rogachev elaborates on what the possible categories of sports disputes are: on admission to competitions (applications, licensing, certification); on doping issues; sports sanctions; on transfers and the amounts of compensation; on membership in sports federations; on the status of an athlete (amateur, professional); on television and commercial rights in sports; on the rights and obligations of national team members; on delegation of rights to conduct competitions; on agency activities in sports; labour disputes of athletes and coaches¹⁹³.

The Author supposes that the above reflects the variety of possible sports disputes and types thereof in detail. Of course, the more advanced the sport legislation in the country, the biggest number of sports disputes could be highlighted.

Among experts in sports law in Russia and the CIS countries, there is a generally recognised position on the need to amend the Sports Law in terms of consolidating the legal framework for resolving sports disputes. In particular, Poghosyan indicates this in his monograph on the basics of resolving sports disputes¹⁹⁴. The Author fully shares this position.

Also, for instance, in Italy, as Yurlov mentions, a new *sports and procedural* branch of legislation has, in fact, been created as there are specialised acts regulating issues related exclusively to the resolution of sports disputes¹⁹⁵.

V. Kamenkov also speaks of the need to introduce similar amendments to the Belarusian Sports Law. In his work, he points out that it would be completely justified and

¹⁹² Newmark, C. *Is a Mediation Effective for Resolving Sport Disputes*. The Hague: T.M.C. Asser Instituut.

¹⁹³ Рогачев, Д. И. 2009. *О спортивном третейском суде России. Презентация* (Eng., On the sports arbitration court of Russia. Presentation). Москва.

¹⁹⁴ Погосян, Е. В. 2011. *Формы разрешения спортивных споров: монография* (Eng., Forms of sports dispute resolution: monograph). Россия: Волтерс Клувер, p. 43–44.

¹⁹⁵ Юрлов, С. 2015. *Спортивные споры и их разрешение. Теория и практика* (Eng., Sports disputes and their resolution. Theory and practice). Россия: Инфотропик Медиа, p. 5.

correct to provide for separate rules on sports disputes and sports courts in the national Sports Law or in the Law on Arbitration Courts, which should, in particular, reflect the provisions as follows:

“in the field of professional sports, sports federations (associations) may create permanent arbitration courts, arbitration courts to resolve a specific dispute and other bodies for the pre-trial resolution of sports disputes; specify the parties entitled to apply to the sports court; determine the law that such a court is entitled to follow; and the procedure for resolving disputes by such a court, appealing and enforcing its decisions”¹⁹⁶.

Lithuania adheres to this position, as Chapter 8 of the Lithuanian law On Physical Education and Sport has Article 51 on the settlement of disputes:

1. Disputes concerning the protection of the rights defined in this Law shall be settled in accordance with the procedure laid down by legal acts of the Republic of Lithuania. Rules of an appropriate sport may lay down the preliminary procedure for settlement of disputes out of court.
2. If the parties to the dispute request so, they may settle the dispute in the sports arbitration. The procedure for forming sports arbitration and rules of procedure shall be defined by the Department of Physical Education and Sports.

Based on the above, the Author supposes it is essential to amend Article 1 of the Sports Law and include a definition of sports disputes which will consequentially lead to a clause on the settlement of disputes. The Author advises to use the definition of sports disputes as follows:

“Sports disputes – diverse in their content unresolved disagreements of subjects of sports relations arising from activities or omissions in the field of sports relations regarding the rights and obligations governing this space, transferred to a jurisdictional body or being resolved using alternative dispute resolution methods”.

Rules on the types of disputes contained in special laws are not a new phenomenon for Latvia. So, in Article 67¹ of the Copyright Law, the legislator lists the disputes exposed to an intermediary.

The necessity to amend the Sports Law by adding a provision on the settlement of disputes is elaborated in the upcoming chapters.

¹⁹⁶ Каменков, В. 2009. Понятие и разрешение спортивных споров в мире и в Беларуси. *Арбитражный и гражданский процесс*. № 8 (Eng. Concept and resolution of sports disputes in the world and in Belarus. *Arbitration and civil procedure*. No. 8), p. 36.

3.2 Mediation and sports disputes: mediator's personality, sports mediation by ISFs and NGBs

The concept "sports dispute" is rather "capacious" and includes in itself a lot of disputed relationship types¹⁹⁷.

In view of the above facts and the nature of legal relationship, sports disputes should be resolved amicably, promptly, confidentially and, what is most important, the resolution should lead to a healthy and, if possible, non-aggressive relationship between the parties to the dispute, a fair outcome, including being aware of the potential harm to another person not directly involved in the dispute; in other words, conflicts should be resolved within the "family of sport"¹⁹⁸.

For these reasons, traditional dispute resolution, i.e. litigation, cannot be considered as the optimal and the best option, whereas ADR methods/techniques and, in particular, mediation can achieve the desired result, i.e. a peaceful, prompt, confidential and non-aggressive resolution in sport with mediation facilitating dialogue between the parties in order to find a solution in their best interest, and allowing the creation of preconditions for further cooperation/competition. When choosing mediation, there is no direct problem of the law applicable to the determination of jurisdiction and the resolution of the dispute.

In other words, the aim of mediation is to have the parties voluntarily reach a resolution of the dispute which can also be legally reinforced. In this process, a neutral third party allows the parties to the dispute to reach a consensus themselves helping the parties find a solution to the conflict in a sustainable and self-determined way. Also, taking the specifics of the sport into account, another advantage of mediation may be the choice of a mediator who is familiar with the specifics of the sport and will be more successful in finding a common language with the parties¹⁹⁹.

Likewise, Olga Shevchenko notes that the field of sports relations is one of the areas where mediation procedure has a very positive experience of application. This is dictated by the fact that advantages of this dispute resolution method create the most interesting conditions and opportunities for the parties involved in sports activities. These are the issues of speed of decision-making, confidentiality, maintaining a reputation, relative cheapness, and further maintenance of normal business, sports, and other relations between the disputing parties through reconciliation. The parties involved in sports activities are also interested in

¹⁹⁷ Kameņecká-Usova, M., Palková, K. 2017. Mediator's Personality in Specific Legal Disputes: Sports Related Disputes and Healthcare Related Disputes. *Acta Universitatis Danubius. Juridica*. 13(2).

¹⁹⁸ Foucher, B. La Conciliation Comme Mode de Reglement des Conflits Sportif en Droit Francais' (2000). Paper presented at the CAS Symposium on Mediation in Lousanne, Switzerland, 4 November 2000.

¹⁹⁹ Kameņecká-Usova, M. 2017. Mediácia un sporta strīdi (Eng., Mediation and sports disputes). *Socrates*. No 3 (9).

the dispute between them being resolved by an independent person with special knowledge in the field of sports and, therefore, a way to take into account the details and subtleties of each specific conflict situation²⁰⁰. The Author agrees with the above opinions and arguments, but it is worth emphasising that the chances of a successful outcome of using mediation to resolve a sports dispute are significantly increased if the mediator has the necessary knowledge of the sports dispute specifics and is oriented in the sports space.

The quote from the Harvard Law School's special report on The New Conflict Management: Effective Dispute Resolution Strategies to Avoid Litigation clearly shows that success of the mediation largely depends on the mediator's skills: "Whenever a dispute flares up, the parties involved must ask themselves which course of action will yield the best outcome. Should they negotiate, litigate, or simply walk away and accept the status quo? <...> When communication with the opposing side is strained or difficult, consider bringing in a mutually trusted third party to serve as a go-between. Mediators can facilitate information exchange, vouch for good-faith efforts, and propose ways to resolve the dispute. Third parties can also help provide a reality check by reminding disputants of the costs and likely repercussions of litigation"²⁰¹.

Hence, the question is, whether a mediator can assist the parties in reaching a consensus if they do not possess substantive knowledge of sports.

3.2.1 Mediator's skills and expertise

According to Article 3(b) of the Mediation Directive, "mediator" means any third person who is asked to conduct a mediation in an effective, impartial and competent way, regardless of denomination or profession of that third person in the Member State concerned and of the way in which the third person has been appointed or requested to conduct the mediation. Hence, only the ability to conduct mediation qualitatively is asked for.

In its turn, Article 1.1 of the European Code of Conduct for Mediators proclaims that mediators must be competent and knowledgeable in the process of mediation. Relevant factors include proper training and continuous updating of their education and practice in mediation skills, having regard to any relevant standards or accreditation schemes. Hence, here we also see that only knowledge and competence in the mediation process is required

²⁰⁰ Шевченко, О. А. 2015. Сравнительно-правовой анализ российского и зарубежного законодательства в сфере спортивной медиации. *Право и государство: теория и практика*. № 2 (Eng. Comparative legal analysis of Russian and foreign legislation in the field of sports mediation. *Law and state: theory and practice*. No. 2), p. 108–112.

²⁰¹ Malhotra, D. The New Conflict Management. Effective Conflict Resolution Strategies to Avoid Litigation. Negotiation Special report #11 of Harvard Law School. 1–2

and nothing is said about any attainments in the sphere where conflict has originated, i.e. “industry expertise”²⁰².

However, addressing the Model Standards of Conduct for Mediators (2005) by the American Bar Association and the American Arbitration Association and the Association for Conflict Resolution we may find some reference to other competence and knowledge required besides the attainments in the mediation process. Section IV on Competence states:

“A mediator shall mediate only when the mediator has the necessary competence to satisfy the reasonable expectations of the parties.

1. Any person may be selected as a mediator, provided that the parties are satisfied with the mediator’s competence and qualifications. Training, experience in mediation, skills, cultural understandings and other qualities are often necessary for mediator competence. A person who offers to serve as a mediator creates the expectation that the person is competent to mediate effectively”²⁰³.

Therefore, mediation parties are free to decide whether a mediator is qualified enough to assist the parties in reaching a consensus, whether his or her skills, industry expertise and other understandings are enough to understand the problem and delve into the core of the dispute. Hence, it would be logical to assume that the parties of a sports-related dispute will choose a mediator who understands what a sports dispute is, knows something about the sports industry, sports law and maybe even has a working experience in a sports body, for instance, a federation, association, etc.; the same principle applies to healthcare-related conflicts.

In his article Choosing the “Expert” Mediator, Brand states that mediators bring different approaches, which emphasise different process skills, to the mediation. Their training, or experience in resolving certain types of disputes, may predict the specific skills they bring to mediation. For instance, some family mediators avoid caucuses and may be skilled in mediating with the parties face-to-face. Community mediators may emphasise a transformative approach and be skilled at helping parties see their dispute in a larger context. Labour-management mediators may be skilled in group dynamics, while retired judges may bring persuasive skills they developed in settlement conferences. Knowing the general approach and process skills of different types of mediators is useful in selecting an

²⁰² Brand, N. 1999. Choosing the “Expert” Mediator. Available from: <http://www.mediate.com/articles/nbrand.cfm> [viewed 12.09.2018.].

²⁰³ American Bar Association & American Arbitration Association & Association for Conflict Resolution. 2005. www.mediate.com; available from: http://www.mediate.com/articles/model_standards_of_conflict.cfm [viewed 14.07. 2017.]

appropriate mediator for your case²⁰⁴. This paragraph implies that Brand, based on his own dispute resolution experience, divides mediators by law sectors. Nevertheless, it should be mentioned that Brand's vast experience is amassed in the United States of America where mediation is a very popular and often used ADR method.

Consequently, based on the written above, it can be presumed that a successful mediator should have good process skills and have substantive knowledge, i.e. industry expertise.

Brand states that one form of expertise often thought to be important is substantive knowledge about specific areas of the law where legal expertise involves knowledge about current verdicts, settlements, and jury trial results in a specific trial court venue, for a specific type of case. He also notes that most sophisticated users of ADR already consider whether their case requires a mediator with specific legal expertise. Later he suggests parties also to consider other kinds of expertise, such as industry, scientific or technical expertise, which can make a difference in the outcome of a mediation²⁰⁵.

The Author finds the following Brand's words very compelling: "A mediator with industry expertise brings an intellectual framework for understanding whether the reliance that is alleged in a complaint comports with industry reality. As a result of this expertise, the mediator may be able to help the parties develop a creative solution that works because of industry-specific considerations"²⁰⁶.

It derives from the Brand's idea that successful mediation depends on a mediator's personality that consists of the process skills, i.e. "knowledge about the process of mediation, and the ability to use that knowledge to affect behaviour"²⁰⁷ and substantive knowledge that can be divided into specific legal expertise and industry expertise.

The Author is in solidarity with the above opinion, but with a small condition that specific legal expertise should not require a mediator to be an attorney-at-law, as habits and proficiency in fighting in the court room of the latter run counter to the peaceful functions of the mediator²⁰⁸. By parity of reasoning, the Copyright Law, which in its chapter X¹ speaks about the requirement for an intermediary that might solve copyright disputes, states the following requirement to have at least three years of professional experience in the field of copyright which clearly indicates the obligation to have industry expertise.

²⁰⁴ Brand, N. 1999. Choosing the "Expert" Mediator. Available from: <http://www.mediate.com/articles/nbrand.cfm> [viewed 12.09.2018.].

²⁰⁵ *Ibid.*

²⁰⁶ *Ibid.*

²⁰⁷ *Ibid.*

²⁰⁸ Kamenecka-Usova, M., Palkova, K. 2017. Mediator's Personality in Specific Legal Disputes: Sports Related Disputes and Healthcare Related Disputes. *Acta Universitatis Danubius. Juridica*. 13(2).

The Author expects that the above information implies that mediation, although largely depending on the will of the parties in a dispute to resolve their conflict and reach a consensus, still relies on the mediator's personality. Therefore, three main conclusions arise:

1. Mediation is an appropriate and amicable extra-judicial dispute resolution method to resolve specific legal disputes such as sports-related disputes.
2. Mediation process has to be built on the mediator's skills and expertise.
3. Successful mediation depends on the mediator's personality that consists of the process skills, i.e. "knowledge about the process of mediation, and the ability to use that knowledge to affect behaviour"²⁰⁹ and substantive knowledge that can be divided into specific legal expertise and industry expertise.

Hence, sports mediation requires a mediator with expertise in the sports sector and/or a high education diploma in one of the sports specialities.

3.2.2 Sports Mediation by ISFs and NGBs

In 2001, Dr. Robert Siekmann, Managing Director of the International Sports Law Project at the TMC Asser Institute, Hague, Netherlands, conducted an informal survey on the use of mediation in sports disputes amongst several international sports federations and national sports governing bodies. A questionnaire was sent to 525 such bodies, i.e. national sports organisations, all Olympic sports in the European Union; 43 of them replied constituting 12 %.

The questionnaire showed that the majority of respondents in 2001 did not have their own mediation rules, but relied on the arbitration and mediation rules of the CAS to which, in such cases, all disputes are exclusively referred²¹⁰.

For instance, all disputes of the International Rowing Federation (FISA) are "uniquely dealt with by the Court of Arbitration for Sport in Lausanne". As it can be seen from Article 66 of the latest FISA statutes²¹¹ available on their webpage, nothing has changed today. The Latvian Rowing Federation Statutes do not contain any clause on the resolution of disputes²¹².

²⁰⁹ Brand, N. 1999. Choosing the "Expert" Mediator. Available from: <http://www.mediate.com/articles/nbrand.cfm> [viewed 12.09.2018.].

²¹⁰ Blackshaw, I. S. 2002. *Mediating sports disputes. National and International Perspectives*. The Hague: T.M.C. Asser Instituut. 169.

²¹¹ World Rowing. Available from: http://www.worldrowing.com/mm/Document/General/General/13/58/39/FISARulebookEN2019web_Neutral.pdf [viewed 07.01.2020.].

²¹² Latvijas Airēšanas federācija (Eng., Latvian Rowing Federation). Available from: <http://www.rowing.lv/index.php?p=5380&lang=1173&pp=6631> [viewed 07.02.2020.].

The International Motorcycling Federation (the FIM) in its Article 9 of the Disciplinary and Arbitration Code also provides for the mandatory reference of appeals to the CAS:

“Final decisions handed down by jurisdictional bodies or the General Assembly of the FIM shall not be subject to appeal in the ordinary courts. Such decisions must be referred to the Court of Arbitration for Sport (CAS), within the time limit of Appeal as laid down in Article 4.6, which shall have exclusive authority to impose a definitive settlement in accordance with the Code of Arbitration applicable to sport.” The FIM also includes an interesting clause named Law of Mercy which provides as follows:

“The Board of Directors, after consultation with the CJI (International Judicial Panel) Director or upon a proposal from the latter, may mitigate or completely dispense with the penalty of a person after having exhausted all the appeal procedures”. Dr. Robert Siekmann supposes it to be “a kind of mediation clause”²¹³.

In its Statutes, the Latvian Motorcycling Federation (LaMCF) has a clause regarding the Disciplinary and Arbitration Commission (DAC) which states that the Commission deals with violations of sporting ethics, the LaMCF's Statutes, competition regulation and competition rules as well as complaints about the decisions of the Commission and the Presidium. The Commission shall lay down penalties for violations. The activities and competence of the Disciplinary Commission shall be governed by the Statutes. Namely, the DAC shall, on the basis of a written application by any member, athlete or LaMCF officer, review and bring to trial: any protest or complaint (regarding any dispute), appeals (for first instance decisions). The rules clarify that the DAC, as a judicial authority, is independent in its activities, operates in accordance with the LaMCF's regulatory enactments and reports to the Congress. All DAC members shall adhere to the principle that they cannot perform their duties when there is a potential conflict of interest in an existing dispute. In such cases, the DAC member shall refrain from making a decision. The composition of the DAC has been approved in accordance with the procedures and requirements of the Statutes.

There are also two instances of infringement proceedings:

- 1) First instance: Official; Jury Commission; LaMCF's structural unit.
- 2) Second instance: Disciplinary and Arbitration Commission (DAC), in opposition or appeal against the first instance decision. The second instance decision is final²¹⁴.

²¹³ Blackshaw, I. S. 2002. *Mediating sports disputes. National and International Perspectives*. The Hague: T.M.C. Asser Instituut.

²¹⁴ Latvijas Motosporta federācija (Eng., Latvian Motorcycling Federation). Available from: https://www.lamsf.lv/wp-content/uploads/2019/09/sporta_kodekss_060919.pdf, point 10.2. [viewed 07.02.2020.].

The home page of this federation also contains DAC decisions, for instance, in the Paņēvins, Rudzons and Šiks ruling²¹⁵ of 18 March 2019 which the Author considers to be a very good example of the use of ADR in the sports sector at the federation level.

This example proves that the LaMCF complies with a good governance policy, has well-functioning dispute resolution procedure and might serve as an example to other Latvian federations that lack such a procedure.

Speaking of other international federations, the International Ice Hockey Federation expressly recognises mediation as the first means of settling disputes within its own internal procedures, but also requires exclusive arbitration by the CAS in the event of any mediation proving to be unsuccessful²¹⁶.

The Statutes of the Latvian Ice Hockey Federation (LIHF) do not contain any information regarding possible disputes and their resolution; only the Disciplinary Penalty Regulations provide that the decisions of the Disciplinary Commission may be appealed to the LIHF's Management Board within 10 days from the date of the decision of the Disciplinary Commission. The decision of appeal of the LIHF's Management Board is not subject to appeal and must be published on the LIHF's website²¹⁷. However, the Statutes in force since 2005 do not specify the competence of the Management Board in this area.

In terms of other countries' national federations, the French Sailing Federation is worth mentioning as it expressly recommends the use of mediation in major events "to reduce the number of protests" pointing out that "through the mediation system, disputes may be solved very shortly, resulting in a lighter penalty". Also, in the Statutes of the Spanish Basketball Federation, there is a provision for "extrajudicial conciliation" of sporting disputes between the clubs themselves and between the clubs and the Federation in certain prescribed circumstances and under certain formal conditions²¹⁸.

The Latvian Basketball Association's dispute resolution system is worth mentioning which, together with the Latvian Motocross Federation's sports dispute resolution model, provides a good example of a thoughtful alternative sports dispute resolution model at the federation level. It should be noted that even the Statutes of the Latvian Gymnastics Federation make no mention of dispute resolution, and this is a sport where Igors Vihrovs

²¹⁵ Latvijas Motosporta federācija (Eng., Latvian Motorcycling Federation). Available from: https://www.lamsf.lv/wp-content/uploads/2019/03/DAK_lemums_motososeja_2019.pdf [viewed 07.02.2020.].

²¹⁶ Blackshaw, I. S. 2002. *Mediating sports disputes. National and International Perspectives*. The Hague: T.M.C. Asser Instituut. 170.

²¹⁷ Latvijas Hokeja federācija. Available from: <https://lhf.lv/files/yVf2L5IPubjKfzRmERBa.pdf> [viewed 07.02.2020.].

²¹⁸ Blackshaw, I. S. 2002. *Mediating sports disputes. National and International Perspectives*. The Hague: T.M.C. Asser Instituut. 170.

won the first Olympic medal for independent Latvia at the Olympics in Sydney and Jevgeņijs Saproņenko won a silver medal at the Olympics in Athens, not to mention the medals at the World Championships; it is the sport that represents our country in the world sports arena at the highest level.

Under Article 3.1 of the Regulation²¹⁹ of the Board of Appeal of the Latvian Basketball Association, meetings of the Board of Appeal are organised to consider and make decisions in case of appeals or protests of the LBA members. After reviewing the case materials, the Board of Appeal assesses the merits of the penalty imposed and its appropriateness to the violation committed. Where the Board of Appeal receives an appeal, the penalty imposed for the violation is suspended until a decision is taken by the Board of Appeal. Clause 3.4 stipulates that the Board of Appeal shall take its decisions by a simple majority of the members present and by open vote. The Chair of the Board of Appeal shall endeavour to find a solution which satisfies the widest possible support of its members in accordance with the regulatory enactments in force. Before voting, the Chair of the Board of Appeal shall enter into discussions with its members on the settlement of the matter. The Statutes do not specify any model of dispute resolution used by the Board of Appeal, nor does it contain a rule on whether the other party is invited to the hearing, namely, the LBA member who filed the protest. In other words, one can assume that a decision is made without the other party's control, influence or authority.

Clause 5.2 of the Statutes sets out that the decision of the Board of Appeal is subject to appeal before the International Court of Arbitration for Sport in Lausanne, Switzerland.

As Dr. Siekman's survey showed, a number of national sports bodies, for instance, the British Triathlon Association, the Hellenic Table Tennis Federation, the Portuguese Judo Federation, the Irish Football Association and the European Swimming League, do not have any specific arbitration or mediation rules, nor do they make any particular provision for the settlement of sports disputes in their Statutes²²⁰. A similar situation is in majority of Latvian sports federations and associations.

Other ISFs and NGBs, as Dr. Siekmann's survey showed, are aware of the need to make such provisions. For instance, the International Mountaineering and Climbing Federation (UIAA) based in Zollikon-Zurich (Switzerland) does not have any special rules on international sports disputes giving as a probable reason for this that they "have never been

²¹⁹ Latvijas Basketbola savienība (Eng., Latvian Basketball Association). Available from: https://basket.lv/documents/84d95-lbs_apelacijas_komisijas_nolikums.pdf [viewed 07.02.2020.].

²²⁰ Blackshaw, I. S. 2002. *Mediating sports disputes. National and International Perspectives*. The Hague: T.M.C. Asser Instituut. 171

involved in a dispute of this kind so that the urgency for regulation is low”. Nevertheless, Dr. Christoph Jezler, Attorney and Board Member of the UIAA, adds:

“We are aware that this might change, in particular in connection with lawsuits of athletes banned based on the doping regulations. We have not yet discussed this in the Board but my feeling is that we would refer to arbitration by the Court of Arbitration for Sport in Lausanne”. Today, in 2019, this federation has its own UIAA Court established to resolve disputes, as stated in Article 23 of the Articles of Association, i.e. the UIAA Court decides its own regulation about: a) conflicts of competence and other possible disputes between the UIAA, UIAA members and bodies; b) disputes between UIAA member organisations; c) any dispute arising within the UIAA shall be brought to the UIAA Court first before executing Article 24 which states that disputes unresolved by the UIAA Court shall be settled in the CAS²²¹. Hence, we see a huge change what once again demonstrates the urgency and topicality of establishing a dispute resolution body in sports federations.

Finally, the Royal Belgian Federation for Equestrian Sports refers appeals against decisions of the Board and the Technical and Disciplinary Committees to arbitration by the Belgian Arbitration Commission for Sport of the Belgian Olympic and Interfederal Committee, which is based in Brussels²²². In 2012, this Commission was replaced by the Belgian Court of Arbitration for Sport (*Cour Belge d'Arbitrage pour le Sport*²²³) which is successfully functioning till today what can be concluded from the list of resolved sports disputes²²⁴ found on their official webpage.

Another interesting example of an NGB that has a multi-tier system of resolving sports disputes is the Russian Football Union (RFU). In the RFU, there are two internal bodies that resolve disputes, i.e. the Dispute Resolution Chamber and the Players’ Status Committee.

The Dispute Resolution Chamber carries out pre-trial (out-of-court) settlement of disputes where disputants are clubs, players, coaches, football players’ agents and other football entities, and also applies disciplinary sanctions for violations of the Regulation on the Status and Transition (Transfer) of Players in football as well as other regulations (provisions) in the case of direct reference to them. Decisions of the Dispute Resolution Chamber by

²²¹ International Climbing and Mountaineering Federation. Available from: https://www.theuiaa.org/documents/members/AoA%20Seoul%202015_Amendments_Final_2018.pdf [viewed 09.03.2020.].

²²² Blackshaw, I. S. 2002. *Mediating sports disputes. National and International Perspectives*. The Hague: T.M.C. Asser Instituut. 172

²²³ Het Belgisch Arbitragehof voor de Sport (Eng., The Belgian Court of Arbitration for Sport). Available from: <http://www.bas-cbas.be/index.php> [viewed 27.10.2019.].

²²⁴ Het Belgisch Arbitragehof voor de Sport. Jurisprudence (Eng., The Belgian Court of Arbitration for Sport. Jurisprudence). Available from: <http://www.bas-cbas.be/fr/jurisprudence.php> [viewed 27.10.2019.].

category of disputes determined by the relevant regulations (provisions) may be appealed to the Players' Status Committee²²⁵.

The Players' Status Committee determines the status of players, including resolves disputes related to the status of a player, considers complaints about the decisions of the Dispute Resolution Chamber, and also monitors the implementation of the Regulation on the Status and Transition (Transfer) of Players in football.

The Players' Status Committee submits to the Executive Committee proposals for improving the Regulation of the RFU on the Status and Transition (Transfer) of Players in football, develops and submits to the Executive Committee documents regulating the activities of the Dispute Resolution Chamber²²⁶. Likewise, under Article 45 of the Statutes of the RFU, the Executive Committee of the RFU is entitled to recognise a permanent arbitration institution administering arbitration of disputes in the field of professional sport and high-performance sport, including individual labour disputes under Federal Law No 329-Φ3 of 04 December 2007 On Physical Culture and Sport in the Russian Federation for the purpose of resolving disputes in football.

In accordance with the laws of the Russian Federation and FIFA, UEFA and RFU rules and regulations, national arbitration is entitled to deal with all or part of internal disputes at the national level between the RFU, its members, leagues, clubs, players, officials, and other football entities without questioning the independence and objectivity of such arbitration. Further, Article 46 (1) of the RFU Statutes prescribes that the RFU, its members, as well as leagues, clubs, players, officials, other football entities that recognise the Statutes, unless otherwise provided by the legislation of the Russian Federation, do not submit a single dispute to state courts, unless otherwise specified for specific cases in the Statutes and in the regulations of FIFA, UEFA. Any disagreement is transferred to the jurisdiction of FIFA, UEFA or RFU. As a final court instance, such disputes should be considered either in the National Arbitration referred to in the relevant article of the Statutes, or in the CAS. The norm further specifies that, considering the provisions of Clause 1 of the said Article, the RFU has jurisdiction over domestic disputes in the field of football at the national level. FIFA has jurisdiction over international disputes, i.e. over disputes between the parties that are members of various national football federations (associations) and/or football confederations, as appropriate. UEFA, in accordance with the rules and regulations of FIFA

²²⁵ Российский футбольный союз (Eng., Russian Football Union). Available from: <https://rfs.ru/subject/1/committees/19> [viewed 18.04.2020.]

²²⁶ Российский футбольный союз. Комитет по статусу игроков (Eng., Russian Football Union. Player Status Committee). Available from: <https://rfs.ru/subject/1/committees/18> [viewed 18.04.2020.]

and UEFA, also has jurisdiction over international (European) disputes (excluding disputes regarding the status of players).

Article 47 prescribes that, under the certain provisions of the FIFA, UEFA and RFU Statutes, any appeal against final and legally binding decisions of FIFA, UEFA and RFU can be heard by the CAS. This sports arbitration court, however, does not hear appeals in the categories of cases defined by FIFA, UEFA, RFU or decisions made by the independent National Arbitration referred to in Article 45 of the Statutes. The RFU ensures full compliance with any final decisions made by FIFA, UEFA or CAS bodies, for its part, on the part of its members, leagues, clubs, players, officials²²⁷.

Hence, the RFU offers a dispute resolution system of two internal bodies, an option of national sports arbitration and prescribes the possibility to appeal to the CAS. The Author supposes it to be a really good example of a sports disputes resolution system logically built in order to offer the disputants all possible stages of conflict resolution. An example of a case resolved at the RFU Dispute Resolution Chamber and appealed to the Player's Status Committee is analysed in Chapter 4 below.

As a result, the Author concludes that there are six types of NGBs and ISFs:

- 1) the ones that do not have any rules on dispute resolution;
- 2) the ones that have a dispute resolution system, but the method is not specified;
- 3) the ones that have a dispute resolution system – arbitration;
- 4) the ones that have a dispute resolution system – mediation and arbitration;
- 5) the ones that redirect all the disputes to the CAS;
- 6) the ones that redirect all the disputes to some national sports disputes resolution body.

The Author supposes the types No 4 and No 6 to be the most beneficial for NGBs and types No 4 and No 5 – for ISFs.

The Authors agrees with Blackshaw that as mediation service provided by the CAS becomes better known and used and the advantages of mediation become more widely appreciated, many ISFs and NSBs can be expected to include specific provisions for mediation of appropriate sport disputes by the CAS in their Statutes and Constitutions²²⁸, as the Author highlighted in the type No 5 above. Such CAS arbitration “clause by reference” in the Statutes of the International Equestrian Federation has been held in a ruling by the Swiss

²²⁷ Российский футбольный союз. Все документы (Eng., Russian Football Union. All documents). Available from: <https://rfs.ru/subject/1/documents> [viewed 18.04.2020.]

²²⁸ Blackshaw, I. S. 2002. *Mediating sports disputes. National and International Perspectives*. The Hague: T.M.C. Asser Instituut. 173

Federal Tribunal of 31 October 1996 in the case of *N.v Federation Equestre Internationale*²²⁹ to be perfectly valid and legal. In that case, the appellant signed a model agreement, which contained an undertaking to abide by the rules of the federation, but did not mention the arbitration clause for settling disputes, which is contained in those rules. The question before the Court was whether the reference to arbitration by the CAS was, in all the circumstances of the particular case, a legally valid one, from the formal point of view. The Court decided in the affirmative and dismissed the appellant's challenge²³⁰.

Therefore, it can be concluded that such a "clause by reference" regarding the CAS mediation would also be valid.

To conclude,

- 1) clause of mediation is not often seen in the statutes of NGBs and ISFs;
- 2) multi-level dispute resolution system is a rarity in NGBs;
- 3) mostly all ISFs mention the CAS as an appeal institution after their internal dispute resolution system has been applied;
- 4) only several Latvian sports federations have introduced in their Statutes a well thought-out internal system of sports dispute resolution, and mediation is not introduced as an option to resolve sports disputes.

As a result, although mediation might be used to resolve many types of sports disputes and it is successfully applied by the CAS, as it will be seen in the next chapter, NGBs and ISFs do not refer to mediation in their statutes as to a first possible step to resolve sports disputes, what makes it difficult to prove the success of mediation applied.

²²⁹ I Civil Division Swiss Fed Trib 31 October 1996. Available from: www.entsportslawjournal.com/articles/abstract/10.16997/eslj.139/ [viewed 13.10.2017.].

²³⁰ Blackshaw, I. S. 2002. *Mediating sports disputes. National and International Perspectives*. The Hague: T.M.C. Asser Instituut. 173

4 ADR and Mediation by National and International Sports Institutions

This Chapter is devoted to the national and international sports bodies that apply ADR methods, including mediation, to resolve sports-related disputes. Sub-chapter 4.1 analyses such national sports institutions as: the United States Olympic Committee, French National Olympic and Sports Committee, Latvian Olympic Committee and Latvian Sports Federation Council. The first two national sports bodies mentioned were chosen to illustrate an example of good governance in the national institution with a well thought-out dispute resolution system, while the last two illustrate the structure and aims of the two most influential sports bodies in Latvia. Sub-chapter 4.2 gives insight into international and non-governmental sports institutions and sub-chapter 4.3. analyses two high-profile sports disputes.

4.1 ADR and mediation by national sports institutions: the United States Olympic Committee, French National Olympic and Sports Committee, Latvian Olympic Committee, Latvian Sports Federation Council

4.1.1 ADR and mediation by the United States Olympic Committee

Before analysing the role of the United States Olympic Committee (USOC), the Author suggests looking into one of the most important documents on the Lex Sportiva – a particular landscape in sports law that includes not only legal rules of sports, in the form in which these are established on an international level, but also rules established by the sports community for sports practice within the framework of the domestic legal order²³¹ – the Olympic Charter, in order to understand in general the powers vested to the National Olympic Committees.

Under Article 27 of the Olympic Charter, the mission of the National Olympic Committees (NOCs) is to develop, promote and protect the Olympic Movement in their respective countries, in accordance with the Olympic Charter.

The NOCs' role is:

- a. to promote the fundamental principles and values of Olympism in their countries, in particular, in the fields of sport and education, by promoting Olympic educational programmes in all levels of schools, sports and physical education institutions and universities, as well as by encouraging the creation of institutions dedicated to Olympic education, such as National Olympic Academies, Olympic Museums and other programmes, including cultural, related to the Olympic Movement;
- b. to ensure the observance of the Olympic Charter in their countries;

²³¹ Panagiotopoulos, D. P. 2014. In Sports activities when there is ludica, lex is not but when lex is, then only lex sportive is. *e-Lex Sportiva Journal*. II(1), 7–18.

- c. to encourage the development of high-performance sport as well as Sport for All;
- d. to help in the training of sports administrators by organising courses and ensuring that such courses contribute to the propagation of the Fundamental Principles of Olympism;
- e. to take action against any form of discrimination and violence in sport;
- f. to adopt and implement the World Anti-Doping Code;
- g. to encourage and support measures relating to the medical care and health of athletes.

The NOCs have the exclusive authority:

1. to represent their respective countries at the Olympic Games and at the regional, continental or world multi-sports competitions patronised by the IOC. In addition, each NOC is obliged to participate in the Games of the Olympiad by sending athletes;
2. to select and designate the city which may apply to organise the Olympic Games in their respective countries.

Hence, the NOCs' functions and aims are clearly defined and should be pursued. In other words, a NOC is an ambassador of the Fundamental Principles of Olympism and its values in each specific country.

As stated by Professor James A. R. Nafziger, the International Olympic Committee, on its own initiative or on that of an athlete, can review a broad range of decisions made by the NOC or International Federations (IFs). Under the Olympic Charter, IOCs recognise the "exclusive powers" of NOCs to represent their countries or select athletes to represent them in competitions, but at the same time it grants power to the IFs to establish criteria of eligibility and to establish and enforce rules to govern the practice of their respective sports²³². Nevertheless, the IOC retains authority as a final arbiter of disputes within the Olympic Movement, as it is stated by Sandu²³³.

Turning to the discussion of the USOC as such, it was reorganised by the Ted Stevens Olympic and Amateur Sports Act originally enacted in 1978. It is a federally chartered non-profit corporation and does not receive federal financial support (other than for select Paralympic military programmes). Pursuant to the Amateur Sports Act, the USOC has the exclusive right to use and authorise the use of Olympic-related marks, images and terminology in the United States. The USOC licenses that right to sponsors as a means of generating revenue in support of its mission. Unlike most other nations, the United States does not have a sports ministry²³⁴.

²³² Nafziger, J. 2002. Dispute Resolution In The Arena of International Sports Competition. *The American Journal of Comparative Law*. Vol. 50.

²³³ Sandu, C. 2015. ADR in Sport Disputes: Should Mediation be used over Arbitration? *Conflict Studies Quarterly*. Issue 11, 57–68.

²³⁴ The official website of the TEAM USA. Available from: <https://www.teamusa.org/about-the-usoc> [viewed

There is also no federal government funding of Olympic sports. Rather, these sports are privately funded, primarily through sponsorships by various United States companies and businesses²³⁵.

The USOC: role and functions

According to the official information stated at the website of the USOC, founded in 1894 and headquartered in Colorado Springs, Colo., the USOC serves as both the NOC and the National Paralympic Committee for the United States. As such, the USOC is responsible for the training, entering and funding of U.S. teams for the Olympic, Paralympic, Youth Olympic, Pan American and Parapan American Games, while serving as a steward of the Olympic Movement throughout the country. In addition to its main responsibilities, the USOC undertakes the functions as follows:

1) the USOC aids America's Olympic and Paralympic athletes through their National Governing Bodies, providing financial support and jointly working to develop customised, creative and impactful athlete-support and coaching education programmes;

2) supports U.S. Olympic and Paralympic athletes on and off the field of play through programming such as direct athlete funding, health insurance, tuition grants, media and marketing opportunities, career services and performance-based monetary rewards;

3) the Olympic Training Centre provides athletes with performance services, including sports medicine; strength and conditioning; psychology, physiology and nutrition assistance; and performance technology;

4) the USOC oversees the process by which U.S. cities bid to host the Olympic/Paralympic Games, the Youth Olympic Games or the Pan/Parapan American Games, while also playing a supporting role in the bid processes for hosting a myriad of other international competitions;

5) approves the U.S. trials sites and procedures for the Olympic, Paralympic, Youth Olympic, Pan American and Parapan American Games team selections²³⁶.

Hence, the two primary responsibilities of the USOC in its oversight of Olympic and Paralympic sport in the United States can be highlighted: 1) to generate resources in support

10.02.2018.].

²³⁵ Matthew, J. M. 2008. Legal protection of Sports Participation Opportunities in the United States of America. *The Official News Letter of the National Sports Law Institute*. 19(4).

²³⁶ The official website of the TEAM USA. Available from: <https://www.teamusa.org/about-the-usoc> [viewed 10.02.2018.].

of its mission, which is to help American athletes achieve sustained competitive excellence; 2) to ensure organisational resources are wisely and effectively used to that end²³⁷.

The regulation of the USOC on the sports dispute resolution

36 U.S. Code Chapter 2205 contains general provisions on the USOC, where § 220,509 is devoted to the procedure of dispute resolution.

The general part of the provision (a) states the USOC shall establish and maintain provisions in its constitution and bylaws for the swift and equitable resolution of disputes involving any of its members and relating to the opportunity of an amateur athlete, coach, trainer, manager, administrator, or official to participate in the Olympic Games, the Paralympic Games, the Pan-American Games, world championship competition, or other protected competition as defined in the constitution and bylaws of the USOC. In any lawsuit relating to the resolution of a dispute involving the opportunity of an amateur athlete to participate in the Olympic Games, the Paralympic Games, or the Pan-American Games, a court shall not grant injunctive relief against the USOC within 21 days before the beginning of such games if the USOC, after consultation with the chair of the Athletes' Advisory Council (AAC), has provided a sworn statement in writing executed by an officer of the USOC to such court that its constitution and bylaws cannot provide for the resolution of such dispute prior to the beginning of such games.

Hence, as it is stated by Mitten, a United States athlete has no federal constitutional right to participate in the Olympic Games. In *DeFrantz v. USOC*, a group of athletes selected to be members of the U.S. Olympic Team sought injunctive relief enabling them to compete in the 1980 Moscow Olympic Games. The Carter Administration (1977–1980) urged a boycott of the Moscow Games to protest the Soviet Union's 1979 invasion of Afghanistan. Faced with political pressure from the federal government, threatened legal action by President Carter, and the possible loss of its federal funding and federal tax exemption, the USOC decided not to enter an American team in the Moscow Games. The court found that, under IOC rules, the USOC has the exclusive and discretionary authority to decide whether to enter a U.S. team in Olympic competition. The court held that, despite being federally chartered, the USOC is a private organisation rather than a state actor; therefore, its conduct is not subject to the constraints of the U.S. Constitution. Moreover, even if the USOC's decision

²³⁷ The official website of the TEAM USA. Available from: <https://www.teamusa.org/about-the-usoc> [viewed 10.02.2018.].

constituted state action, athletes have no federal constitutional right to participate in the Olympic Games²³⁸.

Part (b) of the above-mentioned provision prescribes the presence of an ombudsman for athletes, i.e. an official hired with a salary, benefits, and administrative expenses appointed to deal with individuals' complaints against the USOC.

Under Part (2) (A) of § 220,509, the procedure for hiring the ombudsman for athletes shall be as follows: the AAC shall provide the USOC's executive director with the name of one qualified person to serve as the ombudsman for athletes and the USOC's executive director shall immediately transmit the name of such person to the USOC's executive committee.

The USOC's executive committee shall hire or not hire such a person after fully considering the advice and counsel of the AAC. If there is a vacancy in the position of the ombudsman for athletes, the nomination and hiring procedure set forth in § 220,509 shall be followed in a timely manner.

The USOC may terminate the employment of an individual serving as the ombudsman for athletes only if: (i) the termination is carried out in accordance with the applicable policies and procedures of the USOC; (ii) the termination is initially recommended to the USOC's executive committee by either the USOC's executive director or by the AAC; and (iii) the USOC's executive committee fully considers the advice and counsel of the AAC prior to deciding whether or not to terminate the employment of such individual. Therefore, we can see a two-stage system of hiring and supervision of the ombudsman.

Under Part (1) (A) of § 220,509, the ombudsman shall have three main responsibilities.

Firstly, the ombudsman shall provide independent advice to athletes at no cost about the applicable provisions of § 220,509 and the constitution and bylaws of the corporation, national governing bodies, paralympic sports organisations, international sports federations, the International Olympic Committee, the International Paralympic Committee, and the Pan-American Sports Organisation, and with respect to the resolution of any dispute involving the opportunity of an amateur athlete to participate in the Olympic Games, the Paralympic Games, the Pan-American Games, world championship competition or other protected competition as defined in the constitution and bylaws of the corporation.

Secondly, it should assist in mediating any such disputes. Where mediation according to the American Arbitration Association is – an informal negotiation assisted by an impartial

²³⁸ Matthew, J. M. 2008. Legal protection of Sports Participation Opportunities in the United States of America. *The Official News Letter of the National Sports Law Institute*. 19(4).

third party (the mediator) that encourages disputing parties to craft their own solutions – enhances the likelihood of continuing the business relationship²³⁹.

Thirdly, the ombudsman shall report to the AAC on a regular basis.

Here the Author wants to pay more attention to the second function of the ombudsman, i.e. assisting in mediating disputes as she considers this function especially important and up-to-date with the modern sports law.

36 U.S. Code § 220,529 contains the clauses on arbitration of corporation determinations under which a party aggrieved by a determination of the USOC under § 220,527 (Complaints against national governing bodies) or § 220,528 (Applications to replace an incumbent national governing body) may obtain review by any regional office of the American Arbitration Association (AAA), a not-for-profit organisation with offices throughout the U.S. The AAA has a long history and experience in the field of alternative dispute resolution, providing services to individuals and organisations who wish to resolve conflicts out of court²⁴⁰.

A decision by the arbitrators shall be by majority vote unless the concurrence of all arbitrators is expressly required by the contesting parties. Each party may be represented by counsel or by any other authorised representative at the arbitration proceeding.

The arbitrators may settle a dispute arising under this chapter before making a final award, if agreed to by the parties and achieved in a manner not inconsistent with the constitution and bylaws of the USOC.

The final decision of the arbitrators is binding on the parties if the award is not inconsistent with the constitution and bylaws of the corporation.

Although, according to the Federal Arbitration Act, the AAA's arbitration award affecting an athlete's eligibility to participate in a sport is subject to review and enforcement. In *Gault v. United States Bobsled and Skeleton Federation*, a New York appellate court explained: "although we also may disagree with the arbitrator's award and find most unfortunate the increasing frequency with which sporting events are resolved in the courtroom, we have no authority to upset it when the arbitrator did not exceed his authority". However, a court will vacate or refuse to confirm an arbitration award that is "the result of 'corruption', 'fraud', 'evident partiality', or any similar bar to confirmation". The Amateur Sports Act does not create any substantive athletic participation rights that athletes can

²³⁹ The official website of the American Arbitration Association. Available from: <https://www.adr.org> [viewed 10.02.2018.].

²⁴⁰ The official website of the American Arbitration Association. Available from: <https://www.adr.org> [viewed 10.02.2018.].

enforce in a private litigation against the USOC. The merits of disputes regarding an athlete's eligibility to participate in the Olympic Games and other protected competitions are to be resolved by AAA arbitration, not the courts. In summary, courts have a very limited role in resolving athlete eligibility disputes²⁴¹.

Hence, it can be concluded that the procedure for the resolution of disputes prescribed by the USOC is established by way of interrelation of several normative acts and bylaws; it is well thought-out and available for the understanding of every individual. It is not overloaded with excess details what, according to the Author's opinion, makes it easily accessible for athletes and other parties. Also, disputes resolution provided by the USOC is up-to-date and provides for a possibility to resolve a conflict by several alternative dispute resolution methods. As it was done in *United States Judo Association, Inc. v. United States Judo, Inc.* (2009), when the USOC followed the rules of Section 11.10 of the USOC Bylaws allowing for mediation, and issued an order to mediate. After that the USOC's Chief Executive Officer appointed a mediator after consultation with the parties.

All in all, the Author concludes that the USOC is more than a NOC in many other countries which is determined by the fact that, unlike most countries in the world, the United States does not have a Ministry of Sports and the State does not provide funding to the Olympic Committee as it was stated earlier. This status motivates the USOC to generate revenue through sponsorship contracts, broadcast rights, and donations what, in its turn, makes the USOC a successful business and commercial project with a smart structure, good governance, internal regulations and marketing that contributes to its high popularity and credibility among the nation.

4.1.2 ADR and mediation by the French National Olympic and Sports Committee

According to Nicolas Scelles, sports policy in France is founded on two principles: the delegation of sports management by the State to sports associations; and solidarity between professional and grassroots sport within the sports federations. Each national sports federation organises and promotes the practice of its sporting discipline. It may receive public financial support subject to producing a shared assessment of the past Olympic period, and a four-year strategy outlining the future orientation, priorities and revenue allocation schemes of the federation. The results are reviewed annually. The framework for their evaluation is the Programme "Sport" defined by the Ministry of Sports²⁴².

²⁴¹ Matthew, J. M. 2008. Legal protection of Sports Participation Opportunities in the United States of America. *The Official News Letter of the National Sports Law Institute*. 19(4).

²⁴² Scelles, N. 2017. France: Organisation of Sport and Policy towards Sport Federations. In: Scheerder, J., Willem, A., Claes, E. (eds). *Sport Policy Systems and Sport Federations*. London: Palgrave Macmillan, p. 135.

When the French ex-President François Hollande attended the London Olympic Games in 2012, he had called for a clarification of the responsibilities in the field of French Sports Movement. He had prompted the sports movement to take the initiative in getting France to set up a coherent and strong international sports policy and to fulfil French national Olympic ambition under the very best conditions. Following this demand, in 2012 Valérie Fourneyron, the French Minister of Sports, Youth, Popular Education and Community Life, and Denis Masseglia, the President of the French National Olympic and Sports Committee (French: *Comité national olympique et sportif français*) (CNOSF), have presented the new organisation of French international relations in sport at a joint conference in the presence of Guy Drut, French member of the International Olympic Committee. Therefore, Valérie Fourneyron has kept this promise by tasking the French sports and Olympic movement, represented by the CNOSF, with the strategic management of international sports relations today – a responsibility that used to be shared with the State²⁴³.

According to the information provided on its official website, the CNOSF was formed in 1894 in Paris. It is responsible for France's participation in the Olympic Games and for all of France's overseas departments and territories except French Polynesia.

In its capacity as a National Olympic Committee recognised by the IOC, the purpose of the French National Olympic and Sport Committee is:

6) to promote the fundamental principles of Olympism as laid down by Pierre de Coubertin and set out in the Olympic Charter, in particular, to take action against all forms of discrimination in sport and against the use of substances or procedures prohibited by the IOC, international federations (IFs) and other national or international authorities, by contributing to the dissemination of Olympism in training and educational programmes by ensuring their creation and the activities of institutions (National Olympic Academies, Olympic museums, and so on), dedicating itself to Olympic education and launching cultural programmes connected to the Olympic movement;

7) to participate in activities which support peace and promote women in sport, and to take responsible account of environmental and sustainable development issues;

8) to develop, promote and protect the Olympic Movement in France, pursuant to the Olympic Charter, and to ensure that its members and all those – either legal or physical persons – that are subject to its authority in any manner whatsoever comply with the provisions of the Charter;

²⁴³ France Olympique. Available from: https://www.franceolympique.com/art/3927-management_of_french_international_sports_relations_entrusted_to_the_sports_....html [viewed 01.07. 2020.].

9) to create, organise and lead the French delegation for the Olympic Games and for regional, continental or world multi-sport competitions sponsored by the IOC; thus, the committee must participate in the Olympic Games by enrolling athletes into the games and is responsible for the behaviour of the members of its delegations;

10) to choose a French city to apply to organise the Olympic Games and to lead all preparatory work for that purpose;

11) to ensure the protection of Olympic properties within the meaning of the Olympic Charter, in particular the Olympic symbol, the terms “Olympic”, “Olympiad”, “Olympic Games”, the acronym “OG” and translations thereof;

12) to work under the principles laid down by the Olympic Charter, to keep harmony and cooperation with the State, public authorities and any organisation which may contribute to the development of sport, but also to preserving the fundamental principles and values of Olympism²⁴⁴.

In its capacity as the representative of the French Sports Movement, the purpose of the CNOSF is:

1) to promote the unity of the Sports Movement, including sports federations, sports associations and companies affiliated with them and their licensees and other practitioners, to represent the Sports Movement, in particular, on occasions which are intended to contribute directly or indirectly to the development of sport or the social or societal functions for which it is known, to facilitate the resolution of conflicts arising in the Sports Movement, by means of conciliation or arbitration, and to take legal action to defend the collective interests of the Sports Movement;

2) to undertake, on behalf of federations or with them and in respect of their prerogatives, any activity of mutual interest which encourages and ensures the development and performance of high-performance sport, including professional sport, to facilitate sports practice for all and generally contribute to educational activities through sport, to carry out activities, with particular regard to promoting and supporting athletes, and – socially – initial and continuous training of directors, managers and technicians, referees, or even with regard to research, forecasting, innovation and information;

3) to represent the Sports Movement and protect its interests in all areas which directly or indirectly concern it, with a view to benefiting from a legislative and regulatory environment adapted to sports activities, and developing its societal contribution – in addition to its social, economic and cultural contribution – for the benefit of France;

²⁴⁴ The official website of the CNOSF. Available from: <https://international.franceolympique.com/international/actus/5179-presentation.html> [viewed 01.07. 2020.].

4) to contribute to ensuring the crossover of tasks which are of general interest to sport, by bringing together all players so that their activities, based on shared values, are complementary to each other, making sport available to the Nation and to Humanity and encouraging access to physical and sports activities for everyone and for all ages, in associations and federal clubs;

5) to help prevent doping and take action, pursuant to the provisions of the French Sports Code and the World Anti-Doping Code, against the use of substances or procedures prohibited by the IOC, the World Anti-Doping Agency, international federations and the laws and regulations in force;

6) to enhance and develop societal and economic contribution of the activities of the CNOSF, sports federations, the CNOSF territorial offices (the regional, departmental and territorial committees), its members and organisations from the Sports Movement, for the benefit of France;

7) to develop the international influence of France through its activities, missions and international events organised in France by its members.

Also, the CNOSF has extended its scope of capacity to some economically and commercially beneficial activities in order to comply with the applicable tax provisions²⁴⁵.

In the context of this Doctoral Thesis, the purpose of the CNOSF to facilitate the resolution of conflicts arising in the Sports Movement by means of conciliation or arbitration seems to be very important. This purpose is not meant in the Olympic Charter as one of the functions of a NOC; therefore, it can be concluded that the CNOSF expanded its goals in pursuing the aim to achieve good governance and provide for ADR methods to resolve disputes in the Sports Movement thus complying with the European sports policy.

CNOSF's regulation on the sports dispute resolution

The general right of access to courts in French Sports Code is as follows: Articles R.131-3 and R.132-7 of the French Sports Code set out the disciplinary proceedings to be implemented by sports federations in order to settle disputes involving clubs and players.

Disciplinary proceedings must comply with the principle of fair trial as set out in the French Constitution and in Article 6 of the European Convention on Human Rights. Consequently, all sports federations must respect the parties' fundamental rights, and, in particular:

- 1) the right to a decision in the first instance and to an appeal;

²⁴⁵ The official website of the CNOSF. Available from: <https://international.franceolympique.com/international/actus/5179-presentation.html> [viewed 01.07. 2020.].

- 2) the right to an impartial court (members of a disciplinary body who have a personal interest in a specific case may not take part in deliberations, and members of the disciplinary body may not try the same case in first instance and on appeal);
- 3) the right to be judged within a reasonable period;
- 4) the right to a public trial; and
- 5) the respect of the rights of defence (providing for a reasonable amount of time to prepare the defence, right to be assisted by a lawyer, etc.)²⁴⁶.

It should be mentioned that the French Codes are written with broad formulations that provide for a variety of situations. When faced with a legal problem, one need not ask whether there is case law on the subject but can simply look in the code and ask which article applies to the situation²⁴⁷. The French Sports Code is not an exception.

The French Sports Code also provides for an ADR process before the CNOSF. This dispute resolution process is known as “conciliation”. The use of such proceeding depends on the common will of the parties involved (except in some cases where the conciliation before the CNOSF is mandatory prior to suing before civil or administrative courts).

French civil courts remain accessible to the litigants pursuant to the traditional rules of civil procedure, and administrative courts retain jurisdiction over disputes relating to sports federations or to the application of their by-laws and regulations²⁴⁸.

As stated in L.141-4 of the French Sports Code, the conciliation by the CNOSF is applicable in disputes arising during a sports activity, opposing licensees, sports agents, associations and sports companies and federations approved where conciliation is a non-contentious resolution procedure, also called amicable resolution.

The referral for conciliation is a mandatory prerequisite for any contentious appeal when the conflict results from a decision taken by a sports federation in the exercise of its prerogatives of public authority or in application of its statutes.

It should be mentioned that the institute of alternative dispute resolution is also present in French constitutional law, as working on the constitutional amendments in 1992 a committee delivered a 70-page report with its recommendations among which was a recommendation that an express provision should be made in the Constitution for the appointment of the mediator (ombudsman)²⁴⁹. Today, the provisions on the ombudsman, i.e.

²⁴⁶ The Sports Law review. 4th ed. Available from: <https://thelawreviews.co.uk/edition/the-sports-law-review-edition-4/1177316/france> [viewed 19.04.2019.].

²⁴⁷ Danner, R. A., Bernal, M.-L. H. 1994. *Introduction to Foreign Legal Systems*. Oceana Publications, Inc., 57.

²⁴⁸ The Sports Law review. 4th ed. Available from: <https://thelawreviews.co.uk/edition/the-sports-law-review-edition-4/1177316/france> [viewed 19.04.2019.].

²⁴⁹ Dickson, B. 1994. *Introduction to French Law*. London: Pitman Publishing. 45.

defender of rights, can be found in Article 71-1 (Title XI-bis) of the French Constitution. Since 2011, the French Government and the courts have been increasingly encouraging the use of ADR mechanisms – seen as possible solutions to the problems faced by the French justice system due to the excessive court caseload²⁵⁰.

Articles 141.4 and L-R-141-5 and following of the French Sports Code specify the organisation and functioning of the Conference of Conciliators and conciliation.

The Conference of Conciliators must be composed of at least 13 members and 21 members at most. According to the information provided on the CNOSF's official website, the Conference of Conciliators currently has 16 conciliators who are personalities recognised both for their competence in legal matters and their knowledge of the sports movement, and who undertake, on a voluntary basis, the conciliation mission incumbent on the CNOSF.

They are appointed for four years by the CNOSF Board of Directors on the proposal of its Ethics Committee which is the guarantor of the independence of this conference.

Every conciliator is bound by an obligation of impartiality and must keep in secret the affairs of which he or she is aware.

Therefore, the conciliation procedure is of major interest to the sports movement, which is called upon to try to settle amicably the conflicts generated by its own acts or regulations, before they are submitted to the common law courts, sometimes little aware of the specificities of the sector²⁵¹.

Articles R.141-6 and following of the French Sports Code distinguish, in particular, the two procedures that can be implemented by the President of the Conference of Conciliators according to the quality of the applicants or the nature of the disputed measure: compulsory conciliation and the optional conciliation.

Conciliation hearing

The conciliator summons the parties to a conciliation hearing respecting, except in urgent cases, a period of eight days between the date of the summons and the date of the hearing; persons with the status of “third parties interested in the dispute” are invited to participate in the hearing or to submit their comments in writing.

The hearing takes place in Paris, at the CNOSF's headquarters. It is not public. The presence of the parties is essential in order to establish a contradictory debate likely to allow the search for an amicable solution to the dispute. The debates are led by the appointed

²⁵⁰ Betto, J.-G. and Canivet, A. 2012. *EU Mediation Law and Practice*. USA: Oxford University Press. 113.

²⁵¹ The official website of the CNOSF. Available from: <https://cnosf.franceolympique.com/cnosf/actus/4761-qui-sont-les-conciliateurs-.html> [viewed 19.04.2019.].

conciliator. At the end of the debates, the parties to a dispute may be brought to find between them, from the day of the hearing, an agreement putting a definitive end to their dispute: they then formalise it, under the aegis of the conciliator, by means of minutes of agreement at the hearing.

In the event that they do not arrive at a definitive agreement, the conciliator-designate is bound, under the last paragraph of Article R.141-22, to notify the parties of the conciliation measures, by means of a motivated conciliation proposal in law and equity (fairness as well as sports ethics play an important role in a conciliator's assessment of a dispute)²⁵².

Hence, it can be said that the conciliation procedure under the CNOSF has an element of arbitration since, if parties do not reach agreement, the conciliator produces a conciliation proposal.

From the moment of notification, this proposal is applicable and immediately binding on the parties. To refuse the proposed measures, the parties have a 15-day period from notification of the conciliation proposal. In the absence of a duly notified objection, in the forms provided for in Article R.141-23 of the French Sports Code, both to the CNOSF and to the other party, within these time limits, the proposed measures shall be deemed to have been accepted and become enforceable.

In other words, such a process is called a MedArb process combining mediation and arbitration. Harvard University scholars define this process as follows: “in a MedArb process, the parties first reach agreement on the terms of the process itself <...> Next, they attempt to negotiate a resolution to their dispute with the help of a mediator. <...> In MedArb, if mediation ends in an impasse, or if issues remain unresolved, the process isn’t over. At this point, the parties can move on to arbitration. The mediator can assume the role of arbitrator and render a binding decision quickly based on his or her judgments, either on the case as a whole or on the unresolved issues”²⁵³.

The success of the conciliation by the CNOSF is confirmed with the following 2017 statistics provided by the CNOSF:

²⁵² The official website of the CNOSF. Available from: <https://cnosf.franceolympique.com/cnosf/actus/7541-enjeux-et-cadre-juridique.html> [viewed 19.04.2019.].

²⁵³ Program on negotiation. Harvard Law School. Available from: <https://www.pon.harvard.edu/uncategorized/what-is-med-arb/> [viewed 16.03.2015.].

Figure 4.1 *CNOSF conciliation success*

Between 01 January 2017 and 31 December 2017, 339 applications for conciliation were made to the CNOSF.

Of these, 130 were rejected by the President of the Conference of Conciliators for inadmissibility or lack of foundation pursuant to the provisions of Article R.141-7 of the French Sports Code or for lack of regularisation pursuant to Article R.141-17 of that Code. Seven disclaimers were registered.

209 requests actually gave rise to a conciliation hearing which concluded either by the signing a conciliation report or by the notification of a conciliation proposal. This is a document which, based on a conciliator's legal opinion on the legal problem in question, but also, sometimes on elements of equity or ethics, recommends to the parties intended to close a dispute.

131 disputes reviewed by the conciliators have already been resolved by agreement or acceptance of the conciliation proposal, a dispute resolution rate of 69 %. 65 disputes were not reconciled, one of the parties having opposed the conciliator's proposal, i.e. a "non-resolution" rate of 31 %.

Of these 99 unresolved disputes during the conciliation procedure, 22 have been appealed to the competent courts (all before the administrative courts), i.e. 34 % of unresolved disputes and 11 % of all admissible disputes submitted to conciliation²⁵⁴.

²⁵⁴ The official website of the CNOSF. Available from: <https://cnosf.franceolympique.com/cnosf/actus/4788-statistiques-2017.html> [viewed 19.04.2019.].

Therefore, statistics highlights a positive tendency in applying conciliation by the CNOSF to resolve sports disputes what makes this instrument applicable and suitable for the French sports system.

Sports arbitration by the CNOSF

The Sports Arbitration Chamber was created in 2007 within the CNOSF. Article 2.II.B.1 of the CNOSF's Statutes provides that the Sports Arbitration Chamber may resolve a dispute "through conciliation or through arbitration".

Article 19 of the CNOSF's internal regulation sets out the conditions under which the parties can submit a case before the Sports Arbitration Chamber. First, an arbitration clause may be included in the parties' agreement whereby the parties expressly consent to the submission of their dispute to the Sports Arbitration Chamber. In the alternative, and once the dispute arises, the parties may subsequently agree to submit the case to the Sports Arbitration Chamber even if no arbitration clause was included in the agreement.

The jurisdiction of the Sports Arbitration Chamber is, however, limited, as all disputes relating to a regulated sport and involving the exercise of public service prerogatives have to be brought before the administrative courts. The Sports Arbitration Chamber therefore mainly retains jurisdiction over purely economic disputes, such as sponsoring or broadcasting agreements disputes, transfer fee disputes or disputes among athletes, clubs and sports federations.

Unlike in a conciliation proceeding, the Sports Arbitration Chamber makes a final, binding and unappealable ruling, which is enforceable by law²⁵⁵.

As stated by Romain Soiron and Aude Benichou, the French sports law is one of the most mature and well-established sports laws in Europe and worldwide. The legal protection accorded to the rights of organisers and its extensive application by the courts have contributed to a fast-growing and quality-oriented industry²⁵⁶. It is difficult not to agree with this conclusion hence France is a brilliant example of a European country with well-established good governance in sport. The example of France's sports organisation at the state level, as well as its comprehensive laws on sports might serve as a good example for the Latvian legislator to strive for. Also, the CSNOF's role as a facilitator of the resolution of conflicts arising in the Sports Movement by means of conciliation or arbitration is considered to be crucial for the protection and respect for rights of athletes.

²⁵⁵ France Olympique. Available from: <https://www.franceolympique.com/art/81-larbitrage.html> [viewed 01.07.2020].

²⁵⁶ The Sports Law Review. 4th ed. Available from: <https://thelawreviews.co.uk/edition/the-sports-law-review-edition-4/1177316/france> [viewed 19.04.2019].

4.1.3 Latvian Olympic Committee

At the moment, in Latvia there is no national sports institution that clearly offers mediation or any other ADR method for resolving sports disputes arising between sports organisations in the context of Article 10 of the Sports Law and between such sports organisations and athletes. Therefore, in Section 4.1.4 herein, the Author analyses the functions and role of two national sports organisations, i.e. the Latvian Olympic Committee (LOC) and the Sports Federation Council of Latvia, in order to conclude whether any of these institutions might introduce ADR and mediation in its procedures by the example of the sports institutions analysed before.

On the basis of the principles of the Olympic Charter, under Latvian laws and on the basis of the principal documents of the LOC recognised by the IOC in 1926, the conference of representatives of the Latvian sports federations, sports associations, sports clubs and other sports-related organisations held on 19 November 1988 resumed operation of the LOC established in 1922 in Latvia which was suspended during World War II. Recognition of the LOC by the IOC was renewed in 1991.

The resumption of operation of the LOC in Latvia and its recognition by the IOC took into account the participation of the representatives of the Republic of Latvia in the 1924, 1928, 1932 and 1936 Summer Olympic Games and in the 1924, 1928 and 1936 Winter Olympic Games²⁵⁷.

Under the LOC's Statutes, the LOC, as a member of the Olympic Movement, undertakes to comply with the terms of the Olympic Charter and the World Anti-Doping Code and to comply with the decisions of the IOC; at the national level, the LOC undertakes to participate in activities aimed at promoting peace, to support and promote sporting ethics, including women's participation in sport, to fight against doping in sport and be environmentally responsible.

The LOC's mission is to strengthen the role of sport in society by contributing to the quality of life and health of the population and focusing on and motivating regular sports activities by virtue of the ideal of the Olympic Movement and the high achievements of Latvian athletes.

The operational objectives of the LOC are as follows:

- 1) to ensure the representation of Latvia in the International Olympic Movement and participation of Latvian athletes and teams in the Olympic Games;

²⁵⁷ Latvijas Olimpiskā Komiteja. Available from: <https://www.olimpiade.lv/lv/lok/statuti> [viewed 10.02.2020.].

- 2) to develop sport, sports education and the sports sector in Latvia as a whole in accordance with the principles of the Olympic Movement;
- 3) to achieve compliance with the principles of fair play, sporting ethics and anti-doping policy in Latvia.

The Statutes define the 14 tasks of the LOC, namely:

- 1) to lead the Olympic Movement in Latvia and to coordinate the work of the Latvian sports federations that are responsible for the sports and disciplines included in the Olympic Games programme;
- 2) in its activities, to observe the principles of the Olympic Charter and to supervise their implementation in Latvia, to promote the development of culture and art in the field of sport;
- 3) to promote and support the development of the Olympic Movement and sport and the application of the principles of fair play in sport; to combat distortion, discrimination and doping in sport;
- 4) to promote the establishment and strengthening of a united and democratic system of sports organisation and administration in Latvia and to participate in it;
- 5) to popularise the sporting spirit and interest in sport among the inhabitants of Latvia, especially among young people; to promote sports activities for people with special needs;
- 6) to adopt and apply the World Anti-Doping Code ensuring that the LOC's anti-doping policies and regulations, membership and/or financial support conditions and performance review procedures are in compliance with the World Anti-Doping Code, and certifying that the LOC complies with all obligations and responsibilities of the NOCs as defined in the World Anti-Doping Code;
- 7) to promote Olympic education through the development and implementation of educational and cultural programmes related to the Olympic Movement;
- 8) to cooperate with the International Olympic Academy, to support the Latvian Olympic Academy, to establish the Olympic Museum, to promote and support the development and activities thereof;
- 9) in cooperation with Latvian sports organisations and federations, to organise and ensure the training, selection and representation of athletes in the Olympic Games, World Games, Regional Games, World and Continental Championships, as well as in intercontinental competitions organised under the supervision of the IOC or recognised by it;
- 10) to preserve independence under any pressure of a political, economic or religious

nature if they impede the conduct of activities in accordance with the Olympic Charter;

11) to promote the organisation of Olympic, World, European, regional and other international youth and adult sports competitions in case they would be organised in Latvia;

12) to formulate proposals for the IOC on the issues relating to the Olympic Charter, Olympic Movement and the organisation of the Olympic Games;

13) to co-operate with the Olympic Committees of other countries for the promotion and development of sports and in good faith, as well as with the state and public sports, economic and other organisations related to sport and the Olympic Movement of Latvia and other countries;

14) to select and designate a city that can apply to host Olympiads and Olympic Games in Latvia, using its exclusive rights under the Olympic Charter,.

The Author arrives at the conclusion that the above functions, unfortunately, do not include the task of promoting the development of good governance in Latvian sports, as well as that of facilitating the resolution of disputes between sports entities as proclaimed in the CNOSF's Statutes analysed above.

The highest decision-making body of the LOC is the General Assembly consisting of all LOC members, each having one vote.

The procedure and mechanism for the election from among the LOC members of the President, Secretary General, Executive Committee; 3 (three) Vice Presidents from among the the Executive Committee members and the Audit Committee shall be determined by the Bylaws developed by the LOC's Executive Committee and approved by the LOC's General Assembly.

Between sessions of the General Assembly, operation of the LOC is overseen by the LOC's Executive Committee which consists of the LOC President, Secretary General, 3 (three) Vice-Presidents and 16 (sixteen) other members of the Executive Committee. Each EC member has one vote. Under the LOC's Statutes and the Olympic Charter, an objective majority of the LOC's Executive Committee is to be composed of elected representatives of the national federations, unions or other associations whose sports are covered by the Olympic Games programme.

Under the Olympic Charter, decisions on the disciplinary matters in sport by the LOC's General Assembly or the LOC's Executive Committee may be appealed to the International Court of Arbitration for Sport in Lausanne, Switzerland which will make a final decision under the international Code of Sports-Related Arbitration.

To perform the necessary functions, the permanent committees set up by the LOC's Executive Committee and chaired by its members are as follows:

- 1) Sports Committee;
- 2) Finance Committee;
- 3) Legal Affairs Committee;
- 4) Ethics Committee;
- 5) Athletes Committee.

In addition to standing committees, the LOC may set up other committees, working groups or bodies.

The LOC's Executive Committee draws up and approves by-laws for all the committees, working groups or other bodies set up by it.

Under the Rules of Procedure of the LOC's Legal Committee adopted by the LOC's decision at the meeting held on 16 October 2012, the activities and processes falling within the competence of the LOC are as follows:

- 1) general supervision of the development of documents regulating sports policy within the competence of the LOC, including drafts and proposals of the external regulatory documents;
- 2) general supervision of the drafting of the LOC's internal documents;
- 3) general supervision of the drafting of the LOC's standard contracts and other documents of a civil nature and execution of transactions;
- 4) general supervision of the LOC's involvement in the formation, entry, exit or dissolution of associations, foundations or capital companies; general supervision of their liquidation and of changes in the companies' share capital;
- 5) general supervision of the bringing of legal actions by the LOC against individuals or legal entities or their withdrawal or settlement by courts.

The Committee's decisions serve as a basis for further consideration of the issues within the LOC's Executive Committee or as informative material for further action if the Committee so decides.

Namely, on the basis of the above information, the Author concludes that no dispute resolution mechanisms are provided for in the operation of the LOC. The sole dispute resolution or appeal function is held by the LOC's Executive Committee under Clause 6.3.4 of the Organisational, Administrative, Financial and Economic Activities Regulations of the Latvian Olympic Committee of 20 December 2016 which provides that decisions on the relevance and admissibility of requests for information as well as the responses to requests

may be appealed to the LOC's Executive Committee within 21 (twenty-one) days of receipt of the decision or response. The LOC's Executive Committee will consider such a complaint as a matter of routine at a regular meeting thereof. The decisions of the LOC's Executive Committee may be appealed in accordance with the applicable law of the Republic of Latvia, or by an appeal to the International Court of Arbitration for Sport in Lausanne, Switzerland which will make a final determination under the international Code of Sports-Related Arbitration. The time limit for lodging an appeal is 21 (twenty-one) days from receipt of the decision. The Regulations do not specify the complaint handling mechanisms used by LOC's Executive Committee when handling complaints.

All in all, it can be concluded that both the LOC's statutes and regulations are rather short, general and do not provide for the application of ADR methods in its activity. Nor there is talk about sports disputes and their likelihood which makes them very different from the progressive statutes of the US Olympic Committee and the French Olympic Committee.

The Author believes that the LOC is a good candidate who the legislator could delegate the function of developing and integrating the principle of good governance in Latvian sport which would undoubtedly include the function of facilitating the resolution of disputes between sports subjects especially considering the position and experience of the LOC's ex-President Aldons Vrubļevskis as a judge in the CAS.

4.1.4 Latvian Sports Federations Council

The objectives of the Latvian Sports Law are: to specify the general and legal basis for the organisation and development of sports, mutual relationship of sports organisations, State and local government institutions, and basic tasks in sports development, and the basis for the financing of sport, as well as the principles that are to be observed when taking part in the international sports movement. The Sports Law names several stakeholders taking part in pursuing the stated objectives. One of them is the Latvian Sports Federations Council (LSFC), an independent sports association of 88 sports federations recognised by the regulatory enactments of the Republic of Latvia.

Under Article 10 (6) of the Sports Law, the activities of the sports federations recognised by Latvia shall be coordinated, their shared interests represented and implemented by the LSFC.

A decision regarding the recognition of a sports federation, refusal to recognise it or a decision regarding withdrawal of the status of a sports federation shall be also taken by the Latvian Sports Federation Council, where the procedure for the recognition of a sports

federation shall be determined by the Cabinet of Ministers²⁵⁸. Also, the Sports Law states that the LSFC shall control the field of activity of the recognised sports federations and shall be entitled to issue administrative provisions (administrative act).

Structure and main functions of the Latvian Sports Federation Council

Being an independent association recognised under the Latvian regulation on the recognition of sports federations since 24 March 1992, the LSFC has its own logo:

Figure 4.1 *LSFC logo*

In 2017, the structure of the LSFC could be graphically depicted as follows:

Table 4.1 *LSFC structure*

²⁵⁸ Sporta likums (Eng., Sports Law). Article 10.¹ (2). Available from: <https://likumi.lv/ta/id/68294-sporta-likums>

<p style="text-align: center;">Committees</p> <p><i>(under the procedures of the Cabinet of Ministers)</i></p> <p style="text-align: center;">Sports Federation Committee</p> <p style="text-align: center;">Sports Specialists Certification Committee</p> <p style="text-align: center;">Shooting Instructor Certification Committee</p> <p><i>(under the Statutes of the Sports Federation Council of Latvia)</i></p> <p style="text-align: center;">Financial Committee</p> <p style="text-align: center;">Legal Committee</p> <p style="text-align: center;">Dispute Resolution (Appeals) Committee</p> <p style="text-align: center;">Sports Scholarship Committee</p> <p style="text-align: center;">Certification Approval Committee</p>	
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In 2019, there were some changes and the major part of the commissions was dissolved, including the Dispute Resolution (Appeals) Committee which is elucidated below.

According to the LSFC's Statutes, its goals and objectives are as follows:

- 1) to coordinate the activities of the sports federations recognised in Latvia, to represent and pursue their common interests;
- 2) to represent Latvia in the European Non-Governmental Sports Organisation (ENGSO);
- 3) to perform the functions and tasks assigned in the regulatory enactments of the Republic of Latvia.

To meet the very first goal stated in the LSFC's Statutes, the work of the association has to comply with the Latvian regulation on the recognition of sports federations.

Under Article 10 (3) of the Sports Law, a sports federation is an association composed of sports clubs and other legal entities the work of which is associated with a specific type of sport or field of activities, and the purpose of which is to manage and co-ordinate the work in the relevant type of sport or field of activities, as well as to represent such type of sport or field of activities in the relevant international sports organisations. A sports federation may represent several types of sport or fields of activities.

For comparison, the Latvian neighbour Lithuania has also included a definition of a sports federation in Article 26 of the Lithuanian law On Physical Education and Sport which is considered to be more general and abstract: "A sports (sports branch) federation means a non-governmental sports organisation that takes care of the development of a sport within a

certain territory (a city, country, continent, world) or sports-related activities (sports medicine, sports journalism, etc.)”.

Article 10¹ of the Sports Law sets the criteria and procedures for the recognition of sports federations under which a sports federation is to be recognised if it meets the criteria as follows:

- 1) the objective of activity specified in the statutes of the sports federation is the development of the relevant type(s) of sport or the field of activity in the State;
- 2) sports competitions are organised in the type(s) of sport represented by the sports federation or in the field of activity thereof;
- 3) the term of office of the executive body specified in the statutes of the sports federation does not exceed four years;
- 4) the members of the sports federation are legal entities only;
- 5) the head of the sports federation is a citizen of the Republic of Latvia;
- 6) in the sports federation, merchants form not more than a half of the total number of the members of the sports federation;
- 7) the sports federation observes the requirements of anti-doping in the activity thereof;
- 8) the information regarding the sports federation and the events organised by it is available on the Internet.

As it was stated above, the LSFC, based on the procedures for the recognition of a sports federation laid down by the Cabinet of Ministers, shall make a decision regarding the recognition of a sports federation, refusal to recognise it or a decision regarding withdrawal of the status of a sports federation. The Sports Law empowers the Latvian Sports Federation Council to issue administrative provisions (administrative act²⁵⁹) in order to fulfil these specific tasks. Appeal of a decision regarding the recognition of a sports federation, refusal to recognise it, or a decision regarding withdrawal of the status of the recognised sports federation does not suspend the operation thereof.

The LSFC also holds and manages the Register of Recognised Sports Federations, whereas the content of the information to be included in the Register of Recognised Sports Federations and procedures for updating thereof are determined by the Cabinet of Ministers.

²⁵⁹ According to Section 1 (3) of the Administrative Procedure Law, an administrative act is a legal instrument directed externally, which is issued by an institution in an area of public law with regard to an individually indicated person or individually indicated persons establishing, altering, determining or terminating specific legal relations or determining an actual situation.

The field of activity of the recognised sports federations is also controlled by the LSFC under the specified procedures of the Cabinet of Ministers.

The procedures of the Cabinet of Ministers mentioned in the text and issued pursuant to Article 10¹ (2) (3) (4) of the Sports Law where adopted on 08 December 2009 and are named as follows: Regulation No 1396 Procedures for the Recognition of Sports Federations and the Control of the Recognised Sports Federations' (the Regulation).

The Regulation prescribes:

- 1) the procedures for the recognition of sports federations;
- 2) the procedures for the control of the activity in the field of sports of the recognised sports federations; and
- 3) the content of the information to be included in the Register of Sports Federations and the procedures for updating thereof.

Under Article 10 of the Regulation, if a sports federation is recognised, the LSFC shall issue a Sports Federation Recognition Certificate to the relevant sports federation, whereas a decision regarding refusal to recognise a sports federation shall be taken if:

- 1) a sports federation has already been recognised in the relevant type of sports or field of activity;
- 2) the sports federation does not comply with the criteria for the recognition of a sports federation specified in the Sports Law;
- 3) the sports federation has not submitted updated information within 10 working days after receipt of the request to do so;
- 4) the Board of the LSFC has taken a decision regarding recognition of one sports federation in the case where several sports federations have submitted a submission regarding the recognition in one type of sports or field of activity in which a sports federation has not been recognised yet. In this case, the Sports Federation Committee shall provide a substantiated opinion specifying the considerations of suitability.

Considering the stated functions, the question may be raised as to what happens if the LSFC denies recognition of a new federation because of one of the conditions stated above, but the federation does not agree with such decision and presumes it to be biased, and where the federation should seek for a pre-trial procedure to challenge such decision?

It would be logical to presume that the federation should appeal the decision to the Dispute Resolution (Appeals) Committee the functions of which are elaborated below.

Operation of the Dispute Resolution (Appeals) Committee

Under Clause 8.4.6 of the LSFC's Statutes, the Dispute Resolution (Appeals) Committee is approved by the LSFC's Board.

Under the Sports Law, the LSFC's Dispute Resolution Committee, in accordance with the World Anti-Doping Code and the Anti-Doping Guidelines of the Sports Medicine State Agency (SMSA), acted as an appellate body for decisions of recognised sports federations involving national athletes. With amendments to the Sports Law (effective from 01 July 2018), the LSFC's Dispute Resolution (Appeals) Committee terminated its activities because under Article 11⁵ of the Sports Law the Committee's functions were taken over by the Appeals Committee established by the Cabinet of Ministers.

Namely, Article 11⁵ of the Sports Law provides:

1) "Under the Anti-Doping Conventions and the National Anti-Doping Rules, the Appeals Committee shall examine:

a) athletes' complaints regarding the decisions of the Latvian Anti-Doping Bureau on the temporary prohibition to participate in sports competitions;

b) athletes' complaints regarding the decisions of the Therapeutic Use Exemption Committee;

c) complaints of the Latvian Anti-Doping Bureau, athletes or sports employees regarding the decisions of the Disciplinary Anti-Doping Committee.

2) To review the complaints referred to in Clause 1 of this Article, the Appeals Committee processes personal data, including health data, under the regulatory enactments regulating personal data protection.

3) Decisions of the Appeals Committee are binding on athletes, sports organisations and sports employees and are not subject to appeal.

4) The Appeals Committee is established by the Cabinet of Ministers for a term not exceeding four years, including at least five persons (including lawyers, doctors, sports staff and athletes) who are able to hear cases fairly, objectively and independently and nominated by the Latvian Medical Association, Latvian Olympic Committee, Latvian Sports Federation Council, specialised sports organisation Latvian Olympic Team LLC, and the Latvian Academy of Sports Pedagogy. One and the same representative may be nominated for inclusion in the Appeals Committee for a maximum of two consecutive terms. A representative who is a member of the Disciplinary Anti-Doping Committee or the Therapeutic Use Exemption Committee cannot be nominated for inclusion in the Appeals Committee."

Respectively, it can be concluded that doping-related disputes were within the competence of the Dispute Resolution (Appeals) Committee. This is also evidenced by the initial impact assessment report (abstract) of the draft regulations of the Cabinet of Ministers Amendments to the Regulations of the Cabinet of Ministers of 19 October 2011 No 820 “Doping Control Procedures” which determined as follows:

“The procedure by which athletes may challenge decisions on doping-related offenses is set out in Article 13 Appeals of the Anti-Doping Guidelines No 1-5/4²⁶⁰ (the Guidelines) of National Sports Medicine Centre.

According to Clause 13.2.1 of the Guidelines, appeals against international-level athletes may only be appealed to the Court of Arbitration for Sport (Lausanne, Switzerland) in accordance with the rules of such a court. In turn, under Clause 13.2.2 of the Guidelines, appeals in relation to state-level athletes may be appealed to the Appeals Committee established by the LSFC which coordinates the activities of sports federations recognised in Latvia, represents and implements their common interests under Article 10 (6) of the Sports Law. The LSFC established the respective Appeals Committee²⁶¹ under Clause 8.4.6 of the LSFC’s Statutes²⁶² of 17 April 2014.’

Respectively, the Author concludes that other types of disputes were not considered by the LSFC’s Dispute Resolution (Appeals) Committee. Likewise, the recently established Appeals Committee set up by the Cabinet of Ministers does not deal with disputes other than those related to doping. Namely, the answer to the question asked by the Author at the end of the previous sub-chapter could not be found in the regulatory enactments.

Based on the above, the Author concludes that the LSFC is one of the most important sports bodies in the country. It carries out crucial administrative functions in order to implement the goals and objectives stated in the Sports Law. Being the first step on the way of creation and development of new sports federations and monitoring the activity of already recognised sports federations, it contributes to the development of Latvian sport. Nevertheless, it should be mentioned that a separate body with such functions is not something extraordinary since under Article 15 of the above-mentioned Lithuanian law On Physical Education and Sport the recognition of national and regional (sports branch)

²⁶⁰ Latvijas Antidopinga birojs. 2011. gada 27. decembra Antidopinga pasākumu metodiskie norādījumi Nr. 1-5/4 (Eng., Anti-Doping Guidelines No 1-5/4). Available from: http://antidopings.lv/uploads/2012/SMVA_Antidopinga_noradijumi/SMVA_Antidoping_LAT_met_noradijumi.pdf [viewed 07.02.2020.].

²⁶¹ Latvijas Sporta federāciju padomes Komisijas (t. sk. LSFP Strīdu izskatīšanas (Apelācijas) komisija) (Eng., Commissions of the Latvian Sports Federation Council (incl. LSFP Dispute Resolution Commission)). Available from: <http://www.lsf.lv/lsfp/komisijas> [viewed 09.04.2017.].

²⁶² Latvijas Sporta federāciju padomes statūti (Eng., Statutes of the Latvian Sports Federation Council). Available from: <http://www.lsf.lv/lsfp/statuti> [viewed 09.04.2017.].

federations is given to the governmental organisation named the Department of Physical Education and Sports. The Author, though, does not undertake to assert that these two organisations are identical in their functions and structure.

Having analysed the LOC's and LSFC's functions, the Author arrives at the conclusion that both lack a dispute resolution mechanism in their structure that would allow the resolution of internal disputes.

Simultaneously, speaking of the institution that might serve as sports dispute resolution body in Latvia and would allow athletes to submit their claims, the Author supposes the LOC to be a better choice primarily because of its reputation as a guardian of the Olympic spirit and values.

Taking into account the specifics of the sports industry and sports disputes, which were repeatedly emphasized and reflected in the Doctoral Thesis, and the following statements:

1. sports subjects in accordance with the Sports Law are both sports organizations established by the state and local governments, and associations established in accordance with the provisions of the Law on Associations and Foundations. Depending on the subject matter of dispute and the nature of the rights or legal interests infringed, a sports dispute may be administrative or civil. Respectively, an athlete or a sports club may apply to the administrative courts if a state-founded sports organization, by taking a decision addressed to this person individually or performing an activity in relation to this person, has violated the person's statutory rights. In turn, for instance, a dispute arising from a contractual relationship between an athlete and a federation is subject to civil law.

2. Pursuant to Article 5 (1) of the Arbitration Law, any civil dispute shall be settled in the arbitration court if the parties have voluntarily agreed and concluded an arbitration agreement, i.e., in Latvia the legislator explicitly applies the institute of arbitration law only to private law.

3. Gatis Litvins in his Doctoral Thesis emphasizes that the administrative and legal nature of a dispute is not in itself an obstacle to the consideration of a case in an arbitration court, as arbitrators may have knowledge not only in civil law, but also in public law. However, an arbitration court may not, by a legally binding decision, annul an administrative act issued by an institution or declare such act unlawful because it requires a legal authorization. Acts of public authority may be revoked only by institutions authorized by law - state institutions (officials) (Articles 77 and 121 of the Administrative Procedure Law). The

arbitration court may also indirectly assess the legality of an administrative act, if it is necessary for the settlement of contractual disputes, however, it cannot annul it.

In view of these allegations, the sports arbitration court, established in accordance with the Arbitration Law, cannot resolve all disputes of the subjects included in the Sports Law, as sports disputes may arise both in the field of civil law and in the field of administrative law. This allows to model three possible specialized sports dispute resolution institutions in Latvia: (1) arbitration court, (2) LOC dispute resolution body and (3) quasi-court.

(1) (2) Mostly civil sport disputes, i.e. between sports federations, between an athlete and a sports federation, between an athlete and a coach, between a coach and a sports federation, between a sports club and a sports federation, etc. are presumed to be resolved “within the family of sport”, taking into account the principles of the *lex sportiva*. Such sports disputes with a high degree of probability arise in professional and high-achievement sports.

Although the Sports Law does not explicitly provide for the LOC to be delegated the right to dispose of public property or financial resources, the functions or public administration tasks delegated to this sports institution relate to the development, coordination, organization of specific sports and public ensuring representation in international sports organizations and competitions. In order to ensure the fulfillment of these functions, the Sports Law provides for the allocation of state budget funds to this non-governmental institution.²⁶³ In accordance with Article 13 (1) of the Sports Law, state budget funds are allocated to sports in accordance with the annual state budget law. The fourth part of this article stipulates that sports federations recognized in Latvia, as well as the association “Latvian Olympic Committee” have the right to receive financial resources from the state budget. Namely, in order to promote the development of good governance in Latvia's high achievement / professional sports, additional funds may also be provided from the state budget for the establishment of a sports dispute resolution institution: an arbitration court or a dispute resolution body in LOC. The decision on which dispute resolution institution, sports arbitration court or LOC dispute resolution body, to the greatest extent corresponds to the needs and possibilities of Latvian sports and must be made by the LOC and the Sports Federations, which are members of the LOC General Assembly. The LOC General Assembly is a higher decision-making body of the LOC and its composition includes representatives

²⁶³ Informatīvais ziņojums "Par valsts vai pašvaldību budžeta finansētu institūciju darbību regulējošo normatīvo aktu pilnveidošanu". (Eng., Informative report “On the improvement of regulatory enactments regulating the activities of institutions financed from the state or local government budget”). Available from: https://www.knab.gov.lv/upload/free/zinojumi/knabzin_201211_nvo.pdf [viewed 19.11.2020.]

nominated by the Olympic Sports Federations, thus forming an association of Latvian sports stakeholders. The LOC dispute resolution body may be established by a decision of the LOC Executive Committee, as regulated by sections 6.1 and 8.11. of the LOC Statutes.

Respectively, administrative sports disputes should remain within the jurisdiction of an administrative court taking into account the possibilities provided in Articles 78 and 107.¹ of the Administrative Procedure Law, but civil sports disputes may be settled by agreement of the parties (voluntarily) in a sports arbitration court. The arbitration clause may also be included in the statutes of the sports federations and LOC, which provide for the resolution of disputes arising among their members in the sports arbitration court where:

- (a) the dispute has not been resolved in accordance with the internal dispute resolution procedure (which must be effective and based on the principle of co-operation) specified in the internal regulatory enactments of the federation;
- (b) arbitration court is an appellate instance if one of the parties to the dispute is not satisfied with the decision of the federation in resolving dispute.

Similar conditions apply to the LOC sports dispute resolution body.

(3) A quasi-court would have jurisdiction over both the settlement of civil sports disputes and the settlement of administrative sports disputes. An example of such a quasi-court can be found in Australia - the Victoria Civil and Administrative Tribunal. Analysing the establishment of an administrative quasi-court in Latvia, Litvins in his Doctoral Thesis points out that a quasi-court can be an alternative to contestation or an administrative court. Historically and still today, quasi-courts are recognized in administrative law in both continental European and Anglo-Saxon jurisdictions as a useful method of law enforcement and dispute resolution, although it has traditionally been associated as an institute of Anglo-Saxon law. Author believes that the quasi-court model, which is applicable to all sports disputes, can be an alternative to both civil court and administrative court. In order to be recognized as an independent and impartial body, a quasi-court must meet the following criteria:

- 1) the status is specified by law;
- 2) the procedure for appointment, early termination and dismissal of members does not create doubts as to their objectivity;
- 3) the members are independent of the executive power, the participants in the proceedings and the influence of others;
- 4) the case review process is fair with adequate procedural guarantees;

5) a legally binding decision is usually taken collegially.²⁶⁴

The Author agrees with Litvin's idea that a quasi-court in Latvia could be formed by the Cabinet of Ministers and would be state institutions that would be subordinated to the Cabinet of Ministers in the form of supervision. The operation of quasi-court would be financed from the state budget.

However, in the context of the beginnings of the development of Latvian sports law, the establishment of such a sports quasi-court seems premature to the Author, especially considering that currently no such institution as a quasi-court exists in Latvian legal system, although the establishment of a special economic court can be considered as a step in this direction.

Hence, considering the above-mentioned in (1) and (2), namely, that civil disputes arising between natural persons and associations in high achievement and professional sports require a special approach in view of *lex sportiva*, the Author considers that Latvian sports stakeholders should choose between options (1) and (2).

Based on the above, the Author supposes it is crucial to amend the Sports Law by adding a provision on the resolution of disputes. The Author advises the following clause:

“Resolution of Disputes

1) Sports disputes that, in accordance with Article 11.5 of this Law, are not within the competence of the Appeals Commission, depending on the nature of the rights or legal interests infringed, shall be resolved in accordance with the Civil Procedure Law or the Administrative Procedure Law. The internal regulatory enactments of the relevant sports organization must provide for an internal dispute resolution procedure.

2) The Parties may, by mutual agreement, settle a civil dispute using alternative dispute resolution methods in a dispute resolution body of Latvian Olympic Committee or in a sports arbitration court. The establishment of the sports arbitration court and its procedure in accordance with the provisions of the Arbitration Law shall be decided by the Latvian Olympic Committee and its members. The establishment of a dispute settlement body of Latvian Olympic Committee shall be determined by the Latvian Olympic Committee.”

The Author has to mention that creation of special sports arbitration that also applies mediation and MedArb dispute resolution techniques is considered to be a more optimal though probably costly decision since such a body would be completely independent and able

²⁶⁴ Litvins, G. 2012. Alternatīvās tiesību aizsardzības un strīdu risināšanas metodes administratīvajā procesā: promocijas darbs. (Eng., Alternative methods of judicial protection and dispute resolution in administrative law: Doctoral Thesis). Rīga: LU, Faculty of Law.

to resolve all kinds of sports disputes that can be resolved by way of ADR. The example of such sports arbitrations is analysed in Sub-chapter 4.2. As to the special body in the Latvian Olympic Committee, its impartiality in some cases might be doubted as the number of sports disputes involve the decisions of the Olympic Committee itself. However, the examples of the countries the Olympic Committees of which have the dispute resolution bodies outlined in Sub-chapter 3.2 and Chapter 4 prove this proposal to be realistic and promoting good governance in sport.

4.2 ADR and mediation by international and non-governmental sports institutions: Court of Arbitration for Sports, Federation Internationale de Football Association, Sports Dispute Resolution Centre of Canada, Sport Resolutions UK

A number of international and non-governmental sports institutions offer mediation as an ADR method for sports-related disputes. The most well known are CAS, the UK Sports Dispute Resolution Panel, Sports Dispute Resolution Centre of Canada and, presumably, the Players' Status Committee together with the Dispute Resolution Chamber of Fédération Internationale de Football Association (FIFA). Some sports lawyers point out that the CAS and FIFA have more political influence than some countries.

4.2.1 ADR and mediation by the CAS

The need to provide an alternative forum to the court in which sports-related disputes could be settled fairly, effectively, quickly and relatively inexpensively within “the Olympic Family” was expressed by the retired President of the International Olympic Committee, Juan Antonio Samaranch early in his presidency. As a result, the Court of Arbitration for Sport (CAS) was born in 1983, with the specific purpose of fulfilling this particular role. Originally, the CAS acted as an arbitration body only, but sixteen year later, in May 1999, a mediation service was also added to reflect the growing popularity and success of this form of dispute resolution²⁶⁵.

According to the definition given on the CAS's official website at www.tas-cas.org, the CAS is an institution independent of any sports organisation which provides for services in order to facilitate the settlement of sports-related disputes through arbitration or mediation by means of procedural rules adapted to the specific needs of the sports world.

²⁶⁵ Blachshaw, I. S. 2002. *Mediating Sports Disputes: National and International Perspectives*. T.M.C. Asser Instituut. P. VII, p. 51–61.

The CAS has nearly 300 arbitrators from 87 countries, chosen for their specialist knowledge of arbitration and sports law. Around 300 cases are registered by the CAS every year²⁶⁶.

Any disputes directly or indirectly linked to sport may be submitted to the CAS. These may be disputes of a commercial nature (e.g. a sponsorship contract), or of a disciplinary nature following a decision by a sports organisation (e.g. a doping case).

There are four CAS procedures: an (1) *ordinary arbitration procedure* and (2) *mediation*, that are applicable for disputes resulting from contractual relations or torts; (3) *the appeals arbitration procedure* for disputes resulting from decisions taken by the internal bodies of sports organisations; (4) *a consultation procedure* which allows certain organisations to request an advisory opinion from the CAS, in the absence of any dispute, on any legal issue concerning the practice or development of sport or any activity relating to sport. The advisory opinion does not constitute an award and is not binding²⁶⁷.

Speaking of the most famous advisory opinion given by the CAS, the International Amateur Swimming Federation case of Speedo full body' swimsuits ("the fastest suit ever made <...> some swimmers have shown time saving enough to make a difference between winning and losing a race") should be mentioned, where the CAS was asked by the Australian Olympic Committee whether the results of the Australian swimmers at the Olympics, achieved by using the new swimsuits, might not become the subject of legal claims²⁶⁸.

Article 1 of the CAS Mediation Rules states that CAS mediation is a non-binding and informal procedure, based on an agreement to mediate in which each party undertakes to attempt in good faith to negotiate with the other party with a view to settling a sports-related dispute. The parties are assisted in their negotiations by a CAS mediator.

CAS mediation, in fact, is provided for the resolution of disputes submitted to the CAS ordinary arbitration procedure, i.e. resulting from contractual relations or torts, while the second limitation states that disputes related to disciplinary matters, such as doping issues, match-fixing and corruption, are excluded from CAS mediation. However, in certain cases, where the circumstances so require and the parties expressly agree, disputes related to other disciplinary matters may be submitted to CAS mediation.

Hence, CAS mediation is not meant for all sports-related disputes.

²⁶⁶ Court of Arbitration for Sport. Information on CAS. Available from: <http://www.tas-cas.org/en/general-information/frequently-asked-questions.html> [viewed 07.11.2015.].

²⁶⁷ Court of Arbitration for Sport. Information on CAS. Available from: <http://www.tas-cas.org/en/general-information/frequently-asked-questions.html> [viewed 07.11.2015.].

²⁶⁸ *Ibid.*

According to Articles 5 and 6, the CAS has a list of mediators the parties can choose from; mediators appear in the list for a four-year period and can be reselected. Unless the parties have jointly selected a mediator from the list of CAS mediators, he or she will be chosen by the CAS President from the list of CAS mediators and appointed after consultation with the parties. The mediator shall be and must remain impartial and independent of the parties, and is bound to disclose any circumstances likely to compromise his or her independence with respect to any of the parties.

Article 8 on the conduct of mediation specifies that where the parties agree to submit an ordinary arbitration case to mediation, the mediator may consider the request for arbitration as one party's summary of its dispute and may invite only the other party to submit its summary of the dispute. The necessary content of such a request for arbitration is listed in Article R38 of the CAS Code of Arbitration Procedural Rules.

Each party shall cooperate in good faith with the mediator and shall guarantee him or her the freedom to perform his or her mandate to advance the mediation as expeditiously as possible.

In order to achieve a settlement and reach a consensus, Article 9 of the CAS Mediation Rules lists three functions of the mediator:

- 1) to identify the issues in dispute;
- 2) to facilitate discussion of the issues by the parties;
- 3) to propose solutions.

However, the mediator may not impose a solution of the dispute on either party. And that is an important advantage of mediation comparing to arbitration or litigation as, quoting the often-cited expression, mediation does not “cut the pie” in pieces, it “expands” the pie.

It is said that one of the main reasons why the parties opt for mediation is because they want to avoid publicity that is typical for litigation, which makes confidentiality a very essential element of mediation²⁶⁹. Hence, Article 10 of the CAS Mediation Rules very explicitly describes the confidentiality rule covering both the “mediation privilege” and the “without prejudice rule”, i.e. the mediator, the parties, their representatives and advisers, and any other persons present during the meetings between the parties shall sign a confidentiality agreement and shall not disclose to any third party any information given to them during the mediation, unless required by law to do so. Unless required to do so by applicable law and in the absence of any agreement of the parties to the contrary, a party shall not compel the mediator to divulge records, reports or other documents, or to testify in regard to the

²⁶⁹ Kameņeckā-Usova, M. 2015. Confidentiality in Mediation. *Socrates*. 2(2).

mediation in any arbitral or judicial proceedings. Any information given by one party may be disclosed by the mediator to the other party only with the consent of the former. No record of any kind shall be made of the meetings.

Likewise, Article 10 has a specification of documents and facts obtained during the mediation that parties shall not rely on, or introduce as evidence in any arbitral or judicial proceedings.

Together with the rule that the parties or the mediator may terminate mediation at any time, Articles 11–12 of the CAS Mediation Rules list four cases when mediation is to be terminated:

- 1) by signing of a settlement by the parties (the settlement is drawn up by the mediator and signed by the parties and the mediator);
- 2) by a written declaration of the mediator to the effect that further efforts at mediation are no longer worthwhile;
- 3) by a written declaration of a party or the parties to the effect that the mediation proceedings are terminated; or
- 4) where one of the parties, or both, refuse(s) to pay its (their) share of the mediation costs within the time limit fixed pursuant to Article 14 of the Rules.

In the situations listed under No 2 and No 3, the parties can still opt for arbitration or litigation. If the parties choose CAS arbitration, the mediator will not accept an appointment as an arbitrator in any arbitral proceedings concerning the parties involved in the same dispute, unless the parties in writing agreed otherwise.

In fine, the CAS Mediation Rules is a very qualitative and well thought-out instrument of sport mediation that might and should serve as an example for other sports bodies resolving disputes. The Author supposes that to pay Latvia's attention to ADR methods it would be useful to have some representatives from Latvia in the CAS's panel of mediators and arbitrators. At the moment, there is only one Latvian²⁷⁰, i.e. Aldons Vrubļevskis, President of the Latvian Olympic Committee, who is listed as the CAS arbitrator. Unfortunately, there are no mediators from Latvia as for now.

4.2.2 ADR and mediation by FIFA

To reach balance and stability in the questions regarding international football disputes, FIFA created the Players' Status Committee (the Committee). According to Article 54 of FIFA Statutes 2015, the Players' Status Committee shall set up and monitor compliance

²⁷⁰ Court of Arbitration for Sport. List of arbitrators. Available from: <https://www.tas-cas.org/en/arbitration/liste-des-arbitres-liste-generale.html?GenSlct=2&nmIpt=&nltSlc%5B%5D=202> [viewed 08.11.2015.].

with the Regulations on the Status and Transfer of Players and determine the status of Players for various FIFA competitions. Its powers of jurisdiction are governed by the Regulations on the Status and Transfer of Players. In 2001, FIFA creates a Dispute Resolution Chamber (DRC). This body was set up in order to release the Committee from a particular species of FIFA routine sports disputes and, in particular, to resolve disputes regarding the international status and transfer of players²⁷¹.

Article 22 of the Regulations on the Status and Transfer of Players refers to the competence of FIFA and Articles 23–24 allocate the competence between the Committee and the DRC.

In all, the DRC's competence extends to cases involving employment disputes with international status, as well as disputes regarding payment of training compensation and solidarity contribution. In general, the DRC decides on basic issues such as breach of contract for a legitimate reason or not²⁷². In the event of any uncertainty as to the jurisdiction of the Committee or the DRC, the chairman of the Committee shall decide which body has jurisdiction²⁷³.

The DRC is a division of the Committee which can be considered as a parent body for the DRC. It should be noted that the DRC is not deemed to be a court of arbitration like the CAS. Decisions of the DRC may be enforced only by the execution of the disciplinary measures provided for in the Statutes and regulations of FIFA²⁷⁴.

Although the DRC is not a court of arbitration, the information on the official website states that the DRC provides arbitration and dispute resolution on the basis of equal representation of players and clubs and an independent chairman²⁷⁵. In Articles 23 and 24 of the Regulations on the Status and Transfer of Players, the process of such dispute resolution is called “the adjudication” requiring, depending on the specifics of the case, single or three

²⁷¹ Прокопец, М., Рогачев, Д., Де Вегер, Ф. 2012. *Разрешение футбольных споров: Анализ Палаты по разрешению споров ФИФА, РФС и Спортивного арбитражного суда*. Статут. 9–10 (Eng., Football dispute resolution: Analysis by the FIFA Dispute Resolution Chamber, RFU and the Court of Arbitration for Sport. Statute. 9–10).

²⁷² Прокопец, М., Рогачев, Д., Де Вегер, Ф. 2012. *Разрешение футбольных споров: Анализ Палаты по разрешению споров ФИФА, РФС и Спортивного арбитражного суда*. Статут. 9–10 (Eng., Football dispute resolution: Analysis by the FIFA Dispute Resolution Chamber, RFU and the Court of Arbitration for Sport. Statute. 9–10).

²⁷³ FIFA Rules Governing the Procedures of the Players Status Committee and the Dispute Resolution Chamber from May 2008. Available from: <http://www.fifa.com/about-fifa/official-documents/law-regulations/index.html>

²⁷⁴ Прокопец, М., Рогачев, Д., Де Вегер, Ф. 2012. *Разрешение футбольных споров: Анализ Палаты по разрешению споров ФИФА, РФС и Спортивного арбитражного суда*. Статут. 9–10 (Eng., Football dispute resolution: Analysis by the FIFA Dispute Resolution Chamber, RFU and the Court of Arbitration for Sport. Statute. 9–10).

²⁷⁵ FIFA Dispute Resolution System. Available from: <http://www.fifa.com/governance/dispute-resolution-system/index.html>

judges. Therefore, there is no reason to believe that the Committee and the DRC use mediation as a dispute resolution method, at least officially.

Albeit, having examined FIFA's Circular No. 769 (2001) on the Revised FIFA Regulations for the Status and Transfer of Players, it turned out that the idea to resolve disputes by mediation was present as Article 7 (e) among the key elements to the new dispute settlement provision states: whenever a dispute between a player and a club arises, FIFA will offer low cost, speedy, confidential conciliation facilities available to the parties. The parties are free to accept mediation by an independent mediator. Any such conciliation will not delay or interfere with the formal dispute settlement procedures.

The above amendments were adopted simultaneously with the idea to establish an entirely independent arbitration tribunal for football with its own infrastructure and administration. But, according to Circular No. 827 of December 2002, FIFA abandoned that idea because of the lack of financial and administrative resources. In the same document, FIFA agreed to recognise the jurisdiction of the CAS. So, since 2002, the CAS deals with the decisions of the DRC and the Committee as a body of appeal in accordance with the FIFA Statutes and subject to the specific provisions of the individual FIFA Regulations.

It is hard to explain why FIFA did not include the clause on dispute resolution by conciliation/mediation in its modern regulations. The Author did not find any acknowledgement of whether FIFA used to or applies it in practice, although the headlines regarding mediation by FIFA occur in mass media once in a while. The Author assumes that FIFA will return to reflect on the need for mediation procedure as it will allow FIFA to less often enforce decisions of the DRC with the help of disciplinary measures since the parties will voluntarily perform their mutually beneficial commitments reached by means of mediation.

4.2.3 ADR and mediation by the Sports Dispute Resolution Centre of Canada

As it is proclaimed on the official website www.crdsc-sdrcc.ca, the Sports Dispute Resolution Centre of Canada (SDRCC) was established to address the need to offer the Canadian sport community tools to prevent conflicts and, when they are inevitable, to resolve them. It is the culmination of studies, discussions and analyses carried out by leaders in the Canadian sport community and by experts in the field of alternative dispute resolution.

Provision 10 of the Act to Promote Physical Activity and Sport, which created the SDRCC, dictates the mission of the SDRCC as follows:

“The mission of the Centre is to provide to the sport community a) a national alternative dispute resolution service for sports disputes; and b) expertise and assistance

regarding alternative dispute resolution”. In other words, the SDRCC is about education and prevention. It is about providing tools and guidance to help resolve minor disputes quickly and informally.

The main goals of the institution are:

- 1) to ensure access to independent, alternative dispute resolution solutions for all participants in the Canadian sport system at the national level;
- 2) to strengthen the transparency and accountability of the national sports system and national sports organisations by clarifying their responsibilities to athletes, coaches and other stakeholders;
- 3) to ensure that independent ADR processes are equitable for all;
- 4) to offer a low-cost mechanism throughout Canada in both official languages (i.e. English and French).

Hence, we see that the idea of the national sports body created to resolve sports disputes efficiently has been successfully implemented to life. The SDRCC offers the ADR mechanisms as follows:

- 1) Resolution Facilitation;
- 2) Arbitration;
- 3) Mediation;
- 4) MedArb.

The notion of mediation is discussed above in Chapter 1; therefore, the Author will investigate such ADR mechanisms offered by the SDRCC as Resolution Facilitation and MedArb.

Resolution Facilitation (the RF) is a completely confidential assistance process that allows the parties involved in a dispute to communicate more effectively and work towards an agreement. The resolution facilitator is a neutral “process manager” whose role is to try to help the parties to better communicate with each other and to resolve their dispute through an amicable settlement. Should such a settlement not be possible, the resolution facilitator helps the parties understand the other options offered by the SDRCC to settle the dispute²⁷⁶. From the first sight, is it hard to see the difference between the RF and mediation as the characteristics are very alike with the only two differences between those methods offered by the SDRCC, i.e. resolution facilitation is free of charge and available at all times. As the official information states, the role of the RF was introduced to address the needs of the sports community at any stage of a dispute:

²⁷⁶ Sport Dispute Resolution Centre of Canada. Available from: <http://www.crdsc-sdrcc.ca/eng/home> [viewed 01.03.2016.].

- 1) prior to submitting a request to the SDRCC, through a resolution facilitation request;
- 2) upon submitting a request to the SDRCC (it is mandatory when the parties choose arbitration as the dispute resolution process);
- 3) during arbitration proceedings, the parties always have the option to request the assistance of the RF at any time prior to an award being rendered by the arbitrator;
- 4) following publication of the award rendered by the arbitrator, the RF can assist a party in understanding the award²⁷⁷.

From the above, the Author concludes that the RF is a union of a “charitable” mediation and administrative and legal support for the parties on behalf of the SDRCC which perfectly fits the proclaimed mission and goals of the institution.

MedArb is a dispute resolution process that combines mediation and arbitration. Initially, the parties try to reach a settlement through mediation. If there are issues that are not resolved through mediation, an arbitrator (the same person who acted as the mediator) makes a decision for the parties.

MedArb combines the advantages of both mediation and arbitration:

- 1) because the parties are able to discuss in presence of a professional mediator, the process is likely to preserve relationships or even repair those that may have been damaged by the rise of the dispute;
- 2) during the mediation phase, the parties have control over the outcome and may find a win-win solution;
- 3) resolution is certain, because if mediation fails, a decision will be rendered by a third party;
- 4) transition from mediation and arbitration is seamless;
- 5) it is less costly and quicker than a court battle²⁷⁸.

Along with the list of the advantages of MedArb, it is said in some legal literature that MedArb brings the best of both worlds. But the Author agrees with Mark Batson Baril and Donald Dickey where they name the two most important concerns with MedArb:

- 1) the inherent potential for “coercion” – when the power to decide the dispute is invested in the mediator, it gives him or her the power to pressure the parties into settlement;
- 2) the risk that confidential information gained during mediation may taint the med-arbiter’s final decision – the med-arbiter cannot be completely neutral in the

²⁷⁷ *Ibid.*

²⁷⁸ Sport Dispute Resolution Centre of Canada. Available from: <http://www.crdsc-sdrcc.ca> [viewed 01.03.2016.].

decision-making phase, having gained some information, perhaps unfavourable, in confidence in the mediation phase²⁷⁹.

The SDRCC is a strong organisation with effective working procedures on alternative dispute resolution in sports-related disputes. Canadians widely use such a procedure benefiting from the pros that ADR brings. The Author supposes that a MedArb procedure is a very useful tool which, as stated before, combines the best of the two most popular ADR procedures. The uniqueness of the RF is also worth noting as this so called “charitable mediation” makes ADR available and affordable to a wider circle of stakeholders.

4.2.4 ADR and mediation by Sport Resolutions UK

Sport Resolutions (the SpRUK) is an independent, not-for-profit dispute resolution service for sport in the United Kingdom established by the main stakeholder groups in sport. The aim is to provide an expert, speedy and cost effective alternative to internal appeals processes and court-based litigation. The SpRUK provides sport specific arbitration and mediation services and operates the National Anti-Doping Panel (the NADP) and National Safeguarding Panel (the NSP). Two-thirds of income is self-generated through service level agreements with Non-Governmental Bodies, arbitration and mediation fees, training and room hire. One third of income is received from UK Sport to provide a service to organisations in the Olympic and Paralympic high-performance sport system²⁸⁰. Hence, it can be seen that the SpRUK, as well as the SDRCC, aims to resolve sports conflicts fast, effectively and answers the needs of the UK’s sports community to contribute to high performance sport.

According to the official website of the SpRUK, the following services are offered to resolve sports disputes:

- 1) Arbitration;
- 2) Mediation;
- 3) National Anti-Doping Panel (the United Kingdom’s independent tribunal responsible for adjudicating anti-doping disputes in sport. It is operated by Sport Resolutions in accordance with its own procedural rules and is entirely independent of UK Anti-Doping who are responsible for investigating, charging and prosecuting cases before the National Anti-Doping Panel);

²⁷⁹ Blankenship, T. 2006. Developing your ADR Attitude: Med-Arb, a Template for Adaptive ADR. *Tennessee Bar Journal*. Nov, p. 35.

²⁸⁰ Sport Resolutions. Available from: <http://www.sportresolutions.co.uk/about-us/who-we-are/overview> [viewed 19.07.2016.].

4) National Safeguarding Panel (works in tandem with Non-Governmental Bodies safeguarding systems and provides professional support in cases of significant complexity or seriousness, which present risks to children, young people, and vulnerable adults or to the reputation of a sport. Is also appropriate in cases where an independent and “arm’s length” approach is required);

5) Advisory opinions (provides for an independent arbitrator(s) to give a non-binding interpretation of a law, regulation or rule. It does not have the effect of adjudicating a specific dispute in sport).

6) Pro Bono Legal Advice (the service provides a list of experienced sports lawyers who may be willing to assist individuals of limited financial means before Sport Resolutions panels and other tribunals).

7) The SpRUK’s mediation service provides a quick and cost-effective way of resolving all kinds of sports disputes where it is important for the resolution to remain confidential and for the relationship between the parties to be preserved. Mediation is led by a neutral facilitator who works collaboratively with the parties to reach a joint settlement.

The service includes:

- 1) appointment of an experienced mediator who has a good understanding of sport;
- 2) assistance in setting up and organising a mediation via the mediation procedure and mediation agreement;
- 3) assistance in finalising a settlement agreement between the parties;
- 4) use of purposely-designed mediation centre.

The examples of sports disputes that the SpRUK has successfully resolved by mediation include termination of coaching contracts, deterioration of relationships within the board room or dressing room, issues arising from commercial contracts and agreements, rights and entitlements to govern sport and competitions, discrimination issues, safeguarding children in sport issues²⁸¹.

It can be seen that the SpRUK’s mediation has resolved a wide variety types of cases with very different specifics which proves the successful applicability of this ADR method in British sports disputes.

The SpRUK also provides statistics of its caseload for the last eight years. The Author will reflect the latest data available on mediation and arbitration:

Table 4.2. *SpRUK caseload*

²⁸¹ Sport Resolutions. Mediation. Available from: <http://www.sportresolutions.co.uk/services/mediation> [viewed 19.07.2016.].

Years	Mediation cases	Arbitration cases
2012–13	9	41
2013–14	8	33
2014–15	7	37
2015–16	5	16
2016–17	45	30
2017–18	15	75

The statistics provided shows that arbitration caseload is several times higher than mediation caseload which reveals not such high popularity of mediation in comparison with the “bigger brother” arbitration.

To conclude, the creation at the national levels of such sports dispute resolution institutions as the SDRCC and the SpRUK, with high goals, thought-out structure, variety of ADR methods that answer the needs of the specific sports community, affirms the viability of Juan Antonio Samaranch’s idea to avoid litigation and provide for specialised bodies to resolve sports disputes within the family of sport.

Although at the moment it is hard to conclude that mediation is a popular ADR method in sports law, still one cannot ignore the fact that it is being successfully used by sports institutions to resolve sports-related conflicts.

To sum up, the examples of sports institutions and bodies that are given above show the existence of a policy in different countries to resolve sports disputes in the specialised institutions by competent sports arbitrators and mediators.

4.3 Sports Disputes Case Study

In this sub-chapter, the Author analyses two examples of sports disputes resolved by different competent bodies – the Russian Football Union and Centre for Effective Dispute Resolution (the CEDR)²⁸².

The first case is resolved under the RFU’s procedures discussed in Chapter 3, whereas the second case is one of the most famous cases of sports disputes resolved by means of mediation which is known to the public taking into the account the principle of confidentiality applied to all the mediated cases.

²⁸² CEDR is an independent non-profit organisation which specialises in mediation and ADR and is based in United Kingdom.

4.3.1 Case No. 066-17 on the termination of an employment contract at the initiative of a loaned football player with a club lessee under a transfer agreement before its expiration²⁸³

Football Club D appealed to the Players' Status Committee of the RFU with a complaint against the Chamber's decision regarding the statement of Football Club D in relation to Football Club T on recognising it as having violated the terms of the transfer contract on a "loan" basis with Football Player D which led to its premature termination by the player and subsequent early return of Football Player D to Football Club D resulting in losses on the part of Football Club D.

In substantiating the arguments, the applicant pointed out that the violation of the terms of the transfer contract on a "loan" basis by the new club, which led to its early termination by the player, violates the right of the former club not to pay the player wages during the pre-agreed loan period, as well as the right to provide game practice for a player who has a long-term employment contract with the club and is, in this regard, the club's "asset". In addition, due to the early return of the football player to the former club and the renewal of the employment contract, Football Club D suffered a loss – the sum of the difference between the wages and social payments payable to the player during the period of the proposed transfer contract.

The position of the new club was based on the fact that the early termination of the employment contract and the renewal of the original employment contract cannot be considered as damage (loss) to the former club since the new club fulfilled all the conditions of the Transfer Contract, and the Labour Contract was (unilaterally) terminated on the employee's part on the basis of Article 80 of the Labour Code of the Russian Federation.

Having analysed the case file, the Committee came to the below conclusions.

The Transfer Contract, as regards the relationship between Football Club D and Football Club T, is governed by the civil law of the Russian Federation. The Transfer Contract did not provide for liability for the early termination of the Employment Contract on the football player's part in connection with a material violation of the obligations to the football player by the new club.

Football Club T violated the terms of the Employment Contract with Football Player D as regards the timely payment of wages which was the basis for early termination of the Employment Contract; however, the Committee notes that the duty of Football Club D to pay

²⁸³ Российский футбольный союз. Обзор практики комитета РФС по статусу игроков за 2017 год (Eng., Russian Football Union. Review of the practice of the RFU committee on the status of players in 2017). Available from: <https://rfs.ru/subject/1/committees/18/documents> [viewed 18.04.2020.]

Football Player D the wages stipulated by the Employment Contract arose at Football Club D by virtue of a direct prescription of the law.

By virtue of Article 129 of the Labour Code of the Russian Federation, wages are remuneration for labour depending on the employee's qualifications, the complexity, quantity, quality and conditions of the work performed. Thus, based on Article 348.1 of the Labour Code of the Russian Federation, the labour function of an athlete is to prepare for and participate in sports competitions. Consequently, the monetary funds of Football Club D paid to Football Player D in the form of wages cannot be recognised as the Applicant's losses since, under the Labour Code of the Russian Federation, and also under the terms of the Employment Contract, Football Club D receives, in exchange, a consideration in the form of the football player's labour. Confirming this fact, Football Club D did not provide evidence that Football Player D did not fulfill his labour function while in Football Club D. Thus, the Committee concluded that the requirements of Football Club D were not subject to satisfaction.

This case clearly shows how general labour law correlates with sports reality. The Author supposes that applicability of the general labour law led to the situation where there was no joint responsibility, and player costs were born by one party only, i.e. the former club.

If to presume that the above case was resolved by means of mediation where the mediator had industry expertise, it can be assumed that the result could be different and fairer.

For instance, player costs could be split between the clubs, especially considering the new club's violation according to the regulation and case law of FIFA, and the CAS is considered to be sufficient for the unilateral termination of the contract.

According to Article 10 of FIFA Regulations on the Status and Transfer of Players, a professional football player may be loaned to another club on the basis of a written contract between him and the club concerned. Any such loan is subject to the same rules as apply to the transfer of players, including the provisions on training compensation and the solidarity mechanism. Furthermore, Article 14 states that a contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is *just cause*. The case law of the FIFA's Dispute Resolution Chamber in Cases No 29908 of 19 February 2009, No 271322 of 23 April 2007, No 68242 of 13 June 2008, and No 128557 of 15 December 2008 has formed a view that a justified reason for a football player to terminate his employment contract with the club is the formation of debt to

the football player equivalent to at least two monthly salaries. The same position is expressed in the CAS Case No. 2009/A/1934, *Georgi Chilikov v. Dalian Shilde FC*²⁸⁴.

Hence, the new club has violated its obligations under the contract which constitutes a violation. Therefore, it would be logical to be held liable for it.

According to the position of FIFA, player costs include: wages, registration fee, bonuses for the game won, individual performance bonuses, compensation of apartment/car rent, plane ticket cost²⁸⁵. Hence, player costs for the club are not the same as wages under the general labour law.

According to the Author, in regards to the specifics of football, at least part of the payer costs can be treated as a loss of the former club in its specific case. If a club rents a player, it usually means that at the exact moment the club does not count on this player and cannot give him a game practice, as well as these costs are not budgeted.

Likewise, in such a situation, the player himself is the losing party as he presumably will not be given enough game time in the club that loaned him if he ever will be able to play for the former club until the next transfer window as he has been registered as a player in the new club.

The Author presumes that if, after receiving the contract break warning as it is prescribed by FIFA in case law²⁸⁶:

“<...> Whether the employee falls into financial difficulty by reason of the late or non-payment, is irrelevant. The only relevant criterion is whether the breach of obligation is such that it causes the confidence, which the one party has in future performance in accordance with the contract, to be lost. This is the case when there is a substantial breach of a main obligation such as the employer’s obligation to pay the employee. However, the latter applies only subject to two conditions. Firstly, the amount paid late by the employer may not be “insubstantial” or completely secondary. Secondly, a prerequisite for terminating the contract because of late payment is that the employee must have given a warning. In other words, the employee must have drawn the employer’s attention to the fact that his conduct is not in accordance with the contract (see also CAS 2005/A/893; CAS 2006/A/1100, marg. no. 8.2.5 et seq.)”, the new club, the former club and the player would come together for a mediation or structured negotiations, they could find a consensus and a decision that could

²⁸⁴ Прокопец, М., Рогачев, Д., де Вегер, Ф. 2012. *Разрешение футбольных споров* (Eng., Football dispute resolution). Москва: Статут, p. 148.

²⁸⁵ *Ibid.*, p. 146.

²⁸⁶ *Galatasaray SK v. Frank Ribéry & Olympique de Marseille* [2006] Available from https://arbitrationlaw.com/sites/default/files/free_pdfs/CAS%202006-A-1180%20GSK%20v%20FR%20%26%20OM%20Award.pdf [viewed 11.05. 2020.]

work for all the parties in dispute. For instance, for a period of financial difficulties of the new club, the former club could cover some player costs thus giving a chance for a player to stay in the new club and have game time, etc. The Author supposes that there could have been many options for the parties to discuss which would not lead to the situation when the player is the losing party, all costs are born by the former club and the new club is known to FIFA as a club that committed a sanctioned contract violation.

4.3.2 The Woodhall/Warren case²⁸⁷

In this case, in April 1999, Richie Woodhall sought to terminate his management and promotion agreements with Frank Warren claiming that Warren was in breach of them and also that the agreements were unenforceable. Woodhall refused to fight for Warren and also started approaching other boxing promoters. On the other hand, Warren refused to let Woodhall go claiming that contracts were valid, that there was still some considerable time to run on them, and that he was not in breach of them. The parties were adamant in their respective positions. Woodhall, therefore, started proceedings in the High Court in June 1999. He requested an early hearing of the case to enable him to fight the defence of his world title by September, as required by the rules of the World Boxing Organisation. As the agreements required that any disputes were to be referred to the British Boxing Board of Control, Warren, for his part, sought an order from the Court to that effect.

Blackshaw states that the said dispute had all the makings of a full-blown legal fight in the Courts with lots of blood on the walls – and in the full glare of the media. As such, it would not only be time-consuming and expensive to both parties, but also potentially damaging for their reputations. In addition, Woodhall was anxious to get back in the ring and, if he were to continue to be of any value to Warren, he needed to fight his mandatory defence to his world title within a short period. So, in all these circumstances, the question arose as to whether the Court was the best forum in which to resolve this bitter dispute. It was decided to refer the dispute to mediation. And the Court was prepared to adjourn the proceedings, for a short time, to enable the parties to see if they could, in fact, settle their differences by this method.

A hastily arranged mediation was set up and conducted by the CEDR. Within 72 hours, the dispute was resolved, and Woodhall signed a new deal with Warren.

²⁸⁷ Ian Blackshaw. “The Court of Arbitration for Sport: An International Forum for Settling Disputes Effectively ‘Within the Family of Sport’ (What is known of the case has been gleaned from a Press Release issued by CEDR, with the consent of the parties to the dispute, at the time (21 July 1999).)

Unfortunately, as mediation is confidential and there is no official record or transcript of the process, it is not possible to have a “blow-by-blow” account of what was said, what arguments were adduced and exactly why a settlement was reached (for instance, what leverage the mediator was able to apply to reach a compromise) and what precisely were its actual terms. One thing can, however, be deduced from the brief facts and circumstances of this dispute: there were some sporting and commercial deadlines to concentrate the minds of the parties and act as a spur to reaching a compromise. There was also a pressing need for the parties not to “wash their dirty linen in public”.

According to the Author, this case highlights all the positive sides of mediation when resolving a sports dispute, i.e. quick, effective, confidential; preserves good relationship between the parties in dispute, “expands the pie, not cuts it in pieces”. Also, the risks for the athlete’s career when resolving the sports dispute in court are shown, i.e. should this case be resolved in court, it would take a lot of time, and Woodhall would probably miss the possibility to fight the defence of his world title.

The two sports disputes illustrated by the Author were resolved by two different means: the first was resolved by an internal dispute resolution body under the general labour law of the Russian Federation that governed loan contracts, and the second one was resolved by an independent arbitration institution by means of mediation, i.e. without the reference to the national law. The outcomes of the cases speak for themselves; in the first case a third party adjudicated the result and the outcome is far from the just, and in the second case the parties themselves reached a consensus leaving no one behind.

CONCLUSION

In the course of the research, answers to the research questions were found and are included in the analysis section of the Doctoral Thesis. Also, the goal of the Doctoral Thesis was achieved, namely, the Author studied ADR methods, applicability and problems thereof, clarified other national and international practice on this issue which allowed improving regulation in the form of amendments to the regulatory enactments. Simultaneously, the Author prepared a scientific substantiation for the development of the institute of sports law in Latvia.

It follows from the results of the Doctoral Thesis that the current legal regulation of sports law in the Republic of Latvia is incomplete, and amendments to the Sports Law are necessary along with the updating of the bylaws of sports organisations, including the principle of good governance.

Many of the problems discussed in the Doctoral Thesis stem from the insufficient development of the sports law industry in Latvia and the fact that the Sports Law regulates only part of the relations between sports subjects basically leaving the protection of the rights and interests of such a sports subject as *athlete* to sports federations. Likewise, having analysed the statutes and documents of the leading Latvian sports federations, it was identified that only a small part of them adopted internal regulatory enactments that comply with the principle of good governance, including regulating the internal dispute resolution procedures, i.e. the function indirectly delegated in the Sports Law to regulate and protect the rights and interests of an athlete cannot be properly exercised without order in internal regulatory enactments.

The shortcomings of the Latvian sports regulation, as well as the lack of an organisation that could quickly and confidentially resolve a sports dispute, result in insufficient protection of the athlete's rights often creating a situation where the athlete lacks the tools to challenge the sports organisation's decision thus affecting the athlete's career.

On the other hand, the development of sports law since the end of the 1970s has led to the fact that today many countries consider sports law as a separate branch of law with its own laws and dispute resolution mechanisms. Alongside the development of the sports law theory, there is a worldwide debate on the decisions of the CAS and the World Anti-Doping Agency, their impartiality and legitimacy, and direct contact with the world politics.

The Author believes that these processes have eliminated the doubts about sports law being a separate branch of law since the specificity thereof and high commercialisation of

sports require special smart regulation rather than the applicability of other sectors or the application of general regulation to sports issues.

In the Doctoral Thesis, the Author analysed two law institutes, namely, sports law and alternative dispute resolution which allowed deducing as to what the sports subjects are, what a sports dispute is, what the types of sports disputes are. Foreign and international practices and regulations were examined showing the popularity and effectiveness of the specialised sports arbitration tribunals and sports organisations in resolving sports disputes, applying ADR methods accordingly. However, paying special attention to mediation and inferring the advantages of mediation in resolving sports disputes, the Author failed to practically find confirmation of their superiority over other types of ADR. Namely, the arbitration process guaranteeing a relatively quick dispute resolution is and remains the main form of ADR for resolving sports disputes.

The Doctoral Thesis deals with the mentioned problem, draws conclusions related to the legal aspects of ADR in sports law which the Author divided into three groups and from which general and interrelated analysis proposals for the improvement of the legal framework are put forward.

Conclusions

The first group in regard to the notion of sports disputes:

1.1. In defining the purpose of the Latvian Sports Law, Article 2 thereof indirectly specifies the list of subjects of sports law, but the list is not exhaustive; therefore, the Sports Law regulates legal relations only between a small part of possible sports law subjects delegating the authority to regulate relations between other subjects (for instance, athlete-federation, athlete-coach, coach-sports federation) to sports organisations themselves, i.e. in the context of Article 10 of the Sports Law – sports clubs, sports federations and other institutions referred to in the Law.

According to the Author, the lack of a clear listing of subjects of sports law in the Sports Law does not mean that their rights and interests should not be taken into account which, in turn, imposes obligations on sports clubs and federations (sports organisations) to build a competent system of internal regulatory enactments in pursuance of the goal of achieving the good governance principle recommended by the EU, as well as harmonising its internal regulations with the regulations of the international federation of this sport. In this way, *lex sportiva*, following a hierarchical chain from international sports organisations to national ones, will reach its final destination – a Latvian athlete.

1.2. Latvian legislation does not contain the concept of a sports dispute. Moreover, the Sports Law does not contain a single provision dedicated to the resolution of sports disputes with the exception of doping-related disputes. In addition, the concept of “sports dispute” is not found in the internal regulatory documents of most sports federations. The existence of a definition of the “sports dispute” concept in the Sports Law will contribute to the development of sports law in Latvia and entail the formation of a special sports arbitration court which, in turn, would be consistent with EU policies ensuring that the principle of good governance is respected.

1.3. Depending on the nature of the interrelations that have arisen within the sports relations, sports-related disputes can be divided into the types as follows:

- a. disputes arising out of competitions: disqualification, contesting competition results, violation of the technical rules of the specific sport, etc.;
- b. disputes related to the membership in sports federations;
- c. doping-related disputes;
- d. disciplinary conflicts arising out of breach of the Code of Conduct by an athlete/coach/other member of the federation;
- e. ethical conflicts arising out of unethical sayings, pranks, inappropriate behaviour on public;
- f. contractual or civil legal disputes arising out of breach of an agreement;
- g. eligibility disputes.

Where doping-related disputes, match-fixing (belonging to the group of disputes arising out of competitions) cannot be resolved by means of mediation.

1.4. Successful mediation in a sports dispute depends on the mediator’s personality that consists of the process skills, i.e. “knowledge about the process of mediation, and the ability to use that knowledge to affect behaviour”, and substantive knowledge that can be divided into specific legal expertise and industry expertise. Particularly industry expertise, according to the Author, is a required quality for a mediator in a sports dispute, i.e. sports specialists should be educated and provided with the tools necessary to become mediators.

1.5. There are six types of NGBs and ISFs: (1) the ones that do not have any rules on dispute resolution; (2) the ones that have a dispute resolution system, but the method is not specified; (3) the ones that have a dispute resolution system – arbitration; (4) the ones that have a dispute resolution system – mediation and arbitration; (5) the ones that redirect all the disputes to the CAS; (6) the ones that redirect all the disputes to some national sports disputes resolution body. The Author supposes the types No 4 and No 6 to be the most beneficial for

NGBs and types No 4 and No 5 – for ISFs. After analysing the statutes of several NGBs and ISFs, the Author concludes that: (1) a clause of mediation is not often seen in the statutes of NGBs and ISFs; (2) a multi-level dispute resolution system is a rarity in NGBs; (3) mostly all ISFs mention the CAS as an appeal institution after their internal dispute resolution system has been applied; (4) only several Latvian sports federation (the good examples being the Latvian Motorsport Federation and the Latvian Basketball Association) have introduced in their statutes a well thought-out internal system of sports dispute resolution, and mediation is not introduced as an option to resolve sports disputes, hence mediation is not applied in Latvian sports.

1.6. Even though mediation might be used to resolve many types of sports disputes and it is successfully applied by the CAS, the Author states that NGBs and ISFs do not refer to mediation in their statutes as to a first possible step to resolve sports disputes, hence there is no specific experience of using mediation as the first way to resolve an internal dispute which could be adopted by the Latvian sports organisations.

Suggestions regarding the introduction of the notion of “sports dispute” and sports dispute resolution body:

1. To amend Article 1 of the Sports Law and include Clause 11 with the definition of sports disputes to read as follows:

“Sports disputes – diverse in their content, unresolved disagreements of subjects of sports relations arising out of activities or omissions in the field of sports relations regarding the rights and obligations governing this space transferred to a jurisdictional body or being resolved using ADR methods”.

2. To amend the Sports Law by adding Article 21 on the resolution of disputes to read as follows:

“Article 21. Resolution of Disputes

1) Sports disputes that, in accordance with Article 11.5 of this Law, are not within the competence of the Appeals Commission, depending on the nature of the rights or legal interests infringed, shall be resolved in accordance with the Civil Procedure Law or the Administrative Procedure Law. The internal regulatory enactments of the relevant sports organization must provide for an internal dispute resolution procedure.

2) The parties may, by mutual agreement, settle a civil dispute using alternative dispute resolution methods in a dispute resolution body of Latvian Olympic Committee or in a sports arbitration court. The establishment of the sports arbitration court and its procedure in accordance with the provisions of the Arbitration Law shall be decided by the Latvian

Olympic Committee and its members. The establishment of a dispute resolution body of Latvian Olympic Committee shall be determined by the Latvian Olympic Committee.”

The second group regarding the institute of sports law and its correlation with ADR:

1.7. Bearing in mind that nowadays the views of scholars in regards to sports law generally split to three positions, i.e. 1) sports law is not a separate legal branch and it will not become one in the nearest future, 2) although sports law is not a separate legal branch yet, there is a high probability that such law corpus will be formed soon, 3) sports law is already a separate legal branch, the Author believes that the second position is the most relevant to the current situation in Europe because the European Union acknowledges specifics of the sports industry and a growing number of topical problems in connection with commercialisation, commodification and politicisation of the sports industry. For instance, the Study on the Contribution of Sport to Economic Growth and Employment in the EU commissioned by the European Commission demonstrated that sports-related employment and gross value added amounted to 2.12 % and 1.76 % of the EU total, respectively according to the broad definition of sport. Such an acknowledgement contributed to the growing number of European policies and recommendations to the Member States in order to cover such areas as integrity of sport, economic dimension of sport and sport and society which indicates the path to the development of the legal field “European sports law”.

1.7.1. Also, a prerequisite to the formation of sports law as a separate branch of law is the generally accepted understanding that sports disputes are to be resolved in the specialised dispute resolution institutions “within the family of sport”. The establishing of specialised sports arbitration bodies as well as dispute resolution systems under the NOCs, the growing authority of the CAS and the development of its case law, which frequently is taken as a precedent, and often thought-out internal laws and regulation by the ISFs and NSOs clearly indicate the positive dynamics in the formation of the sports law legal branch.

1.7.2. Sports law is not a separate law field in Europe yet, it is rather an amalgam of interrelated legal disciplines involving such areas as contract, taxation, employment, competition and criminal law. Nevertheless, based on the above, the Author rates the probability of formation of the legal field “European sports law” as high.

1.8. Two important regulations on sports law with the so called “global element” are the Olympic Charter and the World Anti-Doping Code. The former is a private normative act with a strong constitutional character which is respected by all countries that adhere to the Olympic Movement, and the latter provides a framework for harmonising anti-doping

policies, rules and regulations within sports organisations and between governmental bodies around the world.

1.8.1. The Olympic Charter and the World Anti-Doping Code are the most obvious examples of *lex sportiva*, i.e. international laws developed by sports authorities. Also, *lex sportiva* covers the so-called sports law formed by the judges, e.g. the precedents of the CAS. Hence, *lex sportive*, being at the stage of active formation, can be called a “general clause” that is being fulfilled with values in the course of sports law development.

1.8.2. The rules of *lex sportiva* are not directly incorporated into national (local) sports laws, but are rather an obligation for the competent national authorities and federations to harmonise their laws and regulations with the rules of International Federations. In particular, national federations must monitor *lex sportiva* and integrate it into their internal legislation. The Author states that based on the internal documentation of Latvian sports federations, which is in free access, currently only a small part of sports federations in Latvia follow this principle, for instance, the Latvian Basketball Union, the Latvian Motorsport Federation

1.9. The sports industry is organised at international level independently of any form of national oversight, that is to say, modern sports law is a complex set of rules produced and implemented by the regulatory bodies: the special institutions and bodies, namely the International Sports Federations (ISFs) – private entities established under the laws of their domicile. The ISFs regulate the sports for which they are responsible, the relationship between the sports entities and the organisation of the events that may also have a cross-border element. Hence, there is a clear hierarchy and subordination which indicates the self-regulatory character of the international sports industry where, at the top of this pyramid, is the International Olympic Committee.

1.10. One of the latest documents on the EU sports policy based on the values proclaimed in the European Sports Charter, EU White Paper on Sports and all three EU Working Plans on Sports is the Conclusions of the Council and of the Representatives of the Governments of the Member States meeting within the Council on promoting the common values of the EU through sport (2018/C 196/06) that, among other policies, (1) address an invitation to take an action in implementing the common European sport values to three addressees: the Member States, European Commission and Sports Movement; (2) asks the Member States to encourage and, where possible, support sport organisations in strengthening good governance, within their organisations and, where appropriate, address these values in their ethical guidelines or equivalent documents. According to the Author, this document

indicates that in the European Union, sport is, first of all, considered to be an instrument to promote shared values throughout the union and, secondly, it indicates that the common sports values are to be established in the EU. Confirmation of this is also found in the following EU sports policies: Sport and Integrity, Sport and Economy, Sport and Society. The Author supposes that compliance with these guidelines will contribute to the development of internal dispute resolution procedures within the sports organisations in Latvia.

1.11. ADR methods, which include but are not limited to, arbitration, mediation, structured negotiations, dispute resolution by the ombudsman, MedArb, are widely used throughout Western Europe and the United States as a means to resolve sports disputes both within sport organisations and outside those.

1.11.1. The most popular ADR method in sports law is arbitration which is confirmed by practice and statistics of the Court of Arbitration for Sports and national sports arbitration bodies, such as the Sports Dispute Resolution Centre of Canada, Sport Resolutions UK.

1.11.2. However, mediation has the following characteristics: (1) voluntary nature; (2) the neutral mediator (mediator) lacks decision-making competence because he or she systematically facilitates communication between the parties with the aim of enabling the parties themselves to take responsibility for their dispute; (3) a flexible and self-determined approach that can take into account all aspects of the conflict regardless of their legal significance; (4) strict confidentiality: “without prejudice rule” and “mediation privilege”; (5) speed, is also considered an often applicable mechanism for resolving sports disputes. This statement is supported by the CAS and national sports arbitrations case law, as well as the United States and the French National Olympic Committee’s statutes and experience.

1.11.3. The goal of mediation is for the parties to reach a voluntary settlement which is then reduced to writing and becomes a contract²⁸⁸. In this process a neutral third party helps disputants to come to a consensus on their own²⁸⁹ by assisting the parties to find a resolution to their conflict in a sustainable and self-determined way²⁹⁰. Bearing in mind the above, as well as the vision of the former long-time president of the International Olympic Committee Juan Antonio Samaranch that sports disputes should be resolved “within the family of sports”, the Author concludes that mediation provided by the specialised sports dispute resolution institutions/bodies perfectly allows the disputants to preserve relationships

²⁸⁸ Stone, K. V. W. 2004. *Alternative Dispute Resolution. Encyclopedia of Legal History*. Research Paper 04-30. UCLA School of Law. p. 1.

²⁸⁹ The Editors 2012. Mediation secrets for better business negotiations. Harvard Law School Negotiation Special Report #7. p. 1. Available from: www.pon.harvard.edu [viewed 16.03.2015.].

²⁹⁰ Steffek, F. 2012. *Mediation in the European Union: An Introduction*. Cambridge. p.1-2.

good enough to support a healthy family environment. The characteristics of mediation that are considered to be the most beneficial in resolving sports disputes are speed, confidentiality and possibility to “expand the pie” not resting solely on the rule of general law that often does not correspond to the specifics of the sports industry.

1.12. Taking into account, on the one hand, an important mediation bonus, i.e. the control and authority of the parties and, on the other hand, a significant drawback, since in the absence of the desire of one of the parties no third party will impose the dispute resolution, a good alternative to mediation is MedArb where arbitration works as a “safety net” if a dispute cannot be resolved by means of mediation solely. According to the Author, such a “safety net” might perfectly fit to sports contracts and can be introduced and integrated to the dispute resolution procedures of sports organisations by means of the “multi-tier escalating clause”. MedArb, which brings the best of both worlds, is deservedly praised by the Sports Disputes Resolution Centre of Canada which successfully incorporates this dispute resolution method in its procedures.

1.13. The experience of Japan with ADR, which is an integral part of Japan’s social and cultural norms, proves the particular popularity and viability of these methods among people with highly developed common social responsibility and ethics which, according to the Author, confirms the idea that extrajudicial dispute resolution methods are a logical continuation of a society that is sharing common ideas and values, what the sports community constitutes of itself, hence ADR should be an integral part of sports law.

Suggestions regarding introducing sports law framework into the organisation and policy of Latvian sports, which is a prerequisite for the development of a system for resolving sports disputes, are as follows:

1. To amend Clause 4 of Article 3 of the Sports Law on the basic principles applicable to the sports field to read as follows:

“the principle of good governance which requires democratic governance structures, clear objectives, fair procedures, internal dispute resolution procedure, openness, cooperation with stakeholders, effective and sustainable regulation as well as clear levels of oversight and accountability in the organisation”.

2. To amend Article 10¹ of the Sports Law on the criteria and procedure for the recognition of a sports federation and include Clause 9 with additional criteria in the following wording:

“The activities of a sports federation are organised in accordance with the principle of good governance and the Articles of Association of a sports federation provide for an

internal dispute settlement procedure”.

3. To amend the goal of the action line “The Contribution of Culture and Sport to a Sustainable Society” stated in Clause 375 of the draft National Development Plan 2027 to read as follows:

“The physical abilities of Latvia’s high performance athletes, i.e. strength, endurance, speed, flexibility and agility, have already reached such a high level that further improvement of athletic performance requires finding as yet hidden reserves and gaining support in innovative technologies, equipment, methods and techniques. Therefore, applied research in engineering and technology that can support athletes in the production of innovative materials is a challenge. At the same time, the physical and psychological endurance and training of athletes must be ensured where a great role is given to the qualification of coaches and the provision of infrastructure not forgetting the change of generations to take over the established sports traditions, international practice and bring Latvia's name to the world. It is also necessary to develop a legal framework for sport that will contribute to the protection of the rights and interests of athletes”.

4. To amend the explanation of the term “high performance sport” in the Sports Policy Guidelines for the next planning period so that proper legal certainty is a criterion for high performance sport:

“**High performance sport** – training of young people (from the age of 15)²⁹¹, junior/cadet and adult/national team candidates and participants to represent the country and participate in international sports competitions with the aim of achieving high results, and everything related to the organisational, methodological, financial, legal, scientific, medical, technical, and other provisions of studies and training in accordance with the criteria of high performance sport”.

5. To amend the lines of action for achieving the sports policy objective “to contribute to the development of the system of training and competition for athletes” as defined in the Sports Policy Guidelines with the following Action Line No 6:

“To achieve the goal of the sports policy defined in the Guidelines, the following sub-goals were set: (1) to promote physical activity in population (especially children and young people), (2) to promote the development of the system of training and competition of athletes, (3) to improve the health care and medical supervision of children and young people with increased physical activity, high performance athletes and athletes with disabilities, (4)

²⁹¹ There are certain sports where the age of 14–15 is not considered to be the beginning of a high achievement sport, it must be from the age of 12.

to promote the availability and development of sports infrastructure, (5) to ensure the establishment of a sustainable sports financing system”.

To achieve the goal of the sports policy defined in the Guidelines, the following action lines were identified: (1) sufficient physical activity and understanding by the population of the need for physical activity to maintain and strengthen health, (2) improvement of the athlete training and competition system, (3) health care and medical supervision of athletes, (4) sports infrastructure, (5) alternatives to increasing funding for sport, (6) improvement of sports legislation and development of the sports dispute resolution system.

6. To include the lack of good governance and internal dispute resolution procedures in sport organisations to the list of “Formulation of Problems for the Solution of which it is Necessary to Implement a Certain Government Policy” when developing new policy planning documents on sport.

Third group regarding dispute resolution by specialised sports bodies:

1.14. Under the U.S. Code, the United States Olympic Committee shall (1) establish and maintain provisions in its constitution and bylaws for the swift and equitable resolution of disputes involving any of its members and relating to the opportunity of an amateur athlete, coach, trainer, manager, administrator, or official to participate in the Olympic Games, the Paralympic Games, the Pan-American Games, world championship competition, or other protected competition as defined in the constitution and bylaws of the USOC; (2) hire an ombudsman for athletes, to deal with individuals’ complaints against the USOC. The ombudsman has three main responsibilities, where one of them is assisting in mediating disputes. According to the Author’s analysis of the USOC’s internal laws, the USOC prescribed procedure for the resolution of disputes is established by way of interrelation of several normative acts and by-laws, it is well thought-out and available for the understanding of every individual. It is not overloaded with excess details what makes it easily accessible for athletes and other parties. Also, dispute resolution provided by the USOC is up-to-date and provides for a possibility to resolve a conflict by several ADR methods;

1.15. In its capacity as the representative of the French Sports Movement, one of the main purposes of the CNOSF is: to promote the unity of the Sports Movement, including sports federations, sports associations and companies affiliated with them and their licensees and other practitioners, to represent the Sports Movement, in particular, on occasions intended to contribute, directly or indirectly, to the development of sport or the social or societal

functions for which it is known, to facilitate the resolution of conflicts arising in the Sports Movement by means of conciliation or arbitration, and to take legal action to defend the collective interests of the Sports Movement. This purpose is not meant in the Olympic Charter as one of the obligatory functions of a NOC; therefore, the Author concludes that the CNOSF expanded its goals in pursuing the aim to achieve good governance and provide for ADR methods to resolve the disputes in the Sports Movement which complies with the European sports policy;

1.16. The French Sports Code provides for an ADR process at the CNOSF. This dispute resolution process is known as “conciliation”. The use of such proceedings depends on the common will of the parties involved (except in some cases where the conciliation before the CNOSF is mandatory prior to suing before civil or administrative courts). Hence, the role of an intermediary in sports disputes is delegated to the CNOSF in the national sports law.

1.16.1. According to Article L.141-4 of the French Sports Code, conciliation by the CNOSF is applicable in disputes arising during a sports activity, opposing licensees, sports agents, associations and sports companies and federations approved where conciliation is a non-contentious resolution procedure, also called amicable resolution. The referral for conciliation is a mandatory prerequisite for any contentious appeal when the conflict results from a decision taken by a sports federation in the exercise of its prerogatives of public authority or in application of its statutes. Hence, in cases prescribed by law, the use of conciliation is not an option, but a legal requirement.

1.16.2. If the parties do not arrive at a definitive agreement, the conciliator-designate is bound, under the French Sports Code, to notify the parties of the conciliation measures by means of a Motivated Conciliation Proposal in law and equity (fairness as well as sporting ethics play an important role in the conciliator's assessment of a dispute). Hence, the conciliation procedure under the CNOSF has an element of arbitration since, if the parties do not reach an agreement, the conciliator produces a conciliation proposal. Such a model is similar to MedArb.

1.17. The institute of ADR is also present in French constitutional law as working on the constitutional amendments in 1992 the Committee delivered a 70-page report with its recommendations among which was a recommendation that an express provision should be made in the Constitution for the appointment of the mediator (ombudsman). Today, the provisions on the ombudsman, i.e. defender of rights, can be found in Article 71-1 (Title XI-bis) of the French Constitution. This illustrates that the institute of ADR in French sports

follows vertically from the Constitution to the special law on sports which makes this EU country an example of well-established good governance in sport. France's sports organisation at the state level, as well as its comprehensive laws on sports, might serve as a good example to the Latvian legislator to strive for. Also, the CSNOF's role as a facilitator of the resolution of conflicts arising in the Sports Movement by means of conciliation or arbitration is considered to be crucial for the protection of and respect for the athletes' rights.

1.18. In Latvia, there is no national sports institution that clearly offers mediation or any other ADR method for resolving sports disputes arising between sports organisations in the context of Article 10 of the Sports Law and between such sports organisations and athletes;

1.18.1. In the LOC's activities, no dispute resolution mechanisms of any kind are provided for. The only dispute resolution or appeal function is held by the LOC's EC under Clause 6.3.4 of the Regulations on the Organisational, Administrative, Financial and Economic Activities of the Institutions of the Latvian Olympic Committee according to which decisions on the relevance and admissibility of requests for information as well as the responses to requests, if the requester considers that they do not unreasonably contain the requested information, may be appealed to the LOC's Executive Committee within 21 (twenty-one) days of receipt of the decision or response. The LOC's Executive Committee will consider such a complaint as a matter of routine at a regular meeting thereof. The Regulations do not specify which complaint handling mechanisms are used by the LOC's EC when reviewing a complaint;

1.18.2. The LOC is a good candidate to which the legislator could delegate the function of developing and integrating the principle of good governance in Latvian sport which would undoubtedly include the function of facilitating the resolution of disputes between sports subjects. Likewise, the LOC dispute resolution body might serve as an appellate instance in Latvia to allow athletes to submit their claims after they have undergone the internal dispute resolution procedure in the national federation, primarily because of its reputation as a guardian of the Olympic spirit and values;

1.19. The LSFC's Dispute Resolution Committee was operating until 2018 and terminated its activities subject to amendments to the Sports Law (effective from 01 July 2018) because, under Article 11⁵ of the Sports Law, the Committee's functions were taken over by the Appeals Committee established by the Cabinet of Ministers with the aim of reviewing athletes' complaints about the decisions of the Latvian Anti-Doping Bureau, the Therapeutic Use Exemption Committee and the Disciplinary Anti-Doping Committee. In

turn, the competence of both Committees included and will include doping-related sports disputes only. This approach reflects the very narrow approach of the legislator to the concept of “dispute” in the sports sector. However, the composition of the Appeals Committee under Order No 666 of the Cabinet of Ministers of 12 December 2018 is assessed quite positively since it includes several sports specialists from various organisations; a similar principle needs to be applied when determining, for instance, the composition of a dispute resolution body in the LOC;

1.20. The creation of special sports arbitration in Latvia, that also applies mediation and MedArb dispute resolution techniques, is considered to be an optimal though probably costly decision since such an institution would be completely independent and resolve all kinds of sports disputes possible to be resolved by way of ADR, i.e. excluding doping issues, match-fixing and corruption. Also, the creation of a LOC dispute resolution body is a good option, but its impartiality in some cases might be doubted as a number of sports disputes involve the decisions of the Olympic Committee itself. However, the examples of the countries the Olympic Committees of which have such dispute resolution bodies, i.e. USA and France, prove this proposal to be realistic and promoting good governance in sport;

1.21. A number of international and non-governmental sport institutions offer mediation as an ADR method for sports-related disputes. The most well known are the CAS, the UK Sports Dispute Resolution Panel, the Sports Dispute Resolution Centre of Canada and, presumably, the Players’ Status Committee together with the Dispute Resolution Chamber of FIFA;

1.22. The competence of the FIFA’s Dispute Resolution Chamber extends to cases involving employment disputes with international status, as well as disputes regarding payment of training compensation and solidarity contribution. In general, the DRC decides on basic issues such as breach of contract for a legitimate reason or not.

1.22.1. The DRC provides arbitration and dispute resolution on the basis of equal representation of players and clubs and an independent chairman. In Articles 23–24 of the Regulations on the Status and Transfer of Players, the process of such dispute resolution is called “the adjudication” requiring, depending on the specifics of the case, single or three judges. At the moment, here is no reason to believe that the Player’s Status Committee and the DRC use mediation as a dispute resolution method, at least officially. However, FIFA’s Circular No 769 (2001) on the Revised FIFA Regulations for the Status and Transfer of Players confirms that the idea to resolve disputes by mediation was present along with the

idea to establish an entirely independent arbitration tribunal for football with its own infrastructure and administration;

1.22.2. According to Circular No 827 of December 2002, FIFA abandoned the above ideas because of the lack of financial and administrative resources. In the same document, FIFA agreed to recognise the jurisdiction of the CAS. So, since 2002, the CAS deals with the decisions of the DRC and the Committee as a body of appeal in accordance with the FIFA Statutes and subject to the specific provisions of the individual FIFA Regulations.

Suggestions regarding the prerequisites for the development in Latvia of specialised sports dispute resolution bodies:

1. The Latvian National Sports Council, exercising its rights under Clause 3 of Regulations No 422 of the Cabinet of Ministers of 29 July 2003 Regulations of the Latvian National Sports Council, namely, to establish consulting committees and working groups, as well as to invite experts to analyse sports-related issues and performing the tasks specified in Article 9 (3) of the Sports Law, is to set up a committee and/or working group on the establishment of sports arbitration and/or the establishment of a dispute resolution body in the LOC, as well as on the development of the sports law institute in Latvia, their topicalities and Latvian sports regulatory development. When establishing a working group, it is recommended to invite experts from abroad with a developed sports regulatory framework, sports dispute resolution system and experience in sports dispute resolution, further providing findings to the LOC and the Sports Department of the Ministry of Education and Science being the public authority responsible for sports policy.

2. To ensure that Latvia has mediators/intermediaries with substantive knowledge in the sports industry, a Part A course on sports law with 6 ECTS²⁹² credits should be integrated in the programmes of the Latvian Academy of Sport Education providing a diploma of higher pedagogical education in the sports study programme and of Rīga Stradiņš University providing a diploma of fitness instructor in the study direction Education, Pedagogy and Sport. Thereby, a sports specialist, as defined in Clause 11 of Regulations No 77 of the Cabinet of Ministers Regulations Regarding the Procedures for the Certification of Sports Specialists and the Requirements Specified for a Sports Specialist, would also be a person with the knowledge and understanding of sports law, the principles of *lex sportiva*, the CAS's decisions and ADR in sports.

²⁹² European Credit and Accumulation System

Publications and reports on the topic of Doctoral Thesis

Oral presentations

1. What is Sports law. International Conference of the University of Economics and Culture “Emerging Trends in Economics, Culture and Humanities” (etECH2019), Riga 2020, Latvia.
2. ADR and mediation by the French National Olympic and Sports Committee. Rīga Stradiņš University International scientific-practical conferences “Topical Issues of the Legal System”, Riga 2020, Latvia.
3. European Dimension of Sports. 25th International Association of Sports Law’s Sports Law Congress “Professionalism in Sports Activities, International Sports Rules/Sports Law Code”, Athens 2019, Greece.
4. The Topicality of Sports Law. International Conference of the University of Economics and Culture “Emerging Trends in Economics, Culture and Humanities” (etECH2019), Riga 2019, Latvia.
5. Mediation and Sport Disputes. International Conference of Rīga Stradiņš University “Legal Problems in Latvia’s Centennial: Retrospective and Perspective”, Riga 2018, Latvia.
6. Mediation Process: Identifying Mediation Stages. International Conference of the University of Economics and Culture “Emerging Trends in Economics, Culture and Humanities” (etECH2018), Riga 2018, Latvia.
7. Mediator’s Personality in Specific Legal Disputes: Sports-Related Disputes and Healthcare-Related Disputes. International Research-to-Practice Conference of Rīga Stradiņš University “Trends in Modernisation of the Legal System: Reality and Future Prospects”, Riga 2017, Latvia.
8. Latvian Sports Law: Role of the Latvian Sports Federation Council in Achieving the Objectives of Sporta likums. 23rd International Association of Sports Law’s Sports Law Congress “Responsibility in Sports Activities: Law, Jurisdiction and Ethics”, 2017 Rome, Italy.
9. The Concept and Development of Sports Law. 59th International Scientific Conference of the University of Daugavpils 2017, Latvia.
10. The Relevance of the Sports Law of the Republic of Latvia. International Scientific Student Conference “Modern Trends in the Development of Sports Law”, National Research University “Higher School of Economics”, Moscow 2017, Russia.

11. Legal Aspects of Regulation of Sports Policy in Latvia. 22nd International Association of Sports Law's Sports Law Congress "Mega Events in Sport: Legal Environment", Russian International Olympic University, Sochi 2016, Russia.
12. EU Sports Law: the Effect of the Bosman Case. International Student Conference "Health and Social Sciences", Rīga Stradiņš University 2016, Latvia.
13. Mediation by Internationally Recognised Sports Bodies: Sports Dispute Resolution Centre of Canada and UK Sport Resolutions Service. 58th International Scientific Conference of the University of Daugavpils, University of Daugavpils 2016, Latvia.
14. Mediation by Internationally Recognised Sports Bodies: CAS and FIFA. Baltic International Academy, University of Daugavpils, Rīga Stradiņš University, Masaryk University, 4th International Research-to-Practice Conference "Transformation Process in Law, Regional Economy and Economic Policy: Topical Issues of Economic-Political and Legal Relationships", Riga 2015, Latvia.

Scientific publications in internationally reviewed collections of scientific texts and peer-reviewed scientific publications

1. Kameņeckā-Usova, M., Zalcmane, K. 2019. The Cost of Policing Football Matches in Latvia. *Proceedings of the 33rd International Business Information Management Association Conference, IBIMA 2019: Education Excellence and Innovation Management through Vision 2020*, 6633-6641; SCOPUS.
2. Kameņeckā-Usova, M. 2018. Resolution of Sports-Related Disputes: the United States Olympic Committee. *Conference Proceedings of SGEM Scientific Conference on Social Sciences and Arts, Vienna*; Clarivate Analytics, ISI Web of Science (former Thomson Reuters, ISI Web of Knowledge), EBSCOHost, ProQuest, ELSEVIER and is in the process of evaluation and indexation by SCOPUS.
3. Kameņeckā-Usova, M., Zalcmane, K. 2018. The Problematics of Sports Law in Latvia: Civil and Criminal Law Statutory Acts Perspective. *Conference Proceedings of Rezekne Academy of Technologies, International Scientific Conference "Society, Integration, Education – SIE2018"*; WOS.
4. Kameņeckā-Usova, M., Palkova, K. 2017. Mediators's Personality in Specific Legal Disputes: Sports-Related Disputes and Healthcare-Related Disputes. *Acta Universitatis Danubius. Juridica*. 13(2), 5–18; EBSCOhost, HEINONLINE, Genamics.
5. Kameņeckā-Usova, M. 2017. Mediācija un sporta strīdi (Eng., Mediation and sports disputes). *Socrates*. No 3 (9).

6. Kameņeckā-Usova, M. 2016. Legal Aspects of Regulation of Sports Policy in Latvia. *Lex Sportiva Journal of the International Sports Law Association*. IV(1–2), 121–127.
7. Kameņeckā-Usova, M. 2016. Mediation by Internationally Recognised Sports Bodies: CAS and FIFA. *4th International Research-to-Practice Conference “The Transformation Process in Law, Regional Economy and Policy” proceedings*. Riga: BSA
8. Kameņeckā-Usova, M. 2016. Mediation by Internationally Recognised Sports Bodies: Sports Dispute Resolution Centre of Canada and Sport Resolutions UK. *Conference proceedings of the 58th International Scientific Conference of the University of Daugavpils*.
9. Kameņeckā-Usova, M. 2015. Confidentiality in Mediation. *Socrates*. No. 2.
10. Kameņeckā-Usova, M. 2015. Institute of Mediation. *Conference proceedings of the 57th International Scientific Conference of the University of Daugavpils*.
11. Kameņeckā-Usova, M. 2015. Kā pareizi saprast mediāciju? (Eng., How to properly understand mediation?) *Jurista Vārds (Lawyer's Word)*. 21(873).
12. Kameņeckā-Usova, M. 2014. Mediation for Resolving Family Disputes. 5th International Interdisciplinary Scientific Conference “Society. Health. Welfare. Family Well-Being and Human Capital Improvement in Changing Society: Strategy and Practice”. Abstracts. Rīga Stradiņš University. Riga; WOS.
13. Kameņeckā-Usova, M., Matvičuka, K. 2014. Alternative Dispute Resolution in Sports Disputes: Football Hooliganism. *International Association of Sports Law Lex Sportiva Journal*. II(1).

List of references

Literature

1. Beloff, M., Kerr, T., Demetriou, M. 1999. *Sports Law*. Hart, Oxford.
2. Betto, J.-G. and Canivet, A. 2012. *EU Mediation Law and Practice*. USA: Oxford University Press.
3. Blackshaw, I. S. 2002. *Mediating sports disputes. National and International Perspectives*. The Hague: T.M.C. Asser Instituut.
4. Blake, S., Browne, J., Sime, S. 2014. *A practical approach to Alternative Dispute Resolution*. 3rd ed. Oxford University Press.
5. Bolis, J., Gereiša, Z. 2015. *Mediācija un sarunas*. Rīga: Juridiskā koledža.
6. Brown, H., Marriott, A. 2011. *ADR: principles and practice*. 3rd ed. Sweet & Maxwell.
7. Casini, L. 2012. *The Making of a Lex Sportiva by the Court of Arbitration for Sport. Lex Sportiva: What is Sport Law?* The Hague: ASSER Institute Sports Law Series.
8. Chappelet, J.-L., Kübler-Mabbott, B. 2008. *The International Olympic Committee and the Olympic System: The governance of world sport*. Routledge.
9. *Civilprocesa likuma komentāri*. I daļa (1.–28. nodaļa). Otrās papildinātais izdevums. Tiesu namu aģentūra.
10. Cozzillio, M. J., Levinstein, M. S. 1997. *Sports law*. Carolina Academic Press.
11. Danner, R. A., Bernal, M.-L. H. 1994. *Introduction to Foreign Legal Systems*. Oceana Publications, Inc.
12. David, P. 2008. *A Guide to the World Anti-Doping Code. A Fight for the Spirit of Sport*. Cambridge: Cambridge University Press.
13. De Palo, G., Trevor, M. B., eds. 2012. *EU Mediation Law and Practice*. Oxford University Press.
14. Dickson, B. 1994. *Introduction to French Law*. London: Pitman Publishing.
15. Dišlers, K. 1938. *Ievads administratīvo tiesību zinātnē*. Rīga: LU.
16. Fisher, R., Ury, W. 2012. *Getting to YES. Negotiating an agreement without giving in*. Random House Business Books.
17. Gardiner, S., et al. 1998. *Sports Law*. London: Cavendish publishing limited
18. Gardiner, S., James, M., et al. 2006. *Sports Law*. 3rd ed. Cavendish publishing limited.
19. Horstmeier, G. 2013. *Das neue Mediationsgesetz*. München: C.H. Beck
20. Lewis, C. 1992. *Judicial Remedies in Public Law*. London: Sweet & Maxwell.
21. Mayer, B. 2004. *Beyond Neutrality: Confronting the Crisis in Conflict Resolution*. San Francisco: Jossey-Bass.
22. Newmark, C. *Is a Mediation Effective for Resolving Sport Disputes*. The Hague: T.M.C. Asser press
23. Panagiotopoulos, D. 1999. *Sports Law, a special branch of Sports Science*. In: *Gr. Αθλητική Δβκαιο ειδικής κλῶδος της επιστῆμης* in: *Professional Sports Activities*, 1st Sports Law Congress EKEAD Ellin: Athens.
24. Panagiotopoulos, D. 2002. *Justica Desportiva na Vida do Desporto National e International*. Revista Brasileira de Direito Desportivo. No 2.
25. Panagiotopoulos, D. 2011. *Lex Sportiva & Olympica. Praxis and Theory*. Athens: Ant Sakkoulas.
26. Practical Law multi-jurisdictional guide 2012/13. *Dispute resolution Volume I*. Country Q & A Germany.
27. Rau, A. S., Sherman, E. F., Peppet, S. R. 2002. *Mediation and other non-binding ADR processes*. 2nd ed. New York: Foundation Press.
28. Routledge, Abingdon, and Mestre, A. M. 2009. *The Law of the Olympic Games*. The Hague: T. M. C. Asser.

29. Scelles, N. 2017. France: *Organisation of Sport and Policy towards Sport Federations*. In: Scheerder, J., Willem, A., Claes, E. (eds). *Sport Policy Systems and Sport Federations*. London: Palgrave Macmillan.
30. Steffek, F. 2012. *Mediation in the European Union: An Introduction*. Cambridge press.
31. Stone, K. V. W. 2004. *Alternative Dispute Resolution. Encyclopedia of Legal History*. Research Paper 04-30. UCLA School of Law.
32. Weistart, J., Lowell, C. 1979. *The Law of Sports*. Charlottesville, Va.: Bobbs-Merrill Co., Inc.
33. Zalcmane, K., Kamenecka-Usova, M. 2018. *The Problematics of Sport Law in Latvia: Civil and Criminal Law Statutory Acts Perspective*. Proceedings of the International Scientific Conference "Society. Integration. Education". Vol. 4.
34. Алексеев, С. В. 2012. *Спортивное право России, Правовые основы физической культуры и спорта*. Москва: Юнити-Дана
35. Погосян, Е. В. 2011. *Формы разрешения спортивных споров: монография*. Россия: Волтерс Клувер.
36. Прокопец, М., Рогачев, Д., де Вегер, Ф. 2012. *Разрешение футбольных споров*. Москва: Статут.
37. Рулан, Н. 2005. *Историческое введение в право*. Марсель: Nota Bene.
38. Юрлов, С. 2015. *Спортивные споры и их разрешение. Теория и практика*. Россия: Инфотропик Медиа.

Periodicals

39. Blankenship, T. 2006. Developing your ADR Attitude: Med-Arb, a Template for Adaptive ADR. *Tennessee Bar Journal*. 35.
40. Carter, B. 1999. Introduction: What Makes a "Field" a Field? *IVA.J.SPORTS* 234, 245.
41. Davis, T. 2001. What Is Sports Law? *11 Marq. Sports*, 211.
42. Godin, P. D. 01.2017. Sport Mediation: Mediating High-Performance Sports Disputes. *Negotiation Journal*.
43. Grayson E. 1993. Inaugural presentation of former President of the British Association for Sport and Law. *Sport and the Law Journal*.
44. Kameņeckā-Usova, M. 2015. Confidentiality in Mediation. *Socrates*. 2(2).
45. Kamenecka-Usova, M., Palkova, K. 2017. Mediator's Personality in Specific Legal Disputes: Sports Related Disputes and Healthcare Related Disputes. *Acta Universitatis Danubius. Juridica*. 13(2).
46. Kucena, I., Medina, L. 2019. Būtiskākās izmaiņas tiesu sistēmā un tiesību politikas jomā. *Jurista Vārds*. 4(1062).
47. Malhotra, D. The New Conflict Management. Effective Conflict Resolution Strategies to Avoid Litigation. Negotiation Special report #11. *Harvard Law School press*
48. Matthew, J. M. 2008. Legal protection of Sports Participation Opportunities in the United States of America. *The Official News Letter of the National Sports Law Institute*. 19(4).
49. Nafziger, J. 2002. Dispute Resolution In The Arena of International Sports Competition. *The American Journal of Comparative Law*. Vol. 50.
50. Panagiotopoulos, D. 2014. In Sports Activities when there is Ludica, Lex is Not, but when Lex is, then only Lex Sportiva is!!! As a category of Sports Law. *e-Lex Sportiva Journal*. II(1), 12.
51. Sandu, C. 2015. ADR in Sport Disputes: Should Mediation be used over Arbitration? *Conflict Studies Quarterly*. Issue 11, 57–68.
52. Shropshire, K. L. 1998. Introduction: Sports Law? *Am. Bus.* 35, 181, 182.
53. Steffek, F. 2012. Mediation in the European Union: An Introduction. *Cambridge press*, 1–2.

54. Weatherill, S. 2011. EU Sports Law: the effect of the Lisbon Treaty. *University of Oxford, Legal Research Paper Series*. Paper No 3/2011.
55. Каменков, В. 2009. Понятие и разрешение спортивных споров в мире и в Беларуси. *Арбитражный и гражданский процесс*. № 8, 36.
56. Шевченко, О. А. 2015. Сравнительно-правовой анализ российского и зарубежного законодательства в сфере спортивной медиации. *Право и государство: теория и практика*. № 2.

Internet sources

57. Model Standards of Conduct. Available from: http://www.mediate.com/articles/model_standards_of_conflict.cfm [viewed 10.05.2018.]
58. Alrashdan, A. M. The success of mediation: Neutrality, confidentiality, and mediators' conduct. Available from: <http://ssrn.com/abstract=2152072> [viewed 10.06.2015.].
59. American Bar Association & American Arbitration Association & Association for Conflict Resolution. Available from: <https://www.adr.org/Mediation> [viewed 14.07.2017.]
60. Bārdiņš, G. Dialoga loma tiesas spriešanā. Available from: https://dspace.lu.lv/dspace/bitstream/handle/7/31321/298-51343-Bardins_Gatis_gb07033.pdf?sequence=1&isAllowed=y [viewed 27.04.2020.]
61. Benjamin R. The Natural History of Negotiation and Mediation: The Evolution of Negotiative Behaviors, Rituals and Approches. Available from: www.mediate.com/articles/NaturalHistory.cfm [viewed 02.03.2018.]
62. Blackshaw, I. The Court of Arbitration for Sport: An International Forum for Settling Disputes Effectively 'Within the Family of Sport'. Interventions. Available from: www.entsportslawjournal.com/articles/abstract/10.16997/eslj.139/ [viewed 13.10.2017.].
63. Brand, N. 1999. Choosing the "Expert" Mediator. Available from: <http://www.mediate.com/articles/nbrand.cfm> [viewed 12.09.2018.].
64. CLOUT Bulletin. Available from: http://cedep.files.wordpress.com/2009/02/clout-bulletin_feb09_final.pdf [viewed 23.08.2019.]
65. Court of Arbitration for Sport. Available from: https://www.tas-cas.org/fileadmin/user_upload/Media_Release_3940.pdf [viewed 07.11.2015.].
66. Court of Arbitration for Sport. Information on CAS. Available from: <http://www.tas-cas.org/en/general-information/frequently-asked-questions.html> [viewed 07.11.2015.].
67. Court of Arbitration for Sport. List of arbitrators. Available from: <https://www.tas-cas.org/en/arbitration/liste-des-arbitres-liste-generale.html?GenSlct=2&nmIpt=&nltSlc%5B%5D=202> [viewed 08.11.2015.].
68. Cross-Sectoral Coordination Center of the Republic of Latvia. Available from: <https://www.pkc.gov.lv/en/about-us> [viewed 23.08.2019.].
69. Currie, C. Should A Mediator Also Be An Attorney? Available from: <http://www.mediate.com/articles/currie.cfm> [viewed 18.11.2013.].
70. *Encyclopaedia Britannica*. Available from: <https://www.britannica.com/topic/perestroika-Soviet-government-policy> [viewed 30.10.2016.].
71. EUR-Lex. Available from: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=uriserv%3AOJ.C_.2018.196.01.0023.01.ENG [viewed 05.06.2015.].
72. EUR-Lex. The summary of the Mediation Directive. Available from: http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_civil_matters/l33251_en.htm on 9.06.2015 [viewed 05.06.2015.].
73. European Commission. Available from: http://europa.eu/rapid/press-release_IP-95-1411_en.htm [viewed 20.01.2016.].

74. European Justice. Available from: https://e-justice.europa.eu/content_member_state_law-6-lv-en.do?init=true&member=1 [viewed 22.01.2016.].
75. European Parliament. Available from: [https://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL-JURI_ET\(2014\)493042](https://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL-JURI_ET(2014)493042)
76. European Union. Available from: https://europa.eu/european-union/law/treaties_en [viewed 15.08.2019.].
77. FIFA Dispute Resolution System. Available from: <http://www.fifa.com/governance/dispute-resolution-system/index.html> [viewed 11.2015.].
78. FIFA Rules Governing the Procedures of the Players Status Committee and the Dispute Resolution Chamber from May 2008. Available from: <http://www.fifa.com/about-fifa/official-documents/law-regulations/index.html> [viewed 11.2015.].
79. France Olimpique. Available from: https://www.franceolympique.com/art/3927-management_of_french_international_sports_relations_entrusted_to_the_sports_....html [viewed 01.07. 2020.].
80. Funken, K. Alternative Dispute Resolution in Japan. June 2003. Univ. of Munich School of Law. Working Paper No. 24. Available from: <https://ssrn.com/abstract=458001> or <http://dx.doi.org/10.2139/ssrn.458001> [viewed 11.04.2020.].
81. German Institution of Arbitration (DIS). Available from: www.dis-arb.de [viewed 06.03. 2019.].
82. Goodrum, N. Mediation in sports disputes: lessons from the UK. Available from: www.lawinsport.com/articles/regulation-a-governance/item/mediation-in-sports-disputes-lessons-from-the-uk?highlight=WyJnb29kcjVtIl0 [viewed 15.10.2017.].
83. Government of Ireland. National Sports Policy 2018–2027. Available from: <https://assets.gov.ie/15979/04e0f52cee5f47ee9c01003cf559e98d.pdf> [viewed 11.11.2019.].
84. Hesse, V. Is mediation suitable to resolve sport related disputes? Available from: www.lawinsport.com/articles/item/is-meditation-a-suitable-to-resolve-sports-related-disputes?high-light=WyJoZXNzZSjd [viewed 15.10.2017.].
85. Het Belgisch Arbitragehof voor de Sport. Available from: <http://www.bas-cbas.be/index.php> [viewed 27.10.2019.].
86. House of Commons. Culture, Media and Sport Committee. European Commission White Paper on Sport. Seventh Report of Session 2007–08. *Report, together with formal minutes, oral and written evidence. Ordered by The House of Commons to be printed 8 May 2008* HC 347. Published on 14 May 2008 by authority of the House of Commons London: The Stationery Office Limited. Available from: <https://publications.parliament.uk/pa/cm200708/cmselect/cmcumeds/347/347.pdf> [viewed 15.08.2019.].
87. In Brief. Available from: <http://www.inbrief.co.uk/football-law/bosman-decision-football-transfers.htm> [viewed 20.01.2016.].
88. International Climbing and Mountaineering Federation. Available from: https://www.theuiaa.org/documents/members/AoA%20Seoul%202015_Amendments_Final_2018.pdf [viewed 09.03.2020.].
89. Johnston E. A short history of Mediation. Available from: <http://cfrmediation.com/a-short-history-of-mediation/> [viewed 10.12. 2015.].
90. Civil Conciliation Act. Available from: file:///Users/marinakamenecka/Downloads/s26Aa002220207en5.0_h16A152.pdf [viewed 17.09. 2017.].
91. Koo A. K. C. Confidentiality of mediation communications. Available from: <http://ssrn.com/abstract=17389077> [viewed 07.06.2015.].

92. Latvian Olympic Committee Charter. Available from: <http://olimpiade.lv/lv/lok/statuti> [viewed 01.11.2016.].
93. Latvijas Airēšanas federācija. Available from: <http://www.rowing.lv/index.php?p=5380&lang=1173&pp=6631> [viewed 07.02.2020.].
94. Latvijas Antidopinga birojs. 2011. gada 27. decembra Antidopinga pasākumu metodiskie norādījumi Nr. 1-5/4. Available from: http://antidopings.lv/uploads/2012/SMVA_Antidopinga_noradijumi/SMVA_Antidoping_LAT_met_noradijumi.pdf [viewed 07.02.2020.].
95. Latvijas Basketbola savienība. Available from: https://basket.lv/documents/84d95-lbs_apelacijas_komisijas_nolikums.pdf [viewed 07.02.2020.].
96. Latvijas Hokeja federācija. Available from: <https://lhf.lv/files/yVf2L5IPubjKfzRmERBa.pdf> [viewed 07.02.2020.].
97. Latvijas Institūts. Available from: <http://www.li.lv/en/> [viewed 28.10.2016.].
98. Latvijas Motosporta federācija. Available from: https://www.lamsf.lv/wp-content/uploads/2019/09/sporta_kodekss_060919.pdf 10.2 [viewed 07.02.2020.].
99. Latvijas Motosporta federācija. Available from: https://www.lamsf.lv/wp-content/uploads/2019/03/DAK_lemums_motososeja_2019.pdf [viewed 07.02.2020.].
100. Latvijas Olimpiskā Komiteja. Available from: <https://www.olimpiade.lv/lv/lok/statuti> [viewed 10.02.2020.].
101. Latvijas Sporta federāciju padomes Komisijas (t. sk. LSFP Strīdu izskatīšanas (Apelācijas) komisija). Available from: <http://www.lsf.lv/lsfp/komisijas> [viewed 09.04.2017.].
102. Latvijas Sporta federāciju padomes statūti. Available from: <http://www.lsf.lv/lsfp/statuti> [viewed 09.04.2017.].
103. Latvijas Vēstnesis. Available from: <https://www.vestnesis.lv/op/2014/108.1> [viewed 10.04.2016.].
104. Legifrance. Available from: <https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006071318> [viewed 09.04.2020.].
105. Lempereu, A. P., Slifka, A. B. Identifying Some Obstacles To A Successful Mediation Process. Available from: <https://ssrn.com/abstract=1949463> or <http://dx.doi.org/10.2139/ssrn.1949463> [viewed 09.12.2019.].
106. Liholaja. 2009. Izlīgums un taisnīgs krimināltiesisko attiecību noregulējums. *Jurista Vārds*. Nr. 27. Available from: <http://www.juristavards.lv/index.php?menu=DOC&id=194386> [viewed 25.03.2020.].
107. Litvins, G. Directions and perspectives of mediation development. Available from: https://www.apgads.lu.lv/fileadmin/user_upload/lu_portal/apgads/PDF/Juridiskas-konferences/LUJFZK-7-2019/iscflul-7_2019_Ties-zin-uzd-noz-nak_23.pdf [viewed 25.03.2020.].
108. Mediation: The six stages. Available from: <https://www.nolo.com/legal-encyclopedia/mediation-six-stages-30252.html> [viewed 21.11.2019.].
109. Olympic Encyclopedia. Available from: <http://www.olimpiade.lv/upload/content/olympic-encyclopedia-buklets-2016.pdf> [viewed 23.02.2020.].
110. Olympic Charter. Available from: https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/General/EN-Olympic-Charter.pdf#_ga=2.216580689.692019136.1592314714-2111122571.1563792261 [viewed 05.03. 2018.].
111. Panagiotopoulos, D. Aspects of Sports Law and Lex Sportiva. Available from: <https://ar.ijeditores.com/articulos.php?idarticulo=64965> [viewed 14.08.2019.].

112. Policy Planning Guidelines. Available from: https://www.mk.gov.lv/sites/default/files/editor/policy_planning_guidlines.pdf [viewed 23.08.2019.].
113. POLSIS: Policy planning documents database. Available from: <http://polsis.mk.gov.lv/documents/4599> [viewed 30.10.2016.].
114. Program on negotiation. Harvard Law School. *Mediation secrets for better business negotiations*. Harvard Law School Negotiation Special Report #7. p.1. Available from: www.pon.harvard.edu [viewed 16.03.2015.].
115. Spangler, B. 2003. Integrative or Interest-Based Bargaining. Available from: <http://www.beyondintractability.org/essay/interest-based-bargaining> [viewed 16.03.2015.].
116. Special Eurobarometer. 2004. The Citizens of the European Union and Sport. [viewed 13.08.2019.].
117. Sport Dispute Resolution Centre of Canada. Available from: <http://www.crdsc-sdrcc.ca/eng/home> [viewed 01.03.2016.].
118. Sport Resolutions. Available from: <http://www.sportresolutions.co.uk/about-us/who-we-are/overview> [viewed 19.07.2016.].
119. Stepp, J. A. How Does The Mediation Process Work? Available from: <https://www.mediate.com/articles/steppJ.cfm> [viewed 25.03.2017.].
120. The official website of the American Arbitration Association. Available from: <https://www.adr.org> [viewed 10.02.2018.].
121. The official website of the CNOSF. Available from: <https://international.franceolympique.com/international/actus/5179-presentation.html> [viewed 19.04.2019.].
122. The official website of the TEAM USA. Available from: <https://www.teamusa.org/about-the-usoc> [viewed 10.02.2018.].
123. The Sports Law review. 4th ed. Available from: <https://thelawreviews.co.uk/edition/the-sports-law-review-edition-4/1177316/france> [viewed 19.04.2019.].
124. van Soye, S. An Introduction to the Five Stages of Mediation. Available from: <https://www.adrtimes.com/library/an-introduction-to-the-five-stages-of-mediation> [viewed 21.01.2020.].
125. World Rowing. Available from: http://www.worldrowing.com/mm/Document/General/General/13/58/39/FISArulebookEN2019web_Neutral.pdf [viewed 07.01.2020.].
126. World Anti-Doping Code. Available from https://www.wada-ama.org/sites/default/files/resources/files/wada_anti-doping_code_2018_english_final.pdf [viewed 15.09.2019.].
127. Российская Федерация. Федеральный закон. Available from: <http://pravo.gov.ru/proxy/ips/?docbody=&nd=102118584> [viewed 20.04.2020.].
128. Российский футбольный союз. Available from: <https://rfs.ru/subject/1/committees/19> [viewed 18.04.2020.].

Regulatory enactments

129. Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community. *Official Journal of the European Union*, 17.12.2007, C 306/1
130. Regulation (EC) No 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations (Rome I). *Official Journal of the European Union*, 04.07.2008, L 177/6

131. Regulation (EU) No 1215/2012 of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. *Official Journal of the European Union*, 20.12.2012, L 351/1
132. Directive (EU) 2008/52/EC on certain aspects of mediation in civil and commercial matters. *Official Journal of the European Union*, 24.05.2008, L 136.
133. Civilprocesa likums. LV likums. Latvijas Vēstnesis. 326/330, 3.11.1998.
134. Autortiesību likums. LV likums. Latvijas Vēstnesis. 148/150, 27.04.2000.
135. Sporta likums. LV likums. Latvijas Vēstnesis. 165, 13.11.2002.
136. Mediācijas likums. LV likums. Latvijas Vēstnesis. 108, 4.06.2014.
137. Disciplinārās antidopinga komisijas un Terapeitiskās lietošanas izņēmumu komisijas izveidošanas kārtība: Ministru kabineta noteikumi Nr. 440. Latvijas Vēstnesis. 147, 26.07.2018.
138. Nacionālie antidopinga noteikumi: Ministru kabineta noteikumi Nr. 448. Latvijas Vēstnesis. 196, 26.09.2019.
139. Sportistu un bērnu ar paaugstinātu fizisko slodzi veselības aprūpes un medicīniskās uzraudzības kārtība: Ministru kabineta noteikumi Nr. 594. Latvijas Vēstnesis. 174, 8.09.2016.
140. Noteikumi par kārtību, kādā piešķiramas naudas balvas par izciliem sasniegumiem sportā, un naudas balvu apmēru: Ministru kabineta noteikumi Nr. 26. Latvijas Vēstnesis. 4, 6.01.2012.
141. Noteikumi par sporta speciālistu sertifikācijas kārtību un sporta speciālistam noteiktajām prasībām: Ministru kabineta noteikumi Nr. 77. Latvijas Vēstnesis. 16, 29.01.2010.
142. Noteikumi par sporta bāzu reģistrā iekļaujamās informācijas saturu un aktualizēšanas kārtību: Ministru kabineta noteikumi Nr. 76. Latvijas Vēstnesis. 16, 29.01.2010.
143. Sporta federāciju atzīšanas un atzīto sporta federāciju kontroles kārtība: Ministru kabineta noteikumi Nr. 1396. Latvijas Vēstnesis. 195, 11.12.2009.
144. Kārtība, kādā valsts finansiāli nodrošina valsts izlases komandu sporta spēlēs sagatavošanos un piedalīšanos Eiropas un pasaules čempionātu un olimpisko spēļu atlases turnīros un finālsacensībās: Ministru kabineta noteikumi Nr. 819. Latvijas Vēstnesis. 121, 31.07.2009.
145. Noteikumi par kārtību, kādā norāda informāciju par sporta pasākuma līdzfinansēšanu no valsts budžeta, un minētās informācijas saturu: Ministru kabineta noteikumi Nr. 422. Latvijas Vēstnesis. 75, 15.05.2009.
146. Latvijas Nacionālās sporta padomes nolikums: Ministru kabineta noteikumi Nr. 422. Latvijas Vēstnesis. 111, 6.08.2003.
147. Par Pārsūdzības komisiju: Ministru kabineta rīkojums Nr. 666. Latvijas Vēstnesis. Nr. 246, 14.12.2018.

Foreign regulatory enactments

148. Austrian Civil Mediation Act (*Zivilrechts-Mediations-Gesetz*). Available from <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20002753> [viewed 10.04.2020.]
149. Constitution of the Republic of France (*Constitution de la République Française*). Available from <http://www.assemblee-nationale.fr/connaissance/constitution.asp> [viewed 07.03.2020.]
150. French Sport Law (*Code du sport*). Available from <https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006071318> [viewed 10.04.2020.]

151. German Mediation Act (*Mediationgesetz*) Available from https://www.gesetze-im-internet.de/englisch_mediationsg/englisch_mediationsg.html [viewed 10.04.2020.]
152. Olympic And Amateur Sports Act Amendments Of 1998. Available from <https://www.govinfo.gov/content/pkg/CRPT-105srpt325/pdf/CRPT-105srpt325.pdf> [viewed 09.03.2018.]
153. Republic of Lithuania law on Physical Education and Sport. Available from <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/2549922048b011e4ba2fc5e712e90cd4?jfwid=ck9gyax6a> [viewed 09.04.2020.]
154. Sports Code of Russian Federation (*Федеральный закон от 04.12.2007 N 329-ФЗ о физической культуре и спорте в Российской Федерации.*) Available from <https://legalacts.ru/doc/federalnyi-zakon-ot-04122007-n-329-fz-o/> [viewed 11.03.2020.]
155. United States Code. Office of the Law Revision Counsel. Available from: <https://uscode.house.gov/> [viewed 09.03.2018.]

Soft law

156. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Developing the European Dimension in Sport. /* COM/2011/0012 final *. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1389190399614&uri=CELEX:52011DC0012> [viewed 16.08.2019.].
157. EU Work Plan for Sport 2011-2014. Available from: https://ec.europa.eu/assets/eac/sport/library/policy_documents/xg-gg-201307-dlvrb12-sept2013.pdf [viewed 16.08.2019.].
158. European Code of Conduct of Mediators. Available from http://euromed-justice.eu/en/system/files/20090128130552_adr_ec_code_conduct_en.pdf [viewed 10.10.2017.].
159. European Sports Charter. Available from: <https://rm.coe.int/16804c9dbb> [viewed 13.09.2019.].
160. Recommendation No. R (92) 13 of the Committee of Ministers to Member States of the European Sports Charter adopted by the Committee of Ministers on 24 September 1992. Available from: <https://rm.coe.int/16804cf400> [viewed 30.10.2016.].
161. UNCITRAL Model Law on International Commercial Conciliation. 2002. United Nations Publication. Available from: https://www.uncitral.org/pdf/english/texts/arbitration/ml-conc/03-90953_Ebook.pdf [viewed 20.12.2018]
162. White Paper on Sport {SEC(2007) 932} {SEC(2007) 934} {SEC(2007) 935} {SEC(2007) 936} /* COM/2007/0391 final. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52007DC0391> [viewed 18.05.2019.].

Case law

163. *Bradford & Bingley Plc v Rashid* [2006] UKHL 37; [2006] 1 W.L.R. 2066.
164. *Carolina Kostner* [2015] CAS Available from: https://www.tas-cas.org/fileadmin/user_upload/Media_Release_3940.pdf [viewed 04.03.2020.].
165. *Case No. 066-17 on the termination of an employment contract at the initiative of a loaned football player with a club lessee under a transfer agreement before its expiration.*[2017] PSC of RFU. Available from: <https://rfs.ru/subject/1/committees/18/documents>
166. *Gaetano Donà v Mario Mantero* [1976] ECJ 1976-01333.

167. *Galatasaray SK v. Frank Ribéry & Olympique de Marseille* [2006] Available from https://arbitrationlaw.com/sites/default/files/free_pdfs/CAS%202006-A-1180%20GSK%20v%20FR%20%26%20OM%20Award.pdf [viewed 11.05. 2020.]
168. *Muller v Linsley & Mortimer* [1996] P.N.L.R. 74 at 79.
169. *Paņevins/Šiks* [2019] DAK. Available from: https://www.lamsf.lv/wp-content/uploads/2019/03/DAK_lemums_motososeja_2019.pdf [viewed 20.04. 2020.]
170. *The Woodhall/Warren* [1999] CEDR. Available from: https://www.researchgate.net/publication/237285130_The_Court_of_Arbitration_for_Sport_An_International_Forum_for_Setting_Disputes_Effectively_Within_the_Family_of_Sport [viewed 27.04.2020]
171. *Unilever Plc v Procter & Gamble Co* [2000] 1 W.L.R. 2436 at 2448-2449.
172. *Union royale belge des sociétés de football association ASBL v Jean-Marc Bosman, Royal club liégeois SA v Jean-Marc Bosman and others and Union des associations européennes de football (UEFA) v Jean-Marc Bosman* [1995] ECJ Available from: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:61993CJ0415&from=EN> [viewed 25.01.2016.].
173. *Walrave and Koch* 36/74 [1974] ECR-01405 Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61974CJ0036#I2> [viewed 15.08.2019.]

Other sources

Doctoral theses

174. Ābula, M. 2014. Tiesību aizsardzības pagaidu līdzekļi Starptautiskajā investīciju strīdu izšķiršanas centrā (ICSID): promocijas darbs. Rīga: *LU, Faculty of Law*.
175. Jefimovs, N. 2019. Mediācijas piemērošanas perspektīvas un tās kavējošo faktoru neitralizācijas iespējas krimināltiesisko konfliktu noregulēšanā Latvijā: promocijas darbs. Daugavpils: *Daugavpils University*.
176. Litvins, G. 2012. Alternatīvās tiesību aizsardzības un strīdu risināšanas metodes administratīvajā procesā: promocijas darbs. Rīga: *LU, Faculty of Law*.
177. Luika, S. 2012. Inovatīvs Latvijas Sporta Nozares Stratēģiskās Plānošanas Modelis: promocijas darbs. Rīgā: *LSPA*

Policy planning documents

178. Policy Planning Guidelines. Available from: https://www.mk.gov.lv/sites/default/files/editor/policy_planning_guidelines.pdf [viewed 23.08.2019.].
179. The Sports Policy Guidelines for 2014-2020. Available from: <http://polsis.mk.gov.lv/documents/4599> [viewed 30.10.2016.].
180. The National Development Plan of Latvia for 2014-2020. Available from: <http://polsis.mk.gov.lv/documents/4247> [viewed 30.10.2016.].
181. The Public Health Policy Guidelines 2014-2020. Available from: <http://polsis.mk.gov.lv/documents/4965> [viewed 30.10.2016.].
182. The Youth Policy Implementation Plan 2016-2020. Available from: <http://polsis.mk.gov.lv/documents/5549> [viewed 30.10.2016.].
183. The Regional Policy Guidelines for 2013-2019. Available from: <http://polsis.mk.gov.lv/documents/2994> [viewed 30.10.2016.].
184. The National Development Plan of Latvia for 2021-2017 draft. Available from: https://www.pkc.gov.lv/sites/default/files/The%20Latvian%20National%20Development%20Plan%202021-2027%20-%20Summary_pdf_0.pdf [viewed 26.05.2020.].

Working materials

185. BATNA Basics: boost your power at the bargaining table. Management Report. Cambridge: Harvard Law School. 1.
186. Council of Europe Publishing. Study on national sports legislation in Europe, July 1999, p. 6.
187. FIFA Circular no. 769. Revised FIFA Regulations for the Status and Transfer of Players, 24 August 2001.
188. FIFA Circular no. 827. On recognition of the jurisdiction of the CAS, December 2002.
189. Gibbons, D. J. 1990. Law and the Group Ethos in Japan. *3 Int'l Legal Persp.* 98 at 103.
190. Iwai N. The Judge as Mediator: The Japanese Experience, *10 Civ. Just. Q.* 108 at 468.
191. Iwasaki K. 'Japan', Dispute Resolution in Asia, Pryles M. ed., Kluwer Law International, The Hague et al., 1997 at 134.
192. Iwasaki K. 1994. ADR: Japanese Experience with Conciliation. *10 Arbitration International* 91, reprinted in Dean M, op cit at 460.
193. Ohta T., Hozumi T. 1973. Compromise in the Course of Litigation *6 Law in Japan* 99–102, reprinted in: Dean M, op cit at 478–479.
194. Latvijas Olimpiskās komitejas institūciju organizatoriskās, administratīvās, finansiālās un saimnieciskās darbības nolikums, 2016. gada 20. Decembris
195. Pardieck A. M. 1997. Virtuous Ways and Beautiful Customs: The Role of Alternative Dispute Resolution in Japan. *11 Temp. Int'l & Comp. L. J.* 31.
196. Port K. L. 1994. The Case For Teaching Japanese Law at American Law Schools, *43 DePaul L. Rev.* 643 at 457.
197. Wren H. G. 1968. The Legal System of Pre-Western Japan. *20 Hastings L.J.* 217 at 221.
198. Рогачев, Д. И. 2009. *О спортивном третейском суде России. Презентация.* Москва.

Acknowledgements

I would like to acknowledge Professor Andrejs Vilks for his support and assistance throughout doctoral studies and inspiring my interest in obtaining the doctoral degree.

I would like to thank my supervisor, Dr. iur. Ivans-Jānis Mihailovs, for his guidance through each stage of the process.

I thank the reviewers for evaluating my dissertation and recommendations made.

A heartfelt thank you to my parents for their contribution to my education and support throughout all challenges.

And finally, sincere thank you to my husband who has been by my side throughout this PhD, and my children without whom I would not have had the motivation to start and complete this journey.

Annex

The Regulations of the Cabinet of Ministers issued on the basis of the Sports Law

The Regulations of the Cabinet of Ministers issued on the basis of the Sports Law (in force at the time the Author was writing this Doctoral Thesis):

1) Regulation of the Cabinet of Ministers No 440 of 24 July 2018 Procedures for Establishing the Disciplinary Anti-doping Commission and the Therapeutic Use Exemptions Commission. The Regulation prescribes the procedures by which the Latvian Anti-doping Bureau shall establish the Disciplinary Anti-doping Commission and the Therapeutic Use Exemptions Commission, as well as determine the term of office for the members of the Commissions.

2) Regulation of the Cabinet of Ministers No 594 of 06 September 2016 Health Care and Medical Surveillance Procedures for Athletes and Children with Increased Physical Activity. According to the Sports Law, the organisation of such a procedure lies in the competence of the Ministry of Health in cooperation with the Ministry of Education and Science; hence, the National Sports Medicine Centre shall, every year before 01 May, compile a report on the previous year about the status of the physical health of the athletes and children with increased physical activity and submit it to the Minister of Health and the Minister of Education and Science providing the proposals to improve the situation.

3) Regulation of the Cabinet of Ministers No 26 of 03 January 2012 Regulations on the Procedure of Granting Money Awards for the Outstanding Achievements in Sport, and the Amount of the Prize Money. Article 3 states that a money award is granted for the achievements attained in the official international sports competitions that are included in the relevant international sports federation's competitions calendar if this sports federation is recognised by the International Olympic Committee or the International Paralympic Committee, or is a member of the International Sports Federations Association (SportAccord).

4) Regulation of the Cabinet of Ministers No 77 Regulations Regarding the Procedures for the Certification of Sports Specialists and the Requirements Specified for a Sports Specialist adopted on 26 January 2010. This Regulation prescribes the procedures for the certification of sports specialists and the requirements specified for a sports specialist in order to acquire the right to work in the field of sports; and the fee for the certification of a sports specialist.

5) Regulation of the Cabinet of Ministers No 76 Regulations on the Information Content Included in the Sports Facilities Register and its Updating Procedures. This

Regulation was adopted on 29 January 2010 on the basis of Article 12 of the Sports Law which prescribes that “the information regarding sports facilities present in the State shall be compiled in the register of sports facilities. The register of the national sports facilities shall be part of the register of sports facilities. The register of sports facilities shall be kept by the Ministry of Education and Science. The content of information to be included in the register of sports facilities and the procedures for updating thereof shall be determined by the Cabinet of Ministers”.

6) Regulation of the Cabinet of Ministers No 1396 of 08 December 2009 Procedures for the Recognition of Sports Federations and the Control of the Recognised Sports Federations. This Regulation prescribes the procedures for the recognition of sports federations, procedures for the control of the activity in the field of sports of the recognised sports federations, content of the information to be included in the Register of Sports Federations and the procedures for updating thereof.

7) Regulation of the Cabinet of Ministers No 819 Procedures for the State Financial Support to the National Team Preparing for and Participating in the European and world Championships and Olympic Games Qualifying Tournaments and Finals adopted on 28 July 2009. According to Article 2 thereof, the Regulation aims to ensure financial support to a national team in preparation for sports games and participating in competitions in order to promote a high level of achievements and results.

8) Regulation of the Cabinet of Ministers No 422 of 12 May 2009 Regulations Regarding the Procedures by which Information shall be Indicated Regarding the Co-financing of Sports Events from the State Budget, and the Content of the Information Referred to. A private individual or a legal entity receiving co-financing from the State budget for the implementation of a sports event shall use the below logo

in all mass media and publicity (for instance, an information stand, information board, poster, printed materials (including brochures, booklets, conference and seminar materials), Internet website, audio-visual material (including digital video discs, compact discs, cassettes and video films)).

9) Regulation of the Cabinet of Ministers No 422 of 29 July 2003 By-law of the Latvian National Sports Council. The Latvian National Sports Council is a public consultative institution which participates in the development of the State Sports Policy, facilitates sports

development and co-operation in the field of sports, as well as in the taking of decisions regarding sports-related matters. Under Article 3 of the Regulation, the Council shall have the rights as follows:

To require and to receive information necessary for the work of the Council from the State and local government institutions, sports federations and sports clubs; to establish advisory commissions and working groups and to invite experts for the analysing and solving of sports-related matters.