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**Legal Aspects of
Alternative Dispute
Resolution in Sports Law**

Summary of the Doctoral thesis
for obtaining a doctoral degree (*Ph.D.*)

Sector – Law
Sub-Sector – Civil Law

Rīga, 2021



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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 of whether it is related to player contracts, sponsorship issues, construction, TV broadcasts, or stadium

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.].

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 conflicts 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) 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

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?highlight=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.].

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".

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 application thereof?
- 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 fulfill the objectives thereof, several research **methods** were used: comparative method, historical method, synthetic and analytic method, inductive method, law modeling 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, four 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.

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

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 (Conference Proceedings of SGEM Scientific Conference on Social Sciences and Arts).

Description of Doctoral Thesis chapters

Chapter 1 studies the institute of modern sports law its notion and development based on the works of the leading sports law scholars and practitioners, namely, Lorenzo Cassini's (*Cassini, 2012*) work "The Making of a Lex Sportiva by the Court of Arbitration for Sport", Timothy Davis's (*Davis, 2011*) article "What is Sports Law?", as well as several works of Professor Dimitrios P. Panagiotopoulos (*Panagiotopoulos, 2002, 2011, 2014*), Professor Kenneth Shropshire (*Shropshire, 1998*), Professor Burlette Carter (*Carter, 1999*), Professor Simon Gardiner (*Gardiner, 1998, 2006*), Weistart and Lowell (*Weistart and Lowell, 1979*) etc. The research made in subchapter 1.1. covers such areas as EU sports law, its development trends, analyses the main policy documents such as White Paper on Sport, European Sports Charter and highlights the outcomes of the landmark case for the formation of European sports law the "Bosman case". Subchapter 1.2. is devoted to Latvian sports law and includes the subjects as sports-related legislation and policy planning documents on sports.

Chapter 2 provides a general overview of contemporary ADR and trends, analyses the institute of mediation, the principle of confidentiality applicable to mediation process, identifies mediation stages as well as offers a 'multi-tier' escalation clause that builds bridges between arbitration and mediation meeting the needs of sports sector. Subchapter 2.3. deals with mediation in Latvia.

In Chapter 3, the Author analyses the concept of sports dispute and the possibilities of its resolution through mediation. Throughout the subchapter 3.1. the Author provides for the sports dispute definition suitable for Latvian Sports Law citing the views of leading experts in sports disputes notion as well as provides for the sports dispute resolution types. Subchapter 3.2. is devoted specifically to the alliance of mediation and sports disputes through

the lens of mediator's skills and expertise required to successfully promote the mediation process and the analysis of sports mediation by International Sports Federations and National Governing Bodies.

Chapter 4 explores ADR procedures and practices of international and foreign sports institutions. Specifically, the subchapter 4.1. analyses the ADR procedures in the United States Olympic Committee, French National Olympic and Sports Committee, 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. Subchapter 4.2. highlights the ADR procedures provided by the Court of Arbitration for Sports, Federation Internationale de Football Association, Sports Dispute Resolution Centre of Canada, Sport Resolutions UK. Additionally subchapter 4.3 deals with two high profile sports disputes.

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 subject of sports 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 subjects of sports 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.

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 subjects of sports law 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 “sports dispute” concept 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:

- 1) disputes arising out of competitions: disqualification, contesting competition results, violation of the technical rules of the specific sport, etc.;
- 2) disputes related to the membership in sports federations;
- 3) doping-related disputes;
- 4) disciplinary conflicts arising out of breach of the Code of Conduct by an athlete/coach/other member of the federation;
- 5) ethical conflicts arising out of unethical sayings, pranks, inappropriate behaviour on public;
- 6) contractual or civil legal disputes arising out of breach of an agreement;
- 7) 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 National Governing Bodies (NGBs) and International Sports Federations (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 to 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:

“11) 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 settlement 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 sportiva*, 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 contract⁸. In this process a neutral third party helps disputants to come to a consensus on their own⁹ by assisting the parties to find a resolution to their conflict in a sustainable and self-determined way¹⁰. 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

⁸ Stone, K. V. W. 2004. *Alternative Dispute Resolution. Encyclopedia of Legal History*. Research Paper 04-30. UCLA School of Law. p. 1.

⁹ The Editors 2012. Mediation secrets for better business negotiations. Harvard Law School Negotiation Special Report #7. p.1. Accessed: www.pon.harvard.edu. 16.03.15. [viewed 16.03.2015.].

¹⁰ Steffek, F. 2012. *Mediation in the European Union: An Introduction*. Cambridge. p.1-2.

allows the disputants to preserve relationships 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, i.e., the main ADR methods in contemporary Japan being conciliation (*chotei*), compromise (*wakai*) and arbitration (*chusai*)¹¹, 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

¹¹ 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.].

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 the 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:

“4) 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:

“9) 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:

“[375] 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)¹², 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

¹² 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.

physical activity, high performance athletes and athletes with disabilities, (4) 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 to 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 (DRC) 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, there 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 institutions:

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 institution 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 ECTS¹³ 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

¹³ European Credit and Accumulation System

and understanding of sports law, the principles of *lex sportiva*, the CAS's decisions and ADR in sports.

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