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(англійською мовою)

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Декларація академічної доброчесності студентки НаУКМА

Я, Некрасова Анна Ігорівна, студентка 2-го року навчання факультету правничих наук, спеціальність 081 «Право», адреса електронної пошти annanekrassova24@gmail.com,

- підтверджую, що написана мною магістерська робота на тему «Правові аспекти створення спортивного арбітражу в Україні на основі світового досвіду» відповідає вимогам академічної доброчесності та не містить в собі порушень, передбачених пунктами 3.1.1.–3.1.6. Положення про академічну доброчесність здобувачів НаУКМА від 07.03.2017 року, зі змістом якого ознайомлена;
- підтверджую, що надана мною електронна версія роботи є остаточною і готовою до перевірки;
- згодна на перевірку моєї роботи на відповідність критеріям академічної доброчесності у будь-який спосіб, у тому числі порівняння змісту роботи та формування звіту подібності за допомогою Unicheck.
- даю згоду на архівування моєї роботи в репозитаріях та базах даних університету.

17 червня 2022 року   Некрасова А.І.

TABLE OF CONTENTS

INTRODUCTION

Topicality of this master thesis is reflected in the fact that despite of the development of sport and sports law, Ukraine lacks a credible, feasible and impartial forum for the resolution of sports disputes. Currently existing national and international institutions such as national courts, the Court of Arbitration for Sport and the dispute settlement bodies within sports organizations are characterized by significant drawbacks in comparison to a permanent national arbitration tribunal. Also, these sports dispute settlement mechanisms do not correlate between each other, are characterized by jurisdictional conflicts and impede a formation of consistent sports law practice. All in all, the rationale behind the necessity to establish a permanent arbitration tribunal lies in an ensuring an access to justice for the athletes and sports organizations by means of arbitration.

Against this background, *the main purpose of this master thesis* is, firstly, to explore the legal aspects of the establishment and operation of existing sports dispute settlement forums worldwide and, secondly, to make the proposals regarding the legal aspects of the establishment of national arbitration tribunal in Ukraine, based on an application of foreign experience with a deep focus on the Court of Arbitration for Sport as the prominent sports arbitration in the world, as well as, national sports arbitration tribunals in the United Kingdom, Australia and Germany.

Considering the foregoing, *the research tasks* can be described as follows:

1. To explore the legal aspects of the establishment and operation of the CAS, as well as the Sport Resolutions in the United Kingdom, National Sports Tribunal in Australia and the German Court of Arbitration for Sport.
2. To substantiate the necessity of the establishment of national arbitration in Ukraine and, for this purpose, to identify the main drawbacks
3. To make the proposals regarding the important legal aspects of the establishment of sports arbitration in Ukraine.

4. To make proposals regarding potential legislative amendments that are required to be made for the establishment of a national arbitration tribunal in Ukraine.
5. To explore separately the link between nature of sports disputes and their classification, on the one hand, and the necessity and positive impact of the establishment of a national arbitration tribunal in Ukraine, on another hand.

The object of this master thesis is legal relationships that arise in the sphere of an application of national arbitration as a forum for the resolution of sports disputes.

The subject matter of this master thesis is legal aspects of the establishment of an institution of arbitration in Ukraine for the resolution of sports disputes.

The status of research works regarding the study's topic. The scientific sphere in Ukraine contains almost no significant research on the issue of the establishment of sports arbitration in Ukraine, although this topic is demanded. Among foreign scholars, whose scientific works greatly contribute to the topic on how the Court of Arbitration for Sport and other arbittration institutions are working, there are James Carter, Despina Mavromati, Johan Lindholm, Adam Samuel, Richard Gearhart, Alan Sullivan and others. Relying on their scientific works, it becomes possible to use the model of the Court of Arbitration for Sport, the national arbitration models for the establishment of sports arbitration in Ukraine.

Research methodology. When working on this research work, general scientific methods and special scientific methods of legal research were used. In particular, the following general scientific methods are used in this thesis: a set of historical methods, namely, chronological method are applied for the analysis of the steps of the establishment of the CAS and descriptive – for the description of legal aspects of the establishment of national arbitration in the United Kingdom, Germany, Australia; a method of analysis and comparative legal method are applied when foreign experience of the establishment of sports arbitration is explored for the purpose of its implementation in Ukraine; hermeneutic method is applied in part of an interpretation of national legislation, as well as procedural acts of the CAS and national arbitration tribunals in foreign jurisdictions; system-structural method is applied for the

identification and structuring of legal aspects to which attention should be paid in the process of the establishment of sports arbitration.

Among special legal methods there were used formal-legal method, method of interpretation, as well as analysis and generalization of judicial practice. Applying of all these methods allowed to analyze worldwide sports dispute resolution forums, explain the necessity of the establishment of sports arbitration and make the proposals of how foreign experience can be applied in Ukraine.

CHAPTER 1 LEGAL ASPECTS OF THE ETSABLISHMENT OF SPORTS DISPUTE RESOLUTION FORUMS WORLDWIDE

1.1. An operation of existing sports dispute resolution forums worldwide.

Generally, there can be outlined the following sports dispute resolution forums, that are applied worldwide, – sports organizations' dispute settlement bodies, national courts and sports arbitration. Although for the purpose of this thesis the focus is maid on the legal aspects of the establishment and functioning of sports arbitration, this analysis would not be full without the description of functioning of sports organizations' dispute settlement bodies and national courts and their correlation with each other.

The cases, resolved by the sport organizations' bodies, the courts and sports arbitration include disciplinary issues, cases on doping violations, disputes on eligibility or qualification for competitions, employment and a lot of commercial disputes (the classification of disputes is in greater detail analyzed in Section 2.3.). For instance, eligibility issues often arise before the Olympics championship, when it must be determined which athletes or teams will be admitted for game.[1] Today it is simply impossible to imagine sports law developing without both sports organizations' dispute settlement bodies, national courts and sports arbitration.

Firstly, attention will be given to the sports organizations' dispute settlement bodies (they are also called quasi0judicial bodies), that take not the last place in the list of disputes resolution forums in sport. Any type of sport has its national and an international federation above.[2] Apart from that, in each country there is National Olympic Committees, regulating access to national Olympic games and answering to the International Olympic Committee.[3] Each of these organization regulates themselves under internal set of by-laws.[4] Each federations' internal rules establish different procedures and, obviously, they lack uniformity in comparison to each other.[5]

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[1] James H Carter, Advocacy in International Sport Arbitration, in Stephen Jagush QC and Philippe Pinsolle,The guide to advocacy, London : Law Business Research Ltd., K2400 .G852. 2018. p.2.
[2] *ibid*.
[3] *ibid*.
[4] *Ibid*.
[5] *Ibid*.

The sports organizations' dispute settlement bodies are internal bodies of such federations. Usually, their decisions are appealed to the Court of Arbitration for Sport ("CAS")[6] and then, if necessary and admissible, challenged to Swiss Federal Tribunal.[7] This is because only Swiss Federal Tribunal has the authority to supervise CAS arbitrations, as it is established in *Raguz v. Sullivan case* (the establishment and functioning of the CAS is described in detail in Section 1.2).[8]

Meanwhile, doping disputes are usually resolved separately, since usually they addressed to the World Anti-Doping Agency or the national anti-doping authority (for example, the US Anti-Doping Agency).[9]

For better understanding such quasi-judicial bodies in sport can be described by the example of Ukraine. For example, the Ukrainian Association of Football ("UAF") has such bodies of justice, as the Control and Disciplinary Committee as a body of the first instance and the Appeals Committee as a body a body of the second instance for the "field of play" disputes, while disputes on the implementation of transfer obligations, on labor matter, contractual disputes etc, the UAF has established the Dispute Resolution Chamber.[10]

So, the Control and Disciplinary Committee and the Appeals Committee resolve disputes concerning violations of the statutory and regulatory documents and apply disciplinary measures (disputes concerning the rules of football as a game, meaning the rules on the field).[11] The Dispute Resolution Chamber resolves exclusively legal disputes.

In the meantime, *lex sportiva* derives not only from practice established by such organizations, but also form national courts' practice, and litigation also serves as a tool for the resolution of sports disputes. For example, one of the biggest impact on

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[6] Dmytro Koval, Rule of the Game v. Rule of Law: Had Ukraine Finally Resorted to CAS?, Kluwer Arbitration Blog, 2019. URL: http://arbitrationblog.kluwerarbitration.com/2019/08/05/rule-of-the-game-v-rule-of-law-had-ukraine-finally-resorted-to-cas/.

[7] *Ibid*.

[8] Raguz v. Sullivan, New South Wales Court of Appeal (Australia), 2000, NSWCA 240.

[9] James H Carter, Advocacy in International Sport Arbitration, in Stephen Jagush QC and Philippe Pinsolle,The guide to advocacy, London : Law Business Research Ltd., K2400 .G852. 2018. p.2.

[10] Регламент Палати з вирішення спорів Української асоціації футболу, Українська асоціація футболу, 2018, ст. 2.

[11] Офіційний веб-сайт Української асоціації футболу. URL: https://uaf.ua.

sport law precedents derives from Swiss jurisdiction and its arbitration law, because, firstly, the CAS proceedings of first and appeal instances take place in Switzerland, and secondly, a big number of international federations are situated there.[12]

At the same time, recourse to state courts sometimes even is not legally possible, because it is often prohibited in statutes of sports organizations.[13] Otherwise, an athlete may be charged with sanctions or even excluded from a competition. For instance, Fédération Internationale de Football Association ("FIFA") in its Statute allows to refer with an internal dispute exclusively to an independent and properly organized arbitral institution.[14] On the other hand, some categories of disputes (usually, it is referred to the employment disputes) are subject exclusively to litigation, as it is prescribed by respective national legislations.

The question of whether the sports federation's dispute settlement body is a better option than a national court is also debatable, because such dispute settlement body is created under the authority of a sports federation, it is a part and structural body of such a federation and in some questions (for instance, financially) it may depend on it. Thus, such a body may not suffice impartiality when rendering its decision in favor of a sports federation, that often is a party to the dispute and, at the same time, established and financed a respective dispute settlement body.

On the other hand, such provisions of the sports federations' statutes, as mentioned above, can be treated positively, because they indicate that sports federations rely on arbitral institutions, despite of having internal dispute settlement bodies. This leads us to the next step: a legal analysis of the establishment and operation of sports arbitration as a dispute resolution forum, addressing the most applied and experienced institution, – the Court of Arbitration for Sport, as well as the examples of the independent permanent sports arbitration institutions, established at the national

[12] James H Carter, Advocacy in International Sport Arbitration, in Stephen Jagush QC and Philippe Pinsolle,The guide to advocacy, London : Law Business Research Ltd., K2400 .G852. 2018. p.2.
[13] Dmytro Koval, Rule of the Game v. Rule of Law: Had Ukraine Finally Resorted to CAS?, Kluwer Arbitration Blog, 2019. URL: http://arbitrationblog.kluwerarbitration.com/2019/08/05/rule-of-the-game-v-rule-of-law-had-ukraine-finally-resorted-to-cas/.
[14] Регламент Міжнародної федерації футболу асоціації по агентам гравців, Українська асоціація футболу, 2007, ст. 30.

level of foreign jurisdictions. In particular, the lasts would serve as the analogies of what is encouraged to be established in Ukraine.

1.2. Legal aspects of the establishment of the Court of Arbitration for Sport.

Simultaneously with the existence of a big variety of national and international federations and their dispute settlement bodies, most *international* sport disputes are challenged before the CAS – the Court of Arbitration for Sport.[15] For this purpose, sport organizations and athletes agree for the CAS jurisdiction in internal regulations of respective organization and by signing agreements with each other.[16] At the same time, a big amount of CAS's work consists of appeals, mainly from decisions of federations.[17]

Obviously, this arbitration institution is the most demanded in the world of sport disputes, and the features of its creation and operation are of crucial importance for the establishment of sport arbitration and development of sport law in any jurisdiction, including Ukraine.

When considering the process of the establishment of the CAS, it is worth mentioning that understanding that sports related disputes are often happening firstly appeared, when viewers interfered a football match, organized by the Dutch Royal Football Association, in 1927.[18] The absence of any independent authority specializing in sports problems was aggravated in the 1980s in the course of a huge number of international sports-related disputes and resulted into creation of the CAS. [19]

The process of the establishment of "supreme court" in sport disputes was complicated and long, taking approximately 30 years,[20] that, undoubtably, impresses and makes it clear that development of sport arbitration in Ukraine will hardly happen in two days. The idea of establishing this international arbitration tribunal was

[15] James H Carter, Advocacy in International Sport Arbitration, in Stephen Jagush QC and Philippe Pinsolle,The guide to advocacy, London : Law Business Research Ltd., K2400 .G852. 2018.p.2.
[16] *Ibid*.
[17] *Ibid*.
[18] Vjekoslav Puljko, Arbitration and Sport, 5 Interdisciplinary Management Research 603, 2009, p. 592-3.
[19] *Ibid*.
[20] Johan Lindholm, The Court of Arbitration for Sport and Its Jurisprudence: An Empirical Inquiry into Lex Sportiva, T.M.C. Asser Press, 2019. p. 3.

introduced at the XI Olympic Congress in Baden-Baden, Germany.[21] Once the statutes of the CAS came into force, the Court of Arbitration for Sport became operational.[22]

The jurisdiction of the CAS involves disputes relating to the execution of contracts on sponsorship, television rights, staging of sports events, player transfers and relations between players or coaches and clubs and/or agents.[23] Moreover, the CAS resolves civil liability disputes (for example, disputes on an accident to an athlete during a sports competition), disciplinary cases (including doping-related cases, violence on the field of play, abuse of a referee, etc.).[24]

The sphere of sport is the only practice, in which the CAS is competent to decide the disputes.[25] For the time being, FIFA and other components of professional football (similarly – in other kinds of sport) commit contracts, player transfers, discipline and other disputes to the CAS resolution.[26]

It is important that the CAS jurisdiction is not imposed on athletes or federations and remains to be freely available to them.[27] In order to facilitate this procedure, the CAS published a Guide to arbitration, providing for model arbitration clauses.[28] Thus, the parties on their own decide to address the dispute to the CAS, submitting the application for contentious proceedings under the CAS regulations. [29] Alongside this contentious procedure there is also an option of advisory procedure, that gives answers for legal questions in sport of any interested organization or individual.[30]

Thus, an arbitration clause in contracts with athletes allows the CAS resolution of a wide range of cases.

Significant advantage of the CAS is its absolute impartiality. Interestingly, the Swiss Federal Tribunal greatly contributed into the CAS reform on impartiality and

[21] Official web-site of the Court of Arbitration for Sport. URL: https://www.tas-cas.org/en/general-information/history-of-the-cas.html.
[22] *Ibid*.
[23] *Ibid*.
[24] *Ibid*.
[25] Code of Sports-related Arbitration of the Court of arbitration for sport, 2020, R27.
[26] James H Carter, Advocacy in International Sport Arbitration, in Stephen Jagush QC and Philippe Pinsolle,The guide to advocacy, London : Law Business Research Ltd., K2400 .G852. 2018. p.2.
[27] Official web-site of the Court of Arbitration for Sport. URL: https://www.tas-cas.org/en/general-information/history-of-the-cas.html.
[28] *Ibid*.
[29] *Ibid*.
[30] *Ibid*.

fostering of independence, while considering the application of a horse rider against the International Equestrian Federation (the Gundel judgement).[31] Namely, horse rider was challenging the CAS appeal decision in the Swiss Federal Tribunal as a cassation institution, claiming that the CAS lacked impartiality and independence from the International Equestrian Federation. Although, the Swiss Federal Tribunal, by contrast, recognized the CAS as a true and independent court of arbitration, it advised the CAS to modify the structure of institution and revise its regulations to become less depended on the International Olympic Committee.[32] Since that times, the CAS implemented a range of reforms, eliminating any doubts in its impartiality and independent financing. Moreover, international and most of national Olympic organizations recognised the jurisdiction of the Court of Arbitration for Sport and included in their statutes an arbitration clause in its favor.[33] It confirms the fact that the CAS as an arbitration tribunal is recognized worldwide, and it inspires confidence in fairness of all its rulings.

Another key point in the history of CAS is creation of a big number of ad hoc CAS divisions with the task of settling disputes within a twenty-four hours.[34] Such a flexible and easy option is often needed during Olympic Games or other competitions in the course of deciding eligibility of players for taking part in the competition or in other matters.[35] Firstly, it was created in 1996 by the International Council of Arbitration for Olympic Games in Atlanta, where a total of 6 cases were submitted.[36] After that, ad hoc divisions have been created for different Olympic competitions (Olympic Summer and Winter Games), as well as for the Commonwealth Games since 1998, for the UEFA European Championship since 2000 and for the FIFA World Cup in 2006.[37] Undoubtedly, it remains very helpful option in eligibility issues, when expeditious hearings are needed.

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[31] Gundel v. Fédération Equestre Internationale, Court of Arbitration for Sport, 92/A/63, 1992.
[32] Official web-site of the Court of Arbitration for Sport. URL: https://www.tas-cas.org/en/general-information/history-of-the-cas.html.
[33] *Ibid*.
[34] *Ibid*.
[35] Офіційний веб-сайт Української Арбітражної Асоціації. URL: http://arbitration.kiev.ua/uk-UA/Galuzevi-arbitrazhi/Sportyvnyj-arbitrazh.aspx?ID=492.
[36] Official web-site of the Court of Arbitration for Sport. URL: https://www.tas-cas.org/en/general-information/history-of-the-cas.html.
[37] *Ibid*.

As Johan Lindholm wrote, it is inevitably that throughout its history the CAS created a large bulk of landmark cases, to which other institutions often refers and which have deep and systematic effect on the legal order.[38] The main feature, making this arbitration institution so demanded both at the time of its creation and nowadays, is that it is the only international body having a sports-specific jurisdiction, which decisions shall be binding for the top sports organizations.[39] Since the CAS procedure is inexpensive for athletes and sport organizations (although not for all of them), it became one of the most appropriate institution, providing for professional and well-qualified arbitrators for resolving disputes in sport.

1.3. Legal aspects of the establishment of sports arbitration in foreign jurisdictions.

Foreign state's experience of establishing and functioning of national sports arbitration therein, to which this Section is devoted, can be used by as a useful tool in organizing and managing national arbitration institution in Ukraine.

1.3.1. The United Kingdom jurisdiction.

Generally, in the United Kingdom the disputants in sport have access both to litigation and arbitration.[40] Usually, if the parties to the dispute did not conclude an arbitral agreement, make an arbitral clause or in other ways agreed for the arbitration, they resolve the disputes by recourse to the national courts or sport bodies' internal disputes resolution forums.[41] Moreover, usually, recourse to the courts is allowed after internal disputes resolution forums were exhausted, however, there is no such a rule with regard to the arbitration.[42]

In the United Kingdom resolution of disputes through arbitration is governed by the Arbitration Act, dated 1996, and is considered a faster, less expensive, and more confidential option than litigation.[43] The arbitration clause, confirming the consent of

[38] Johan Lindholm, The Court of Arbitration for Sport and Its Jurisprudence: An Empirical Inquiry into Lex Sportiva, T.M.C. Asser Press, 2019. p. 121.
[39] *Ibid*.
[40] Jamie Singer, Oliver White, Cambise Heron, The Sports Law Review: United Kingdom - England & Wales, The Law Reviews, 2021, URL; https://thelawreviews.co.uk/title/the-sports-law-review/united-kingdom-england--wales.
[41] *Ibid*.
[42] *Ibid*.
[43] *Ibid*.

the parties for arbitration is usually placed in internal rules of the sporting bodies, employment agreements or other contracts.[44] At the same time, similarly, to Ukraine and other jurisdictions, resolution of employment disputes, as well as criminal and insolvency matters is subject to the courts and the Employment Tribunal only.[45] Correlation between all these dispute settlement bodies in sport is treated simply: if there is an arbitration clause or an arbitration agreement based on which the parties agreed to refer to arbitration, the court cannot consider a claim of such disputants and has to stay its proceedings.[46] If one of the party attempts to challenge the arbitral award, the United Kingdom's courts will assess the following issues:

1) Whether an arbitration tribunal was competent to resolve the dispute. As it is prescribed by Section 67 of the Arbitration Act, "a party to arbitral proceedings may (upon notice to the other parties and to the tribunal) apply to the court – (a) challenging any award of the arbitral tribunal as to its substantive jurisdiction; or (b) for an order declaring an award made by the tribunal on the merits to be of no effect, in whole or in part, because the tribunal did not have substantive jurisdiction";

2) whether there is any serious irregularity, that affected the tribunal, the proceedings or the award and caused injustice.[47]

[A]part from that, the courts in the United Kingdom are allowed to consider an appeal on a question of law arising out of the award, unless the parties decided and prescribed otherwise in their arbitration agreements.[48] For example, Arbitration Rules of Sport Resolutions (organization, that is described further) includes a provision on a waiver of a right on an appeal, namely it stipulates: "All decisions and/or awards of the Tribunal shall be final and binding on the parties and on any party claiming through or under them and the parties agree, by submitting to arbitration under these Rules, to waive irrevocably their right to any form of appeal, review or recourse to any state court or other judicial authority, subject to any applicable statutory or other rights".[49]

[44] *Ibid*.
[45] *Ibid*.
[46] *Ibid*.
[47] *Ibid*.
[48] *Ibid*; Arbitration Act, 1996 (UK), Section 67, 69.
[49] Arbitration Rules of the Sport Resolutions, Sport Resolutions, Art. 12.4.

Enforceability procedure has no special differences the disputants are allowed to enforce the arbitral award, based on the provisions of the sports organizations' internal rules or through the litigation procedures.[50]

Despite of the Court of Arbitration for Sport, sporting organizations and athletes in the United Kingdom can refer to a nation's competent, independent arbitration, provided by Sport Resolutions (before it was named Sports Dispute Resolution Panel).[51] By the Review of Australia's Sport Integrity Arrangements, arbitration, provided by it, was recognized as one of the most successful and as such, that can be used as a model for the National Sports Tribunal, recently created in Australia.[52] Likewise, Sport Resolutions' dispute resolution service, namely, arbitration, can be taken as a model or as an example for the creation of a nation's sport arbitration institution in Ukraine, and for this reason, it should be analyzed in detail.

The Sport Resolutions is a non-profit organization, that is based in the United Kingdom, at the International Dispute Resolution Centre, and delivers the expert, speedy and cost sport-specific dispute resolution service that serves as an alternative option to internal appeals ad court-based litigation, as it is explained on its website.[53] It was created by the representative umbrella groups of sport in the United Kingdom, such as British Athletes Commission, British Olympic Association, British Paralympic Association, European Sponsorship Association, Northern Ireland Sports Forum, Professional Players Federation, Sport & Recreation Alliance, Scottish Sports Association, Welsh Sports Association, with financing from the governmental organization, named UK Sport, that aims to provide investment for the Olympic and Paralympic sports and develop sports in the United Kingdom in other ways.[54] One of the dispute, that made this resolution body famous, is a dispute between Christine Ohuruogu and the British Olympic Association regarding a life time ban, imposed on Ohuruogu for the violation of anti-doping law (she won and became a World Champion

[50] Jamie Singer, Oliver White, Cambise Heron, The Sports Law Review: United Kingdom - England & Wales, The Law Reviews, 2021, URL; https://thelawreviews.co.uk/title/the-sports-law-review/united-kingdom-england--wales.
[51] *ibid*.
[52] *ibid*.
[53] Official web-site of the Sport Resolutions. URL: https://www.sportresolutions.com/about-us/who-we-are/overview.
[54] *ibid*. Official web-site of UK Sport. URL: https://www.uksport.gov.uk.

in the same year, as well as the Olympic Champion in the next year in athletics).[55] Later, in 2012 Sport Resolutions resolved 19 selection disputes in relation to that year London Olympic and Paralympic Games.[56]

Dispute resolution mechanism, provided by Sport Resolutions, can be divided at arbitration and mediation services, as well as the National Anti-Doping Panel and National Safeguarding Panel.[57] Sport Resolutions' activity is governed by Arbitration Rules, the National Anti-Doping Panel Rules, National Safeguarding Panel Rules, Mediation Procedure. Moreover, Sport Resolutions has a service of International Federation Tribunal that may serve as (1) arbitration for any international sport federation, that conveyed jurisdiction through a referral clause in their internal rules or by conclusion of an arbitration agreement, or as (2) an "independent secretariat to those federations who already have their own tribunals".[58] In addition to arbitration, meditation services and International Federation Tribunal, Sport Resolutions offers investigations and review service provides (compiling evidence in connection with a complaint or allegation, in support of a sport organization's disciplinary procedures or other procedures), advisory opinions, as well as other services ad projects.[59]

The arbitration procedure in Sport Resolutions is governed either by the rules, prescribed by a respective agreement between the parties, either by the Sport Resolutions' Arbitration Rules.[60] Generally, arbitration in Sport Resolutions has several steps: (1) conferring jurisdiction on Sport Resolutions; (2) filling a notice of arbitration, which sets out, among other things, the nature of the dispute and the remedy or outcome sought (additionally, at this stage the parties may be required to make a deposit), a statement of appeal or a statement of claim, reply of the respondent and other written submissions if necessary; (3) attempting to resolve a dispute by conciliation; (4) appointment of a sole arbitrator or a panel of arbitrators by the Executive Director of Sport Resolutions in collaboration with the disputants (among a

[55] *ibid*.
[56] *ibid*.
[57] *ibid*.
[58] *ibid*.
[59] *Ibid*.
[60] *ibid*.

list of legally qualified arbitrators, provided by Sport Resolutions); (5) holding the oral or written hearings (in private), during which the parties present their arguments and evidence, witnesses are examined (all administrative fees and costs for hearings are split on the parties in equal amounts and depend on different factors, such as the length of hearings, the number of arbitrators in a panel etc.); (6) production of an award.[61] The role of Sport Resolutions itself throughout the process of arbitration is to act as secretariat to the tribunal and to support communication with a panel of arbitrators.[62] Special attention should be given to the flexibility of the procedure of an appointment of arbitrators, since the parties to the dispute can even ask Sport Resolutions "to appoint arbitrator(s) with specific skills or experiences".[63]

The Arbitration Rules provide for two procedures, under which the disputes may be resolved: (1) the Appeal Arbitration Procedure and (2) the Full Arbitration Procedure.[64] On contrary to the Full Arbitration Procedure, the Appeal Arbitration Procedure implies that one of the parties appeals "from a disciplinary, doping, selection or other decision of a sports federation, governing body, club, association or other body…insofar as the Appellant has exhausted all other procedures available under any applicable regulations".[65]

Also, Sport Resolutions provide for the skeleton of the arbitration agreement, that contains the provisions regarding:

- the delamination of the scope of a jurisdiction (in the agreement it shall be stated: "the Arbitrator(s) shall have jurisdiction to decide [set out brief description of issues to be decided by arbitration, as agreed by parties]");
- the laws, by which the arbitration will be governed, – Rules for Arbitration and the Arbitration Act (that was mentioned earlier);
- the right of appeal on the point of law (in particular, the agreement prescribes that it is excluded, as it is allowed under Section 69 of the Arbitration Act);

[61] *ibid*; Arbitration Rules of the Sport Resolutions, Sport Resolutions, Art. 2.3, 2.4, 2.5, 2.7, 3.1, 5.1, 6.1, 7.1, 9.1, 10.1.
[62] Official web-site of the Sport Resolutions. URL: https://www.sportresolutions.com/about-us/who-we-are/overview; Arbitration Rules of the Sport Resolutions, Art. 4.1.
[63] Official web-site of the Sport Resolutions. URL: https://www.sportresolutions.com/about-us/who-we-are/overview.
[64] Arbitration Rules of the Sport Resolutions, Sport Resolutions, Art. 1.3.
[65] Arbitration Rules of the Sport Resolutions, Sport Resolutions, Art. 2.1.

- the publicity of the award and public or, in contrary, private proceedings (for consideration by the parties).[66]

Sport Resolutions hold hearings not only at the International Dispute Resolution Centre, but also throughout the UK and internationally.[67] Sport Resolutions' arbitration resolves the disputes in anti-doping, athlete selection, commercial agreements, discrimination, player eligibility, promotion and relegation and safeguarding.[68]

Referring to the statistics, the work of the Sport Resolutions is impressing, though it was created and established in 1997, 25 years ago and 13 years after the establishment of CAS. In particular, Sport Relations represents the following results: resolution of 1500 disputes in 40 types of sports during the last 10 years, or 180 cases per year (include both arbitration and mediation), resolution of 40 selection disputes before Commonwealth, Olympic and Paralympic Games, receiving more than 135 international referrals since 2017, resolution of more than 250 anti-doping disputes since 2007.[69] Interestingly, in 2019-2020 more than 70% of athletes of the United Kingdom, that were involved in anti-doping disputes, requested for assistance at Sport Relations.[70] Sport Relations resolved the sports disputes with a lot of British and international sporting clubs and athletes, such as: Dan Evans, Varvara Lepchenko, Aaron Cook, Cristian Coleman, Salwa Eid Naser, Kipyegon Bett, Sheffield Wednesday (football club from Sheffield), English Football League (British league of professional football clubs), Queens Park Rangers (London football club), World Athletics (the world governing body for athletics), Derby County (football club from Derby), International Tennis Federation, Rugby Football League, Tobago Football Federation, British Olympic Association.[71]

[66] Official web-site of the Sport Resolutions. URL: https://www.sportresolutions.com/about-us/who-we-are/overview; Skeleton of Arbitration Agreement of Sport Resolutions. URL: https://www.sportresolutions.com/images/uploads/files/D_16_-_Skeleton_Arbitration_Agreement-2021.pdf.
[67] Official web-site of the Sport Resolutions. URL: https://www.sportresolutions.com/about-us/who-we-are/overview.
[68] *ibid.*
[69] *ibid.*
[70] *ibid.*
[71] *ibid.*

1.3.2. Australian jurisdiction.

Generally, Australian dispute resolution system includes sporting organizations' own quasi-judicial tribunals, arbitration and the courts. In comparison to other jurisdictions, Australian national legislation in the field of sports law has a distinctive feature, namely it stipulates that, based on the public policy, sporting organizations' internal rules cannot preclude an athlete from referring to the courts and remove a jurisdiction of the courts (*Stollery v. Greyhound Racing Control Board case* serves as an example of a case, where this issue was considered), even if collective bargaining agreements of the sports organization or the contracts, concluded with players, defines a tribunal's exclusive jurisdiction.[72] Often, the courts review the decisions of sports organizations' tribunals, that are established as quasi-judicial bodies in most major Australian sporting leagues (for instance, the NRL Judiciary, the AFL Match Review Panel and Tribunal, the FFA Tribunal).[73] Sometimes, internal rules of the sporting organizations even prescribes that their tribunals' decisions can be appealed by the recourse to the international sporting organization, such as the International Cricket Council or FIFA, especially if the case relates to eligibility matters, disputes between organization's members, between organizations, contractual disputes between athletes and sporting clubs, disciplinary and doping violations disputes.[74] Recourse to the CAS or the Swiss Federal Tribunal usually takes place, when all other methods were exhausted.[75] However, a special attention in this chapter should be given to Australian national arbitration in sports – the National Sports Tribunal, that resolves national-level anti-doping rule violations, disciplinary, discrimination and other sports disputes.

When Australian federal Minister for Sport, Greg Hunt, disclosed an idea to establish in Australia a national equivalent to CAS, Paul Hayes, Melbourne barrister and international sports law expert, responded to this idea positively.[76] Its main

[72] Prudence J Smith, Annie E Leeks, Mitchell J O'Connell, Charlie Guerit, The Sports Law Review: Australia, The Law Reviews, 2021. URL: https://thelawreviews.co.uk/title/the-sports-law-review/australia; Stollery v. Greyhound Racing Control Board, High Court of Australia, 128 CLR 509, 1972.
[73] Prudence J Smith, Annie E Leeks, Mitchell J O'Connell, Charlie Guerit, The Sports Law Review: Australia, The Law Reviews, 2021. URL: https://thelawreviews.co.uk/title/the-sports-law-review/australia.
[74] *ibid.*
[75] *ibid.*
[76] Stephanie David, The delicate equilibrium between the international and the domestic, the private and the public in sports regulation – does the Australian Sports Tribunal provide an answer?, 2019. URL:

advantage for Australian athletes and sporting clubs, in Paul's opinion, derives from an opportunity to determine the disputes by "a common specialist panel, with the potential for more consistent outcomes to be reached for disputes common to most sports such as anti-doping and match-fixing".[77] At the same time, it was noticed that "the real worth to the Australian sporting community of the proposed national integrity tribunal will depend on two elements: its availability and affordability; and, its legal structure and powers".[78] Below it is analyzed, whether these objectives were reached after the National Sports Tribunal was created in Australia.

National Sports Tribunal in Australia differs from Sport Relations in the United Kingdom by the fact that it is established not by a private organization, but by a government and its activity is governed by national legislation (the National Sports Tribunal Act).[79] This tribunal was established in 2017 with an aim "to provide for an effective, efficient, independent, transparent and specialist tribunal for the fair hearing and resolution of sporting disputes" and "in response to the growing global threat to the integrity of sport, that includes cheating, doping and match-fixing".[80] It derives from the Review of Australia's Sports Integrity Arrangements that one of the motive force for the establishment of National Sports Tribunal was insurance of first instance anti-doping violation rules matters.[81] Apart from the National Sports Tribunal Act, tribunal's activity is governed by its internal regulations: National Sports Tribunal

https://www.sportresolutions.com/news/view/expert-analysis-australian-sports-tribunal; Paul Hayes , Era of Sports Sitting in Judgment on Themselves is Over, The Australian, 2018. URL: https://1f2ca7mxjow42e65q49871m1-wpengine.netdna-ssl.com/wp-content/uploads/2018/03/The-Australian-170527-Era-of-sports-sitting-in-judgment-on-themselves-is-over.pdf.

[77] Paul Hayes , Era of Sports Sitting in Judgment on Themselves is Over, The Australian, 2018. URL: https://1f2ca7mxjow42e65q49871m1-wpengine.netdna-ssl.com/wp-content/uploads/2018/03/The-Australian-170527-Era-of-sports-sitting-in-judgment-on-themselves-is-over.pdf.

[78] Stephanie David, The delicate equilibrium between the international and the domestic, the private and the public in sports regulation – does the Australian Sports Tribunal provide an answer?, 2019. URL: https://www.sportresolutions.com/news/view/expert-analysis-australian-sports-tribunal; Paul Hayes , Era of Sports Sitting in Judgment on Themselves is Over, The Australian, 2018. URL: https://1f2ca7mxjow42e65q49871m1-wpengine.netdna-ssl.com/wp-content/uploads/2018/03/The-Australian-170527-Era-of-sports-sitting-in-judgment-on-themselves-is-over.pdf.

[79] Stephanie David, The delicate equilibrium between the international and the domestic, the private and the public in sports regulation – does the Australian Sports Tribunal provide an answer?, 2019. URL: https://www.sportresolutions.com/news/view/expert-analysis-australian-sports-tribunal.

[80] National Sports Tribunal Act, 2019, Section 3; Stephanie David, The delicate equilibrium between the international and the domestic, the private and the public in sports regulation – does the Australian Sports Tribunal provide an answer?, 2019. URL: https://www.sportresolutions.com/news/view/expert-analysis-australian-sports-tribunal.

[81] Report of the Review of Australia's Sports Integrity Arrangements, Department of Health of the Commonwealth of Australia, 2018, Chapter 5. URL: https://consultations.health.gov.au/population-health-and-sport-division/review-of-australias-sports-integrity-arrangements/supporting_documents/HEALTH%20RASIA%20Report_Acc.pdf.

Rule, dated 2020, National Sports Tribunal Practice and Procedure Determination, dated 2021, National Sports Tribunal Principles for Allocating a Member to a Dispute.[82]

National Sports Tribunal is divided at three divisions: an Anti-Doping Division (under Australian legislation, it hears all first instance anti-doping rule violations disputes, except for those which "opt-out", meaning such those disputes that have be heard by sport organizations' internal tribunals subject to an approval of a Australian Sports Anti-Doping Authority), a General Division and an Appeals Division.[83] As always, recourse to the National Sports Tribunal is possible, if a person is "bound by a constituent document covering a sporting body; and the document permits the dispute to be heard in the General Division or the persons who are in dispute agree to refer the dispute to the Tribunal" (the same works for an Anti-Doping Division).[84] In the General Division application can be also made for mediation, conciliation or case appraisal of certain.[85] The right for an appeal either derives from "a determination made in an arbitration conducted in the Anti-Doping Division or General Division" or is applied in order to appellate "a sporting body's decision or a sporting tribunal's decision".[86] What is interesting, apart from usual basis for the jurisdiction (when consent for an arbitration is given in an agreement or when an athlete is bound by the internal rules of the sporting organization with respective provisions), the sporting body may apply to the National Sports Tribunal for arbitration, bases on the approval of the tribunal's CEO, given due to the fact that such a dispute "may set a precedent for dealing with similar disputes that may arise in the future".[87]

National Sports Tribunal Act does not exactly define which disputes are "sporting" and, thus, are covered by the National Sports Tribunal's jurisdiction, however, they are determined as all disputes, or which a consent of the parties is given

[82] Official web-site of the National Sports Tribunal. URL: https://www.nationalsportstribunal.gov.au.
[83] National Sports Tribunal Act, 2019, Section 9, 11; Stephanie David, The delicate equilibrium between the international and the domestic, the private and the public in sports regulation – does the Australian Sports Tribunal provide an answer?, 2019. URL: https://www.sportresolutions.com/news/view/expert-analysis-australian-sports-tribunal.
[84] National Sports Tribunal Act, 2019, Section 21.
[85] *ibid.*
[86] *ibid.*
[87] *ibid*, Section 23.

or which are approved by the tribunal's CEO and at the tribunal's web-site they are outlined as anti-doping rule violations, disciplinary matters (for example, match fixing violation of codes of behavior etc.), selection and eligibility issues, bullying, harassment and discrimination, other disputes, if approved by our CEO.[88] At the same time, the National Sports Tribunal does not handle contractual or remuneration disputes, employment disputes (unless they fall within disciplinary ones), disputes occurring "in the field of play", disputes regarding damages.[89]

The process of arbitration includes lodging an application, arranging a preliminary conference to determine issues, cost and timing, appointment of arbitrators by tribunal's CEO, making submissions and providing for evidence, arranging hearings, producing of award and achieving and agreement an agreement (mediation, conciliation, case appraisal).[90] Publishing of awards takes place in case of anti-doping matters (unless a party that committed a violation us under the age of 18 or there was no violations), while publishing of summaries of awards without identifying the parties involved – in all other matters.[91] The advantages of this tribunal include its hearings, lacking formality and technicality and being expeditious and not expensive.[92]

1.3.3. Germany jurisdiction.

In Germany dispute resolution system in sports also provides for an access to the courts, internal sport organizations' tribunals and arbitration. [93] However, if sports governing body has an internal appeals body, the athletes, before the recourse to the courts and arbitration, has to exhaust these legal remedies (it is allowed to disregard them only under some exclusive circumstances).[94] However, if the parties gave their

[88] Stephanie David, The delicate equilibrium between the international and the domestic, the private and the public in sports regulation – does the Australian Sports Tribunal provide an answer?, 2019. URL: https://www.sportresolutions.com/news/view/expert-analysis-australian-sports-tribunal.
[89] Official web-site of the National Sports Tribunal. URL: https://www.nationalsportstribunal.gov.au.
[90] *ibid.*
[91] *ibid.*
[92] Stephanie David, The delicate equilibrium between the international and the domestic, the private and the public in sports regulation – does the Australian Sports Tribunal provide an answer?, 2019. URL: https://www.sportresolutions.com/news/view/expert-analysis-australian-sports-tribunal.
[93] Alexander Engelhard, Thomas Wassenhoven, The Sports Law Review: Germany, The Law Reviews, 2021. URL: https://thelawreviews.co.uk/title/the-sports-law-review/germany.
[94] *ibid.*

consent for arbitration, that is valid, and if a dispute is arbitrable, then, they shall refer to the arbitration instead of the court.[95]

Arbitration proceedings in Germany are regulated by the Code of Civil Procedure (Section 1025), that defines sport disputes as arbitrable as long as they concern pecuniary matters, however, these terms includes any disputes, where the monetary interest of an athlete or a sporting club exist.[96] Similarly to other jurisdictions, labor disputes cannot be resolved by arbitration, however, usually a no-team athlete is not recognized an employee and, hence, most of "employment" disputes become arbitrable.[97]

The most important sports tribunal in Germany is German Court of Arbitration for Sport, established in 2008 by a joint initiative of the German National Anti-Doping Agency and the German Institution for Arbitration.[98] This tribunal resolves anti-doping violations cases, transfer disputes, membership disputes, disputes on sponsoring agreements and licensing and arising from sports events both at first instance and on appeal (except for disputes concerning a breach of anti-doping rules, that are, as usual, reviewed by CAS).[99] As it derives from the description of the German Court of Arbitration for Sport on its website, this arbitration tribunal ca be characterized as time- and cost-efficient, as well as independent from any sporting clubs, German authorities, athletes, associations, owing to what it plays an important role in resolution both of anti-doping violations disputes and sport-related commercial disputes.[100] In its activity the German Court of Arbitration for Sport is guided by procedural rules, that were designed specifically for sport arbitration – 2008 DIS Sport Arbitration Rules and 2016 DIS Sport Arbitration Rules.[101] In a question of reforms, increase of transparency, integrity of sport arbitration, providence of financial aid for the athletes, the German Court of Arbitration for Sport is advised by the Sport Committee, uniting different

[95] *ibid.*
[96] *ibid.*
[97] *ibid.*
[98] *ibid.*
[99] *ibid.*
[100] Official website of the German Court of Arbitration for Sport. URL: https://www.dis-sportschiedsgericht.de/en/the-court.
[101] *ibid.*

stakeholders of professional sport in Germany (sport federations, sportsmen's representatives, National Anti-Doping Agency of Germany, academics, sponsors, lawyers etc.).[102]

What is interesting, the German Court of Arbitration for Sport provides for the statistics of sport arbitration proceedings, that demonstrate an increase of the case load since the establishment of the German Court of Arbitration for Sport in 2008, that is especially visible in 2017-2018.[103] It also derives from the statistics that the most of the cases, decided by the German Court of Arbitration for Sport, are anti-doping-disputes (in 2019 there were 22 anti-doping-disputes and in 2020 – 15 anti-doping-disputes, while I 2019 there were no general sports-related disputes and in 2020 – only 2 general sports-related disputes) and the cases are mostly decided at first instance (there were 22 first instance cases in 2019 and 17 first instance cases in 2020, while there were no appeal cases in 2019 and only 2 appeal cases in 2020).[104]

A special attention should be given to the procedure of appointment of arbitrators of the German Court of Arbitration for Sport, that is in part entrusted with an organ, created specifically for this purpose, – the Appointing Committee for the German Court of Arbitration for Sport.[105] In particular, the procedure is the following: the parties are allowed to choose arbitrators on their own, however, they must disclose all information, that might doubt their impartiality ad independence; if there were disclosed such circumstances that questioned the impartiality, then, appointment of arbitrators shall be put on the Appointing Committee.[106] Moreover, this Committee is responsible for replacement and dismissal of arbitrators.[107] It is composed of members (there are also alternate members, who perform the duties of members in case they cannot participate in the work of the Committee), that take decision by simple majority without a possibility to review it and, of course, cannot act as arbitration of the German Court of Arbitration for Sport.[108] An appointment of an arbitrator for anti-doping

[102] *ibid.*
[103] *ibid.*
[104] *ibid.*
[105] *ibid.*.
[106] *ibid.*
[107] *ibid.*
[108] *ibid.*

disputes requires such an arbitrator to "have extensive knowledge and experience in the areas of arbitration and anti-doping rules" (substantive and procedural laws).[109] Due to this requirement to have such specific qualifications, there is also a selection procedure, that prescribes that a sole arbitrator or a president of the arbitral tribunal shall be chosen by using the lottery wheel.[110] Moreover, in 2016 the was established a Task Force, consisting from a balanced number of sport clubs, associations, athletes, the German National Anti-Doping Agency's representatives and other members, in order to "review the qualifications of arbitrator candidates" and to recommend the candidates for the inclusion to the list of arbitrators specifically for the anti-doping violations disputes.[111]

Similarly to Sport Resolutions in the United Kingdom, the German Court of Arbitration for Sport provides for the model arbitration clause for sport-related commercial disputes and model arbitration clause for anti-doping disputes.[112] For example, model arbitration clause for sport-related commercial disputes has the following formulation: "All disputes arising out of or in connection with the contract (... designation of the contract ...) or concerning its validity shall be finally settled in accordance with the Sport Arbitration Rules of the German Arbitration Institute (DIS) without recourse to the ordinary courts of law". [113] Further, this model requires the parties to define, whether the arbitral tribunal shall be comprised of a sole arbitrator or three arbitrators; where will be the seat of the arbitration; what will be the language of the arbitration; what will be the law applicable to the merits.[114] At the same time, arbitration clause in anti-doping disputes has a little bit different formulation. In fact, this arbitration clause empowers the German Court of Arbitration for Sport the German Court of Arbitration for Sport to impose sanctions for violations of anti-doping rules (arbitration clause also should list the acts, that contain such rules, meaning the

[109] *ibid.*; Sport Arbitration Rules of the German Arbitration Institute, German Arbitration Institute, 2016, para. 53.1.
[110] Official website of the German Court of Arbitration for Sport. URL: https://www.dis-sportschiedsgericht.de/en/the-court.
[111] *ibid.*
[112] Model arbitration clauses for the German Court of Arbitration. URL: https://www.dis-sportschiedsgericht.de/en/tools-resources/model-clauses.
[113] *ibid.*
[114] *ibid.*

National Anti-Doping Code of the National Anti-Doping Agency of Germany, the World Anti-Doping Code of the World Anti-Doping Agency, the rules of national and international federations.[115] Also, this arbitration clause delegates the National Anti-Doping Agency of Germany to initiate an arbitration against an athlete, who has allegedly violated anti-doping rules :"the ... [federation] has delegated to NADA the results management and disciplinary proceedings in anti-doping matters. The Athlete agrees that NADA may directly file an arbitration against the athlete and be a party to any such arbitration".[116] With regard to the arbitration agreement, German Court of Arbitration for Sport does not provide for a model of a agreement, however, makes reference at its website to the section 1031 of the Civil Code, that defines the form requirements of arbitration agreements (existence of an agreement must be proved by respective document, telegrams etc.).[117]

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Summing up, in this Chapter there was explored the legal aspects of the establishment and operation of existing sports dispute settlement forums worldwide, such as the internal dispute settlement bodies in sports organizations, the national courts, CAS, national arbitration tribunal in foreign jurisdictions with a purpose to implement this experience for the establishment of a sports arbitration tribunal in Ukraine.

A special attention was paid to the application of the foreign experience of the establishment and operation of the CAS, as well as national sports arbitration tribunals in the United Kingdom, Australia and Germany. The questions explored include such issues, as: first instance and appeal procedures, the forms of procedural documents that must be submitted by the parties (statement of claims, statements of appeals, other written submissions), all steps required to be taken for the submission of an application to the arbitration and beginning of the proceedings, the overall arbitration procedure

[115] *ibid.*
[116] *ibid.*
[117] *ibid*; Civil Code, 1900 (DE), Section 1031.

(the form pf oral hearings, possible types of arbitration procedures), what law is applicable, enforcement of award, the existing conciliation procedures, the process for the appointment of arbitrators, involving witnesses, experts, confidentiality issues etc.

CHAPTER 2 LEGAL ASPECTS OF THE ESTABLISHMENT OF NATIONAL SPORTS ARBITRATION IN UKRAINE

2.1. An overall rationale behind the establishment of sports arbitration in Ukraine.

Generally, in Ukraine there are similar sports disputes resolution mechanisms, as worldwide: national courts, the sports' organisations dispute settlement bodies, in some cases national courts and the CAS. However, a correlation between them is not clear and fully established that gives rise to a necessity to facilitate the access to justice by the establishment of a national sports arbitration in Ukraine.

Starting with an analysis of the role of national courts in resolution of sports disputes in Ukraine. On the one hand, recourse to national courts from the legal point of view is allowed. There is an opinion that national courts of the general jurisdiction cannot be deprived from the right to resolve the disputes (notwithstanding it is sport dispute or not) even by a clause in the agreement, that recognizes only the jurisdiction of federation's dispute settlement bodies or sports arbitration.[118] It can be explained by the existence of respective constitutional guarantee, that is prescribed by Article 124 of the Constitution of Ukraine and states: "Justice in Ukraine is administered exclusively by courts"[119], albeit, an interpretation of this constitutional provision in such a way is inconceivable, since it makes any arbitration bodies operation impossible.

Meanwhile, Ukrainian case law shows that the competence of national courts of general jurisdiction covers almost every dispute, that usually arises in sports relations. Namely, the courts of civil jurisdiction in matters related to sports may consider labor disputes, disputes for protection of rights, interests, disputes on refutation of information that undermines business reputation.[120] Administrative courts hear the claims against actions of authorities related to the registration or liquidation of sport organizations.[121] Commercial courts may consider commercial, contractual and other

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[118] Апаров А.М. Спортивне право України : Навч. посібник / А. М. Апаров. – К. : "Істина", 2012. С. 395-402
[119] *Ibid*.
[120] *Ibid*.
[121] *Ibid*.

disputes between sports entities.[122] In addition, arbitration bodies, under the general rule, are prohibited from hearing labor disputes and disputes to which a foreign person is a party, and they must be heard by courts of general jurisdiction.[123] Hence, appeal to the national courts may seem to be a logical outcome, especially after all sports federations' dispute settlement bodies are exhausted.[124]

On the other hand, recourse to national courts may be directly prohibited in some internal regulations of sports organizations, as it was mentioned earlier in the first chapter.[125] Simultaneously, there are a lot of cases when Ukrainian athletes proceed submitting their application to courts and not consistent court practice with regard to such athletes' applications.

For instance, there is decision of Supreme Court, that establishes that none of Ukrainian courts has jurisdiction, necessary to deal with sports disputes.[126] This case shows that due to the fact that *sports* disputes sometimes have ambiguous nature Ukrainian judges have disagreements on a type of jurisdiction of the court, to which it can be submitted and, therefore athletes should not refer to national courts as such. Namely, when a referee was banned for his/her influence on basketball players, administrative courts considered that it is a matter of courts of civil jurisdiction.[127] Finally, the Supreme administrative court decided that the claim in general is inadmissible, because none of national courts have jurisdiction for it and appeal decision of basketball federation can be challenged only before the CAS.[128] In particular, the conclusion of the court was the following: "…as FBU [Federation of Basketball of Ukraine] members must abide by the rules set by international sports organizations such as FIBA and FIBA Europe, and the FBU is a member of these organizations, disputes between basketball and FBI actors over official basketball rules and the principles of fair play games, is the subject of arbitration proceedings under

[122] *Ibid*; Рішення господарського суду Житомирської області від 16 червня 2011 року по справі №16/5007/61/11.
[123] Закон України «Про третейські суди», 2004, ст. 6.
[124] Апаров А.М. Спортивне право України : Навч. посібник / А. М. Апаров. – К. : "Істина", 2012. С. 395.
[125] Dmytro Koval, Rule of the Game v. Rule of Law: Had Ukraine Finally Resorted to CAS?, Kluwer Arbitration Blog, 2019. URL: http://arbitrationblog.kluwerarbitration.com/2019/08/05/rule-of-the-game-v-rule-of-law-had-ukraine-finally-resorted-to-cas/.
[126] Постанова Великої палати Верховного Суду від 27.03.2019 по справі 826/4734/16.
[127] *ibid.*
[128] *ibid.*

paragraph 3.17.2 of the Statute [of the Federation of Basketball of Ukraine]. In addition, the Grand Chamber of the Supreme Court considers it necessary to note that as of the time of consideration of the case by the Court of Cassation, the "Regulations on FBU Disciplinary Sanctions", approved by the FBU Council on December 24, 2015, making a decision on imposing disciplinary sanctions at the request of any person who has information about the commission of a disciplinary offense by a subject in the field of basketball. Also, in Art. 30 of this Regulation stipulates that the decision made as a result of consideration of a complaint of a disciplinary offense may be appealed by an interested party in the Court of Arbitration for Sport in Lausanne. Taking into account the above and taking into account the essence of the disputed legal relationship, the Grand Chamber of the Supreme Court concluded that the lawsuit to declare illegal and cancel the FBU decision cannot be considered in court by an administrative court (including in any jurisdiction)".[129]

It evidences that internal dispute settlement bodies of sports organizations currently may be considered as the only forum for the resolution of sports disputes.[130]

In another case, Ukrainian judges decided that employment dispute can be considered by civil court, despite of an opposite arbitration clause in employment contract.[131] It explained its decision by the fact that "employment issues go beyond internal sports disputes" and because the arbitration clause must not deprive the athlete of his constitutional right to a fair trial.[132] At the same time, such a decision in no way answers the question how to differentiate internal sport-related disputes from those employment and others that go beyond sport-related disputes. It one more time confirms how it is difficult to "demarcate" jurisdiction of the courts, arbitration tribunals and federations' dispute settlement bodies when the sport dispute takes place.

Lately, in another case the Ukrainian court ignored the Supreme Court's decision, mentioned above, and opened proceedings, despite of the sport-related nature

[129] *ibid.*
[130] Dmytro Koval, Rule of the Game v. Rule of Law: Had Ukraine Finally Resorted to CAS?, Kluwer Arbitration Blog, 2019. URL: http://arbitrationblog.kluwerarbitration.com/2019/08/05/rule-of-the-game-v-rule-of-law-had-ukraine-finally-resorted-to-cas/.
[131] *Ibid.*
[132] *Ibid.*

of dispute, although it even was not an employment dispute.[133] The case concerns a denial for football player's participation at Professional Football League. Although ignoring previous Supreme Court's decisions, this court relied on Melnyk v. Ukraine case, where it is stated that "the right of access to court cannot be limited in such a way or to such an extent that its very essence is impaired".[134] What is more, the Court satisfied interim measures and prohibited Ukrainian Association of Football to approve calendar of 2019-2020 league championship for the season and the Ukrainian Cup until it decides on the merits.[135]

Hence, there are the following jurisdictional difficulties, confirming the necessity to establish a separate arbitration institution in Ukraine with a jurisdiction exclusively for sports-related matters:

1. an existence of the arbitral clauses and agreements, by which the CAS or the sports organizations' dispute settlement bodies are the only possible forums with the exclusion of the courts' jurisdiction;
2. the difficulties in choosing the court's jurisdiction and the absence of a consistent court's practice in this regard;
3. a twofold nature of the employment disputes, that are labor-related and sports-related disputes simultaneously.

Despite of a problem regarding the choice of jurisdiction between Ukrainian courts, the necessity to establish national sports arbitration tribunal derives also from the nature of arbitration as such, that prevails in comparison to litigation and has already become a standard for the dispute resolution in sports for a lot of jurisdictions (as it derives from, among other, from the experience of the United Kingdom, Germany, Australia, as analyzed in Section 1.3.).

[133] Постанова Касаційного цивільного суду Верховного Суду від 20.11.2019 по справі № 757/11542/17-ц.
[134] Dmytro Koval, Rule of the Game v. Rule of Law: Had Ukraine Finally Resorted to CAS?, Kluwer Arbitration Blog, 2019. URL: http://arbitrationblog.kluwerarbitration.com/2019/08/05/rule-of-the-game-v-rule-of-law-had-ukraine-finally-resorted-to-cas/.
[135] Постанова Касаційного цивільного суду Верховного Суду від 20.11.2019 по справі № 757/11542/17-ц; Dmytro Koval, Rule of the Game v. Rule of Law: Had Ukraine Finally Resorted to CAS?, Kluwer Arbitration Blog, 2019. URL: http://arbitrationblog.kluwerarbitration.com/2019/08/05/rule-of-the-game-v-rule-of-law-had-ukraine-finally-resorted-to-cas/.

According to the foreign scholars' attitude to arbitration in sports disputess, it is obvious that a high-quality resolution of sports disputes requires affordable, fast, "comfortable", "easy-to-use" and, at the same time, impartial form of justice, delivered by specialists in sports law with a consequent formation of case law, that would become consistent and common for most of future sports disputes.[136] In fact, it even becomes obvious that Ukrainian courts and in some aspects even the CAS would hardly satisfy these requirements for Ukrainian athletes and sporting clubs. When it comes to the internal dispute resolution bodies of the sporting organizations, the reason of why they are not always appropriate options is delivered by a quote of Paul Hayes regarding establishment Australian own sport arbitration, that was already mentioned and analyzed in previous chapter. Namely, Paul Hayes has stated: "In an era now where most sports have been professionalized, the minister and others are correct to assert that it is no longer appropriate for sports bodies to sit in judgement of themselves".[137] At the same time, it must be remembered that each national sport "remains all but a cog within the international sports system."[138]

In greater detail, resolution of sport disputes often requires the witnesses to appear before the tribunal to give their testimonies and evidence.[139] The absence of witnesses and their inability to attend before the tribunal may become a significant obstacle for resolution of a dispute in sports.

Moreover, taking into consideration a big number of national sports disputes, arising not only in football, a permanent arbitration body, competent in hearing of all variety of sports disputes, would become a unified forum for the disputes from different areas of sport.

Another important reason for the establishment of Ukrainian sport arbitration derives from a lack of corresponding specialists with in-depth knowledge in sport law and arbitration of all types of sport, that explains fears of sport clubs and athletes to

[136] Paul Hayes, Era of Sports Sitting in Judgment on Themselves is Over, The Australian, 2018. URL: https://1f2ca7mxjow42e65q49871m1-wpengine.netdna-ssl.com/wp-content/uploads/2018/03/The-Australian-170527-Era-of-sports-sitting-in-judgment-on-themselves-is-over.pdf.
[137] *ibid.*
[138] *ibid.*
[139] *ibid.*

bring their disputes before state courts. For example, due to the lack of expertise in spots law the judges resort to inviting witnesses, even if the thing that is asked could be easily explained by an arbitrator, well-experienced in sport law. As it was already mentioned in Section 1.2., this was one of the reasons for the establishment of the CAS.

Also, there are cases, when there was an urgent need of arbitration to assist with a dispute just before the competition starts and regardless it is day or even at night, and ad hoc arbitration int eh framework of the permanent arbitration tribunal is a great option to meet this often demand.

Thus, an operation of unified and independent arbitration body, requiring average expenditures for certain country, would facilitate access to justice for athletes and sports organizations and become an exclusive option (thus, depriving the courts' jurisdiction) for the resolution of national sports disputes in Ukraine.

2.2. Legal aspects of the establishment of sports arbitration in Ukraine: general overview.

In the question of the establishment of sports arbitration tribunal, there is a range of the legal aspects that must be properly analyzed for the purpose of adoption of procedural acts, adjustment of national legislation and prevention of further legal gaps in operation of an institution, that is created firstly in the history of Ukraine. The proposals concerning these legal aspects, provided in this Section, are based on the experience of the Court of Arbitration for Sport and national arbitration tribunals in foreign jurisdictions, that was in detail analyzed in Sections 1.2. and 1.3. of this thesis.

First of all, due to the numerous features of sport disputes and the process of proceedings, a separate procedural act or code could be prepared exclusively for sports arbitration, as it was adopted in of all arbitration tribunals, analyzed in Section 1.3. Another good example is the CAS's arbitration procedure, that is mostly governed by the Code of Sports-related Arbitration, consisted of the Statutes of bodies working for the settlement of sports-related disputes, the Procedural Rules and a set of mediation

rules as an option of negotiation.[140] The procedural rules are different for the ordinary arbitration, the appeals arbitration Procedure and for the CAS Anti-Doping Division.

Taking into consideration that 85%n of CAS caseload is appeal procedures,[141] Ukrainian federations may go the same way and prescribe in relevant documents the CAS as an appellate body. Alternatively, Ukrainian sport arbitration can include an appellate type of arbitration (although it would an unusual approach), and respectively, the development of necessary legal rules for it would require much more time.

Moreover, the mere fact that the seat of the CAS is in Lausanne also defines what law will govern the arbitration.[142] Since, national arbitration tribunals are primarily established for the purpose of resolution of national disputes the seat of arbitration in Ukraine, by analogy to the CAS and foreign national tribunals, can indicate that Ukrainian law is applicable, except the parties decided otherwise.

Despite of the fact that arbitration procedure must be governed by relevant legal documents, it should be considerably flexible and corresponding to modern legal tendencies simultaneously. For example, the CAS remains one of the most authoritative bodies in the field of sport disputes, although its hearings are flexible and differing from each other (at least, they are influenced by the national traditions of the arbitrators, some of whom them represent a civil law, others – a common law background).[143]

Another important requirement for the sports arbitration, that must be considered during the establishment of sports arbitration in Ukraine, is an often need of expedited procedures in the world of sport disputes.[144] Mostly, it is explained by arising eligibility issues, that must be immediately decided, as well doping and disqualification matters.[145] As it was already mentioned, the CAS Code in this regard provides for the

[140] Official web-site of the Court of Arbitration for Sport. URL: https://www.tas-cas.org/en/general-information/history-of-the-cas.html.
[141] James H Carter, Advocacy in International Sport Arbitration, in Stephen Jagush QC and Philippe Pinsolle, The guide to advocacy, London : Law Business Research Ltd., K2400 .G852. 2018. p. 5.
[142] Adam Samuel, Richard Gearhart, Sporting Arbitration and the International Olympic Committee's Court of Arbitration for Sport, Journal of International Arbitration, Volume 6 (4), 1989, p. 4.
[143] *Ibid*.
[144] James H Carter, Advocacy in International Sport Arbitration, in Stephen Jagush QC and Philippe Pinsolle, The guide to advocacy, London: Law Business Research Ltd., K2400 .G852. 2018. p. 5.
[145] *Ibid.*

possibility of ad hoc tribunals and generally the CAS hear the disputes in tight limits.[146] At the same time, commercial and contractual disputes do not usually require speed proceedings.[147] National arbitration tribunal in Ukraine can meet this requirement by providing an option of ad hoc tribunals.

One more useful model that can be taken from the procedures of the CAS and national tribunals of other jurisdictions is the possibility to achieve conciliation before the proceedings started. They may have a considerable role in demarcation disputes where the parties are interested in conciliation, rather than fighting to the bitter end.[148]

Just as in case of national arbitration, as well as the CAS there must be provided an opportunity both for written and oral proceedings. For instance, the CAS Code describes the oral part of proceedings as follows: "As a general rule, there shall be one statement of claim, one response and, if the circumstances so require, one reply and one second response. The President of the Panel shall conduct the hearing and ensure that the statements made are concise and limited to the subject of the written presentations, to the extent that these presentations are relevant."[149] At the same time, the procedural rules of the Sport Resolutions describes the form of proceedings in a very simple manner and even allow the possibility to conduct the proceedings remotely,[150] that also can be useful for Ukraine.

Also, the choice of competent arbitrators is very important, because without high-qualified and honest arbitrators this institution will never be in demand. For instance, arbitrators of the CAS are "personalities with a legal training and who possess recognized competence with regard to sport",[151] appointed for a renewable term of four years.[152] The arbitrators must be chosen "with a view to safeguarding the interests of

[146] *Ibid.*
[147] *Ibid.*
[148] Adam Samuel, Richard Gearhart, Sporting Arbitration and the International Olympic Committee's Court of Arbitration for Sport, Journal of International Arbitration, Volume 6 (4), 1989, p. 4.
[149] Code of Sports-related Arbitration of the Court of Arbitration for Sport, 2020, R44.1, R44.2.
[150] Arbitration Rules of the Sport Resolutions, Sport Resolutions, Art. 9.1.
[151] Code of Sports-related Arbitration of the Court of Arbitration for Sport, 2020.
[152] Official web-site of the Court of Arbitration for Sport. URL: https://www.tas-cas.org/en/general-information/history-of-the-cas.html.

the athletes"[153] and among personalities independent of sports organizations,[154] because it is of crucial importance for maintaining impartiality.

Someone may argue that a requirement to possess competence with regard to sport law may narrow the persons who can become arbitrators to those, who are affiliated with various sporting entities.[155] For this purpose, there can be also established certain rules, of how ay potential close ties to such bodies can be verified. Moreover, in Adam Samuel and Richard Gearhart in their article dispel this presumption by reference to the list of 52 CAS members, the majority of whom do not have such ties, although are professional on their field. In any case, there is always an option to elaborate on the rules regarding the challenge of arbitrator.

Apart from the requirements to arbitrators, it must be determined the number of arbitrators in a panel and the procedure of how they will be chosen. It is of special importance for any court or arbitration, because it entails the issue of impartiality.

For example, Sport Resolutions in the United Kingdom has a very detailed and unusual procedure of how the arbitrators can be appointed, that can be partially applied in Ukraine. Namely, in Section 6 of the Arbitration Rules of the Sport Resolutions it is prescribed that "Any dispute to Sport Resolutions shall be decided by one or three member tribunal ("the tribunal") appointed by the Executive Director of Sport Resolutions unless the parties have otherwise agreed in writing (within any timescale notified by the Executive Director of Sport Resolutions that they whish to make their respective nomination(s) in accordance with rule 6.2. or 6.3". Moreover, "the Executive Director of SDRP shall decide whether to appoint a one or three member tribunal as he/she considers appropriate in all the circumstances and in discussion with the parties unless the parties agreed in writing whether the Tribunal should consist of one or three members".[156]

[153] Code of Sports-related Arbitration of the Court of Arbitration for Sport, 2020, S14.
[154] Official web-site of the Court of Arbitration for Sport. URL: https://www.tas-cas.org/en/general-information/history-of-the-cas.html.
[155] Adam Samuel, Richard Gearhart, Sporting Arbitration and the International Olympic Committee's Court of Arbitration for Sport, Journal of International Arbitration, Volume 6 (4), 1989, p. 3.
[156] Arbitration Rules of the Sport Resolutions, Sport Resolutions, Art. 6.1.

If a sports arbitration institution is established in Ukraine by private non-governmental organizations, such a procedure for the appointment by the director of a sports tribunal of arbitrators can be taken as a model. As we can see director can also decide the question of how many arbitrators are required for the resolution of a certain type of sports dispute. However, in any case, the arbitration procedural rules always remain a right to decide these details on the disputants' consideration and, as described further, the parties are entitled to approve the arbitrators.

After the director makes a proposal of the names of a potential arbitrator (if it is agreed that one arbitrator is sufficient for the particular sports dispute) to the parties, according to the Arbitration Rules of the Sport Resolutions, "the parties shall seek to agree on one, whom they shall nominate to be appointed by the Executive Director of Sport Resolutions. That one Arbitrator shall constitute a valid Tribunal. If the parties fail to agree, the Executive Director of Sport Resolutions shall appoint the Arbitrator".[157]

At the same time, the procedure differs, if the number if arbitrators three, namely in this case the parties shall notify the director about their desire to have three arbitrators and appoint them and, then, each party will be permitted to nominate one of the.[158] At the same time, it is stated that "The Executive Director of Sport Resolutions shall propose to the parties the names of potential arbitrators from whom the parties shall seek to make their respective nominations to the Executive Director of Sport Resolutions for him/her to appoint".[159]

Comparing with the CAS Code, there is a permission for the parties to choose two arbitrators by their own and the third must be selected by agreement or by the CAS.[160] All arbitrators must be nominated from the list of persons who make up the CAS Court, which is composed of nearly 400 arbitrators of all nationalities.[161]

[157] *ibid*, Art. 6.2.
[158] *ibid*, Art. 6.3.
[159] Arbitration Rules of the Sport Resolutions, Sport Resolutions, Art. 6.3.
[160] Code of Sports-related Arbitration of the Court of Arbitration for Sport, 2020, R40, R50.
[161] James H Carter, Advocacy in International Sport Arbitration, in Stephen Jagush QC and Philippe Pinsolle, The guide to advocacy, London: Law Business Research Ltd., K2400.G852, 2018. p. 6.

As such an arbitration body also shall be independent from any other organizations and those organizations to which an arbitration is affiliated. It is of particular importance for the establishment of national arbitration, if it is established by private organizations, as in case of Sport Resolutions in the United Kingdom. While the CAS was initially established by the International Olympic Committee, Olympic movement is excluded from its jurisdiction.[162] Namely, in art. 61 of the Olympic Charter it is stated that "The decisions of the IOC are final. Any dispute relating to their application or interpretation may be resolved solely by the IOC Executive Board and, in certain cases, by arbitration before the Court of Arbitration for Sport (CAS)".[163] An independence, impartiality and an ability to preserve the parties' autonomy is of a particular importance, taking into consideration that the Olympic Committees have, for instance, the power to revoke licenses of athletes, and the same authorities may possess an organization, under umbrella of which Ukrainian arbitration will be created.[164]

The jurisdiction of arbitration and delamination of the scope of disputes that can be referred to the arbitration body must be accurately defined therein. Obviously, it must be limited exclusively to sports-related disputes, that include eligibility, disciplinary, anti-doping, contractual and some others matters. For example, in case of the CAS, the scope of sport disputes involves "matters of principle relating to sports or matters of pecuniary or other interests relating to the practice or the development of sport and may include, more generally, any activity or matter related or connected to sport".[165] Moreover, Rule 55 of the procedural rules of the CAS Code contains a Kompetenz-Kompetenz principle, allowing the CAS to decide whether the arbitral clause is binding and whether the dispute lies within its jurisdiction.[166] Namely, it is stated that "the Panel shall rule on its own jurisdiction. It shall rule on its jurisdiction irrespective of any legal action already pending before a State court or another arbitral

[162] Adam Samuel, Richard Gearhart, Sporting Arbitration and the International Olympic Committee's Court of Arbitration for Sport, Journal of International Arbitration, Volume 6 (4), 1989, p. 3.
[163] Olympic Charter of the International Olympic Committee, International Olympic Committee, 2021, Art. 61.
[164] Viktoriya Pashorina-Nichols, Is the Court of Arbitration for Sport Really Arbitration?, LLM Research Paper, 2015, p. 62. URL: https://researcharchive.vuw.ac.nz/xmlui/bitstream/handle/10063/5007/paper.pdf?sequence=1.
[165] Stuart S McInnes, User Guide to the Court of Arbitration for Sport, Squire Patton Boggs, 2017, p. 10. URL: https://media.squirepattonboggs.com/pdf/misc/User-Guide-to-the-Court-of-Arbitration-for-Sports-Booklet.pdf.
[166] *ibid.*

tribunal relating to the same object between the same parties, unless substantive grounds require a suspension of the proceedings".[167]

Other questions significant for creation of arbitration body include representation of the parties. For instance, under the CAS Code[168] the parties can be represented by any person, who provide a power of attorney, notwithstanding he or she is an attorney or not.

Another interesting and important issue is confidentiality of arbitration awards. If compared with the CAS, the last usually publishes its awards unless the parties disagree and, thus, enhances development of *lex sportiva,* even in spite of the fact that commercial arbitral institutions, on contrary, consider arbitral awards confidential unless the parties expressly agree otherwise.[169]

In addition, it is important to establish the form of testimonies. In international commercial arbitrations it is common that the written statements of witnesses and reports of experts often take the form of full affirmative testimony.[170] Also, it must be taken into consideration that doping disputes usually requires expert opinions and reports.

Another important issue is an enforceability of sports award of a local arbitration. Generally, awards of commercial arbitration in Ukraine must be recognized and enforced under Art. 482 the Civil Procedural Code of Ukraine, according to which "granting permission to enforce the decision of international commercial arbitration, if the place of arbitration is located in Ukraine, is carried out by the court".[171] The legislation in this regard can be adjusted. Meanwhile, recognition and enforcement abroad would be based on the New York Convention, to which Ukraine is a party. As it was stated in *Gasser case* by the English High Court, "so long as there is a valid agreement to arbitrate, the procedure has been fair and the award does not offend public

[167] Code of Sports-related Arbitration of the Court of Arbitration for Sport, 2020, R55.
[168] Code of Sports-related Arbitration of the Court of Arbitration for Sport, 2020, R30.
[169] Mark Mangan, The Court of Arbitration for Sport: Current Practice, Emerging Trends and Future Hurdles, 25 Arbitration International 4, 2014, p. 598.
[170] James H Carter, Advocacy in International Sport Arbitration, in Stephen Jagush QC and Philippe Pinsolle, The guide to advocacy, London: Law Business Research Ltd., K2400 .G852. 2018. p. 6.
[171] Цивільний процесуальний кодекс України, 2004, ст. 482.

policy, such an award will be recognized and enforced in municipal courts".[172] For the purpose of enforcement, Ukrainian legislation shall exactly define formal validity rules, meaning a form of the arbitral clause that is allowed to be applied, bearing in mind that the New York Convention require that an arbitration clause or an arbitration agreement to be in written form. In particular, it is stated that "the term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed".[173]

The scholars describe the following challenges that may occur in this regard: for example, if a sportsman when entered the competition promised to abide by the rules of a certain sporting organizations, though without signing the documents, that included an arbitral clause, such an arbitral clause would become void according to the Swiss legislation, however, would become valid and applicable in other jurisdictions.[174] Then, the ability to rely on such an arbitration clause depends on what law is applicable, according to the rules of an arbitration.[175]

Moreover, it increases the risks that an arbitral award would not be enforced in a country, where the arbitral clause is valid only if made in a written form (such as Italy, where the court practice shows a position that New York Convention does not cover arbitral agreements incorporated by a reference to another document).[176] In order to decrease the problems, deriving from the form of an arbitration clause and an enforcement of arbitral awards aboard, the scholars offer a party, wishing to rely on the award, to convert an award to a court agreement of a state, where a enforcement is

[172] Gasser v. Stimson, English High Court, 15 June 1988; Adam Samuel, Richard Gearhart, Sporting Arbitration and the International Olympic Committee's Court of Arbitration for Sport, Journal of International Arbitration, Volume 6 (4), 1989, p. 6.
[173] Convention on the Recognition and Enforcement of Foreign Arbitral Awards, United Nations, 1958, Art. 2
[174] Adam Samuel, Richard Gearhart, Sporting Arbitration and the International Olympic Committee's Court of Arbitration for Sport, Journal of International Arbitration, Volume 6 (4), 1989, p. 6-7.
[175] *ibid.*
[176] *ibid.*

sought.[177] Alternatively, the rules of an arbitration may establish a requirement to sign the terms of reference, as it is required by the CAS Statute, and thus to avoid any doubts regarding the formal validity of an arbitration clause or an agreement to arbitrate.[178]

2.3. Establishment of sports arbitration subject to classification of sports disputes.

A special attention should be devoted to the legal aspects of the establishment of sports arbitration tribunal in Ukraine, taking into consideration the classification and of sports disputes.

There can be observed a link between a nature of sports dispute and the choice of arbitration as the most advantageable forum among others. Before starting the analysis of this link and the issue of how the establishment of sports arbitration in Ukraine is impacted by classification of sports disputes, it should be established how such disputes are usually classified.

For example, Adam Samuel and Richard Gearhart in their article "Sporting Arbitration and the International Olympic Committee's Court of Arbitration for Sport" define four classic types of sporting disputes:

1. Those disputes that relate to the "purely commercial side of sporting activities";
2. The disputes that concern the employment issues (mostly, this is employment disputes of staff by sporting organizations);
3. So-called, "demarcation disputes between sporting organizations";
4. Disputes regarding disciplinary sanctions, imposed on athletes by the sports bodies.[179]

A special attention should be given to the commercial sports disputes, because almost all of them are contractual by their nature. As Alan Sullivan noticed, "the law of contract is the cornerstone on which sports law has been built".[180]

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[177] *ibid.*
[178] *ibid.*
[179] Adam Samuel, Richard Gearhart, Sporting Arbitration and the International Olympic Committee's Court of Arbitration for Sport, Journal of International Arbitration, Volume 6 (4), 1989, p. 1.
[180] Alan Sullivan, The Role of Contract in Sports Law, Australian and New Zealand Sports Law Journal, 5(1), 2010, p. 3. URL: http://classic.austlii.edu.au/au/journals/ANZSportsLawJl/2010/2.pdf.

As it inferred from different classifications, the contractual disputes may arise around numerous issues, deriving from the contracts, with an enormous part of them – in the sponsoring field. According to one of the classifications, there can be outlined the following contractual disputes:

- sponsorship, television rights, the sale of media rights in respect of a sporting event or competition,
- staging of sports events and the rights to host a major sporting competition or event,
- participation rights and obligations in major events or competitions,
- the eligibility of athletes or teams to compete in competitions or events,
- the selection of athletes for sporting teams and the removal of athletes from teams for which they had been selected,
- disciplining of athletes including but not confined to, commission of doping offences,
- the engagement of athletes or players by teams or organizations to compete in various sporting competitions and events,
- player transfers and relations between players or coaches and clubs and/or agents, athletes and managers, relating to ground or venue hire including 'signage' rights, membership rights in sporting clubs or organizations.[181]

The reason of why the majority of sports disputes are contractual, among other things, derives from an unusual nature of a contract in comparison to the civil law contracts in other areas.

While most of contracts relating to the area of sport in on one or another way (especially in media, sponsorship, marketing) contracts "can be accommodated within the orthodox approach an "offer" + "acceptance", contractual obligations of sportsman and sporting organisation before each other exist even without a contract, concluded directly between them, and may lead to selecting and disciplinary disputes.[182]

[181] *ibid.*
[182] *ibid*, p. 9.

Alan Sullivan gives several examples of such situations: “A rugby union player may wish to play in a local rugby competition. He or she may, perhaps, become a member of a club. In such a circumstance he or she may sign a membership form, registration form or some other form of acknowledgement by which he or she undertakes to abide by not only the rules of the particular club which he or she is joining but also the “rules” or “contracts” which the club has made with its state federation or national federation and which the national federation has, in turn, made with the international organisation and such rules or contracts may incorporate, by reference or necessary implication, contracts which the national federation or international federation has made with other international organisations”.[183] Thus, a player becomes obliged not only by the documents, that were directly signed by him or her to enter the club, but also by rules of the contracts, to which a club is a party.

This example is supported by case law: for instance, in Australian decision in *Raguz v Sullivan case* there were no direct contracts between the parties, although the court decided there were contractual obligations, relying on *Clarke v Earl of Dunraven case*.[184] Namely, in this *Clarke v Earl of Dunraven case* the main issue arose on whether there were contractual obligations between the parties took place after during a yacht race one of the yachts collided with another one and sank it.[185] Obviously, two competitors did not sign any contracts between each other, however, both of them were bound by the rules of the Yacht Racing Association.[186] The rules stipulated that “if a yacht, in consequence of her neglect of any of these rules, shall foul another yacht, or compel other yachts to foul, she shall forfeit all claim to the prize, and shall pay all damages”.[187] Despite of the fact that this document, in fact, did not contain the competitors as the parties, there was decided that a yacht that damaged another one was obliged by this rule and, therefore, it shall hold responsibility. This case became a

[183] *ibid.*
[184] *ibid*; Raguz v. Sullivan, New South Wales Court of Appeal (Australia), 2000, NSWCA 240.
[185] Julie Clarke, Clarke v The Earl of Dunraven and Mount-Earl (The "Satanita"), [1897] AC 59, Australian Contract Law Database. URL: https://www.australiancontractlaw.info/cases/database/clarke-v-dunraven.
[186] *ibid.*
[187] *ibid.*

precedent, and it characterizes that sports dispute are indeed decided differently in comparison to other contractual disputes and, hence, requires a respective expertise.

Similarly, the CAS decision in *International Rugby Board v Troy case* evidences that the provisions of the World Anti-Doping Code in relation to doping offences becomes binding even upon an amateur player.[188]

Hence, due to the extension of contractual obligations even on, at first sight, non-contractual sport relations, almost all arising sport disputes can be characterized as contractual.

Contractual nature of such a big amount of sport disputes lead to a choice of an arbitration. As it is explained by Adam Samuel and Richard Gearhart, "an expertise in the technical areas is concerned, as with most commercial dispute resolution, is the principal reason for using arbitration", meaning that a detailed knowledge of sport-related commercial law is highly required and this is exactly what arbitration can give.[189] As an author mentioned, when resolving, for example, sports-sponsorship dispute, there must be an understanding of what impact may be caused on both parties in case of a breach of sports-sponsorship agreement: "outsiders to this area will find it hard to determine the financial value to a sponsor of the publicity obtained through a sponsorship agreement and the effects on a sport or participant of the withdrawal of sponsorship". [190]

If considering employment and disciplinary disputes, arbitration is also seemed to be a better option, although it remains to be debatable whether labor-related disputes can be resolved by arbitration. First of all, it should be analyzed, whether sport club's managers, staff, players and referees are considered employees as such and, respectively, whether the employment disputes can take place in sport.

Determination of whether an athlete is an employee of the club, depend on a respective test, that may differ in each jurisdiction. For example, in common law

[188] Alan Sullivan, The Role of Contract in Sports Law, Australian and New Zealand Sports Law Journal, 5(1), 2010, p. 9. URL: http://classic.austlii.edu.au/au/journals/ANZSportsLawJl/2010/2.pdf; *International Rugby Board v Troy case,* Court of Arbitration for Sport, 2008/A/1664, 2008.
[189] Adam Samuel, Richard Gearhart, Sporting Arbitration and the International Olympic Committee's Court of Arbitration for Sport, Journal of International Arbitration, Volume 6 (4), 1989, p. 2.
[190] *ibid.*

system to define whether an athlete is an employee, so-called, "control test" shall be applied.[191] According to the control test, a person is "controlled" by a company as its employee, meaning that a player "is told not only what to do but also how to do it".[192] An emphasis is also given to other factors such as whether a person is in business. Another important criterion is that employment relations are characterized by mutuality obligations, when both contracting parties incur the obligation in respect to each other (for example, in employment relations, contrary to civil law relations, an employer must have an obligation to provide work for the employees).[193]

For example, in *Singh v National Review Board case* it was recognized that referees in that case are not employees, even despite of the obligation to referee games regularly and as directed due to the absence of mutual obligations.

In any case, even self-employed players or club's staff may be subject to some social guarantees (for example, minimum wage guarantee) or be protected by discrimination law, that may become a matter of an employment dispute.[194]

Similarly, in Ukraine there are prepared two legislative bills regarding this matter: the Draft Law on Amendments to the Labor Code of Ukraine to Define the Concept of Labor Relations and Signs of Their Existence and the Draft Law, alternative to it. Based on the analysis of these bills, as well as the court practice, the criteria, indicating the employment relations in Ukraine, include the following: possessing a specific qualification or profession for performance of the work, a company controls the performance of work, a person is subject to a company's internal regulations, policies, established working regime, duration of working hours etc., a company provides a contractor with a workplace, equipment; the work performed is of a permanent character rather than aimed at achieving a specifically established result, reimbursement for the services provided is paid systematically; a person is reimbursed with business trips and other financial expenses.[195]

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[191] Roger Welch, Employment Law in Sport, University of Portsmouth, 2020, p. 2. URL; https://www.researchgate.net/publication/341521260_EMPLOYMENT_LAW_IN_SPORT_2020.
[192] *ibid.*
[193] *ibid.*
[194] *ibid.*
[195] Проект Закону про внесення змін до Кодексу законів про працю України щодо визначення поняття трудових відносин та ознак їх наявності, 2021, ст. 21^2; Проект Закону про внесення змін до Кодексу законів про працю

Thus, the courts would consider a player an employee, when at least several of the above-mentioned conditions are met. Attention would be also given to the fact, whether a player is registered as a private entrepreneur, that would emphasize his status of an independent contractor, rather than an employee. Hence, subject to these criteria, sport disputes may be considered employment in Ukraine too.

If relations between player and a club are defined as employment, it also usually gives grounds to apply a wider range of disciplinary measures, such as fines, bans or even dismissal and in some cases leads to disciplinary disputes.[196]

Advantages of local arbitration body in case of employment and disciplinary disputes is explained by simple arguments. As it is evidenced by the scholars, most employment contracts relating to sport are concluded between organizations and athletes (or other employees) of the same jurisdiction, so there are simply no obvious reasons to resort to a foreign arbitration, such as the CAS or others, while Ukrainian is just cheaper and simpler option.[197] At the same time, the CAS may serve as more appropriate forum for the disputes, deriving from the international employment contracts.[198]

Apart from it, employment and disciplinary disputes are usually characterized by the fact that they always have an individual as one of the parties. Hence, for these types of disputes an arbitration prevails due to heavy expenses for court litigation. And while for a commercial organization these sum of expenses can hardly impact its overall turnover, it can become a burden for an athlete, especially in case he or she losses the case.[199] Moreover, even for sporting organization it is unlikely that spending disproportionate sums of money on individual disputes will be approved by those who finance them, because each sporting organization is called “a private club with a public

України щодо регулювання деяких питань трудових відносин, 2021, ст. 21[2]; Постанова Верховного Суду від 14.05.2019 по справі № 640/1099/19.

[196] Roger Welch, Employment Law in Sport, University of Portsmouth, 2020б p. 4. URL; https://www.researchgate.net/publication/341521260_EMPLOYMENT_LAW_IN_SPORT_2020.

[197] Adam Samuel, Richard Gearhart, Sporting Arbitration and the International Olympic Committee's Court of Arbitration for Sport, Journal of International Arbitration, Volume 6 (4), 1989, p. 6.

[198] *ibid.*

[199] *ibid.*, p. 2.

function" and it means that such money they would rather distribute for some new sporting facilities or so on.[200]

The same relates, for instance, to drug-doping sporting issue, that is a type of disciplinary disputes. What is more, drug-doping disputes in order to be properly resolved by a national and, especially, the lower municipal courts, require a recourse to scientific and sports experts with expenses, amounted to hundreds of thousands of dollars.[201] While in arbitration, as it has been already outlined, this problem is, in fact, eliminated "by the possibility of having arbitrators with expertise in the relevant field".[202]

On the other hand, recourse to arbitration in case of employment disputes may be precluded by a problem of arbitrability that, as it has been already mentioned, exists in Ukraine too. Namely, arbitration bodies, under the general rule, are prohibited from hearing labor disputes and disputes to which a foreign person is a party, and they must be heard by courts of general jurisdiction.[203] Apart from Ukraine, the same situation is present in other countries: in France an employee is allowed to address the employment dispute before arbitration only after employment relations are already terminated; in Belgium arbitration clause with regard to the employment disputes (except for higher paid employee) are considered void; in one of Swiss canton there was established a special tribunal, that has an exclusive jurisdiction over the employment disputes, starting from a value less than SF 20,000.[204] The same related to the jurisdictions of the united Kingdom, Australia and Germany, as analyzed in Section 1.3. of this thesis.

So, in this regard Ukrainian legislation shall be adopted accordingly: either allowing all employment disputes or some categories of employment disputes in sports to be decided by arbitration as an exception from the rule, or attributing all the employment disputes, including sports disputes, solely to the court's jurisdiction. As we can see from the practice of other states, distribution of jurisdictional power over

[200] *ibid.*
[201] *ibid.*
[202] *ibid.*
[203] Закон України «Про третейські суди», 2004, ст. 6.
[204] Adam Samuel, Richard Gearhart, Sporting Arbitration and the International Olympic Committee's Court of Arbitration for Sport, Journal of International Arbitration, Volume 6 (4), 1989, p. 7.

the employment disputes may also depend on an amount of the employee's salary or of the dispute's value.

This issue is of particular importance, because otherwise it may serve as a ground for challenging the recognition of an arbitral award in Ukraine.[205] Similarly, it must be taken into consideration employment disputes may be non-arbitrable also in a country, where recognition and enforcement is sought, and therein, sport award of Ukrainian arbitration may be rendered ineffective.[206]

Another reasons of why the enforcement of sport arbitral awards in employment disputes abroad may be problematic are a commercial reservation and public policy concern.[207]

In particular, according to. Art. 1 (3) of the New York Convention, the State may declare that it will apply the Convention only to differences, arising out of legal relationship, whether contractual or not, which are considered as commercial under the national law of the State making such declaration.[208] It should be noted that, about one-third of the States (from the whole amount of States that ratified the New York Convention) have made the commercial reservation.[209] Thus, if a state has made such a commercial reservation, it may refuse to recognize and enforce the arbitral award, issued on the employment dispute, based on the assumption that employment relationship is not commercial one.[210] Obviously, this problem does not relate to sponsorship and marketing agreements, however, it probably will take place in case of employment and disciplinary disputes.[211] What is interesting, this issue brings us back to a question, that was raised earlier, – whether the athletes can be considered the employee as such.

Regarding public policy concern, the scholars have an opinion that this ground for challenging the award in case of employment dispute can be easily applied by one

[205] *ibid.*
[206] *ibid.*
[207] *ibid.*
[208] Convention on the Recognition and Enforcement of Foreign Arbitral Awards, United Nations, 1958, Art. 1.
[209] Adam Samuel, Richard Gearhart, Sporting Arbitration and the International Olympic Committee's Court of Arbitration for Sport, Journal of International Arbitration, Volume 6 (4), 1989, p. 7.
[210] *ibid.*
[211] *ibid.*

of the parties to the dispute, when the award contains the results, significantly different from those, that would have been contained in the court ruling, based on the legislation, applicable in the relevant area of a particular country.[212] Public policy concern can be applied both in Ukraine (the place of arbitration) and abroad – where the recognition or enforcement would be sought.[213] For example, the situation may take place, just as in *Gasser case*, where an athlete relied on the restraint of trade in order to challenge the arbitration award on the ground of public policy.[214] Namely, an athlete challenged the reasonableness of an arbitral award, based on the argument that such an arbitral award, by which an athlete was suspended from a participation on the competition for several years, prevented her from using her professional skills and earn a living form it. [215] Albeit this argument was not successful, this case demonstrates of how easily the public policy concern can be applied in an employment dispute at the stage of recognition and enforcement of sports arbitral award both at the place of arbitration and abroad.[216]

Demarcation disputes is one of the best examples of a type of dispute that should be decided by the independent arbitration body. This is because, usually, these disputes arise between two sporting organizations or, often, between the parts of an umbrella organization. In the last case, the neutrality of an arbitration is of a high demand, because sometimes an umbrella body may prefer one organization over another.[217] The case, when a demarcation dispute was decided by the independent arbitration can be exemplified by the *United States Wrestling Federation v. Wrestling Division case*, where the American Arbitration Association administered an arbitration between two US wrestling organizations, wishing to be recognized as the national governing body for wrestling with regard to the Olympic movement.[218] There is also an opinion that

[212] *ibid.*
[213] *ibid.*
[214] *ibid;* Gasser v. Stimson, English High Court, 15 June 1988.
[215] Adam Samuel, Richard Gearhart, Sporting Arbitration and the International Olympic Committee's Court of Arbitration for Sport, Journal of International Arbitration, Volume 6 (4), 1989, p. 7; Gasser v. Stimson, English High Court, 15 June 1988.
[216] *ibid.*
[217] *ibid*, p. 6.
[218] ibid, p. 6, 8; United States Wrestling Federation v. Wrestling Division of the AAU case, US District Court for the Northern District of Ohio, 545 F. Supp. 1053, 1982.

CAS would better resolve the international cases, while domestic matters should be subject to a local arbitration set-up with, at least, less costs, burdening the parties.[219]

2.4. Overall positive impact of the establishment of a sports national arbitration tribunal in Ukraine.

In the conditions, when a lot of different options for the resolution of sport disputes exist, but sometimes none of them is clear, feasible or reliable, the solution can be found in the recourse to a permanent arbitration institution. Those scholars, who support the recourse to sports arbitration, in most cases outline such its benefits, as lower costs (in view of high legal fees if compared with national litigation), privacy, the presence of expertise on the tribunal and rapidity.[220]

All of these advantages can be implemented into national sports arbitration tribunal in Ukraine, if properly established and managed.

In particular, the establishment of sports arbitration in Ukraine would have the following positive impact.

First, the idea of the establishment of sports arbitration coincides with cumulative scholars' opinion, as recourse to state courts is inappropriate and a separate system of arbitration could eliminate any misunderstandings, existing in case with the courts.[221] Namely, national courts to a greater extent (except for the employment disputes) will be replaced by arbitration tribunals, and in Ukraine it would resolve the problem of the judges' insufficient qualification in sports disputes, bring to the end the jurisdictional conflicts, including the questions of whether the national court has a jurisdiction to resolve a sport dispute at all, by which jurisdiction the sports dispute is covered etc.[222]

The establishment of a national arbitration tribunal will ensure an equal access to justice for the athletes and sports organizations of *all* types of sport. For example,

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[219] Adam Samuel, Richard Gearhart, Sporting Arbitration and the International Olympic Committee's Court of Arbitration for Sport, Journal of International Arbitration, Volume 6 (4), 1989, p. 6.
[220] *Ibid,* p. 1.
[221] Бубліченко В. Організаційні засади функціонування Міжнародної арбітражної ради в галузі спорту та Спортивного арбітражного суду / Укр. часопис між нар. права. — 2015. — Спецвипуск. Україна. Теорія і практика між нар. права. С. 8.
[222] Dmytro Koval, Rule of the Game v. Rule of Law: Had Ukraine Finally Resorted to CAS?, Kluwer Arbitration Blog, 2019. URL: http://arbitrationblog.kluwerarbitration.com/2019/08/05/rule-of-the-game-v-rule-of-law-had-ukraine-finally-resorted-to-cas/.

the UAF Dispute Resolution Chamber could also serve as an example of institution, specialized in sport law, however, its jurisdiction and competence narrow to disputes exclusively in football area, while national sports arbitration will not have such a drawback.

From the practical point of view, due to a policy of most sports organizations and location of sport events, it is usually necessary, though very costly to invite witnesses from another part of the world.[223] In this regard, recourse to a high-qualified arbitrators, that, can arrange hearings anywhere in the world (if it is allowed by their procedural documents or prescribed by the arbitration agreement), also indicates that arbitrational tribunals have much more logical approach to the resolution of such a kind of disputes.

Another resolved problem is overcoming the impartiality problems, existing in case of resolution of disputes by internal bodies of the sports' federations, that may, for example, discipline players for breaking their rules and simultaneously resolve the disputes over their own disciplinary measures.

Although for creation of a prominent arbitration institution it would be important and useful to adopt the best qualities of the CAS, Ukrainian arbitration, on contrast to Swiss one, would be less expensive, especially if pecuniary cases are taken (the CAS requires at least 1,000 Swiss francs for administrative fee, as well as higher expenditures for professional legal support).[224] Someone may argue that, regardless of the amount of expenses, federations and players still address their disputes to the CAS, namely *Shakhtar Donetsk v. Ilson Pereira Dias Junior; Metallurg v. Lerinc; Obolon Kyiv v. FC Kryvbas Kryviy Rig cases* serve as good and nor sporadic examples of cases, decided by the CAS. However, it can be explained simply by the absence of other choices.

Taking into consideration that sporting area is very commercialized, and it takes not the last place in the world's economy, it is obvious that the right (or wrong) choice

[223] Adam Samuel, Richard Gearhart, Sporting Arbitration and the International Olympic Committee's Court of Arbitration for Sport, Journal of International Arbitration, Volume 6 (4), 1989, p. 2;
[224] Dmytro Koval, Rule of the Game v. Rule of Law: Had Ukraine Finally Resorted to CAS?, Kluwer Arbitration Blog, 2019. URL: http://arbitrationblog.kluwerarbitration.com/2019/08/05/rule-of-the-game-v-rule-of-law-had-ukraine-finally-resorted-to-cas/.

of forum for resolving a sport dispute has colossal financial implications.[225] In this regard, Ukrainian arbitration would become more feasible, comfortable and easily accessible for Ukrainians and Ukrainian entities in comparison to arbitration in Lausanne.

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Hence, the research made in Chapter 2 reaffirms the necessity and explains the rationale behind the idea of the establishment of sports arbitration in Ukraine. It is based on the jurisdictional conflicts, unfeasibility of other arbitration forums, lack of impartiality in case of internal dispute settlement bodies in sports organizations and other reasons.

Separately, there was analyzed a wide range of legal aspects of the establishment and operation of the sports arbitration, proceeding from experience of the establishment of the Court of Arbitration for Sport and national arbitration tribunals in the United Kingdom, Australia and Germany. In particular, in the thesis there were analyzed a lot of legal aspects concerning their operation by reference to the procedural rules.

One more important question analyzed include the legal aspects of the establishment of a national sports arbitration tribunal, proceeding from the nature of sports disputes and their classification into commercial, employment, demarcation, disciplinary, selection, eligibility anti-doping disputes and other disputes.

Finally, the conclusion was made the establishment of the sports national arbitration tribunal in Ukraine would have positive impact for the resolution of sports disputes.

[225] Adam Samuel, Richard Gearhart, Sporting Arbitration and the International Olympic Committee's Court of Arbitration for Sport, Journal of International Arbitration, Volume 6 (4), 1989, p. 2.

CONCLUSION

To summarize, in the thesis there was achieved its main research purpose, since the author explores the legal aspects of the establishment and operation of existing sports dispute settlement forums worldwide and based on this analysis, provides the proposals regarding the legal aspects of the establishment of national arbitration tribunal in Ukraine.

For this purpose, the author fulfills all initially established research tasks and, the thesis:

1) Provides an overall analysis of how the sports disputes are resolved in the world and Ukraine with a special attentional to the role of arbitration for the resolution of sports disputes.
2) Provides deep analysis of the legal aspects of the establishment and operation of the CAS, as well as the Sport Resolutions in the United Kingdom, National Sports Tribunal in Australia and the German Court of Arbitration for Sport.
3) Substantiates the necessity to establish national sports arbitration in Ukraine.
4) Makes proposals on a wide range of legal aspects of the establishment of sports arbitration in Ukraine, as well as on potentially required legislative amendments.
5) Explores and provides an analysis of the link between sports disputes classification and how it impacts the establishment of a national arbitration tribunal in Ukraine.

In turn, an analysis of foreign experience was proposed to be applied with regard to the the issues of an adoption of procedural rules, determination of the form of consent for the tribunal's jurisdiction, the procedure of appointment of arbitrators, determination of the scope of jurisdiction, the enforcement of arbitral award and many others.

Based on this analysis, firstly, it was concluded that resolution of sports disputes take place in dispute settlement bodies of the sports federations, national courts and arbitration. While a dispute settlement body of the sports federation seems to be an

indispensable dispute resolution mechanism, because most of sports federations establish it, national courts, on contrary, sometimes are deprived from a right to hear the sports disputes. In any case, there is a necessity of the existence of a separate and independent sports arbitration tribunals in national jurisdictions, that would specialize exclusively in resolution of sports disputes.

With regard to the Court Arbitration for Sport, if there are grounds for the disputes to be submitted to it in a form of arbitration clause or an arbitration agreement, the CAS serves as an arbitration institution of high professionalism, where arbitrators resolve sport disputes on the disciplinary, employment, contractual, commercial, doping and other issues both at the first and appeal instances. Namely, it was analyzed what are the grounds for the disputes to be submitted to the CAS, described how the CAS operates, what are the main features of its proceedings and other legal aspects that could be important for the establishment of an institution of sport arbitration in Ukraine. An analysis of the legal aspects of its establishment and successful operation confirms that the CAS is an independent and credible organization, being able to render fair and impartial decisions and serve as a model for the establishment of national qualitative sports arbitration tribunal.

The legal analysis of the resolution of sports disputes in the United Kingdom, Australia and Germany is also useful and important, since it demonstrate the examples of jurisdictions, where such disputes are addressed by national arbitration tribunals. These tribunals have both similarities and some distinctive features, for example, Australian national sports arbitration tribunal was founded by the government, while in the United Kingdom and Germany the national arbitration tribunals were established by non-governmental organizations. In any case, the legal aspects of the establishment and operation of such national sports arbitration in respective foreign jurisdiction, can be applied for the purpose of the establishment of national sports arbitration institution in Ukraine.

At the same time, an overview sport disputes resolution mechanisms in Ukraine reaffirmed and substantiated the necessity of the establishment of sports arbitration in Ukraine. In particular, analysis of case law in sport disputes in Ukraine reaffirmed the

existence of a wide range of jurisdictional problems. This gives grounds to consider that it is almost impossible to answer the question, whether application to national courts with a sport dispute should be recognized as admissible. The scholars' opinions are also ambiguous and inconsistent on this matter. Some courts strongly oppose dismissal of claim due to the rights of fair trail, guaranteed by the Constitution of Ukraine and European Convention on Human Rights. Others rely on the treaty clause, granting jurisdiction exclusively internal dispute resolution bodies of sports federations.

Meanwhile, sports dispute resolution bodies inside sports organizations in Ukraine also have drawbacks, especially taking into consideration that they may lack an impartiality in sports disputes and, for this reason, they are highly criticized too.

Hence, there is no consistent and clear understanding of how Ukrainian athletes and sport organizations can protect their rights and to whom they can refer their sports disputes in Ukraine. Finally, these jurisdictional difficulties and ambiguous court practice lead to failure of fair trial guarantees.

Instead, a national forum has a wide range of advantages in comparison to all other existing forums for the sports dispute resolution, that is confirmed by prominent scholars in this sphere. All these factors cumulatively give rise to the necessity to establish national sports arbitration.

There is a wide range of legal aspects of the establishment and operation of the sports arbitration tribunal that can be in advance elaborated, based on the experience of the establishment of the Court of Arbitration for Sport, Sport Resolutions in the United Kingdom, National Sports Tribunal in Australia and the German Court of Arbitration for Sport, that were in detail explored in the Chapter 1. Their experience could be applied together or, alternatively, one of them can be taken separately as a model.

The main aspects that were analyzed from the perspective of these international and national sports arbitration tribunals include the adoption of procedural rules, determination of what substantive law should be applied, the procedure of appointment of arbitrators, determination of the scope of jurisdiction, determination of the form of

consent for the tribunal's jurisdiction, the question regarding the instances, in which the cases can be decided by the tribunal, the questions of confidentiality of arbitration, the representation of the parties, the enforcement of arbitral award of a newly created arbitration tribunal and others.

Moreover, the establishment of sports arbitration tribunal in Ukraine requires an analysis of the legal aspects from the prospective of classification of sports disputes. A special attention should be given to the employment and disciplinary disputes, that remain under jurisdiction of the courts under the legislative provisions of a lot of foreign countries, as well as to the anti-doping violations disputes, that often require a compliance with the rules of the international sports law. Undoubtedly, the establishment of arbitration institution for the commercial sports disputes have a positive impact for their resolution.

Finally, the conclusion can be made that if there is established an arbitration, that is separate from judicial system, independent from any sport federations and, thus, it would become more credible in comparison to litigation, more impartial, in comparison to the federations' bodies and more feasible in comparison to currently existing arbitration options. Moreover, it may become an appropriate solution to resolve jurisdictional conflicts in the courts and provide a highly qualified and demanded expertise in sports law. In case of successful implementation of existing worldwide experience, Ukrainian sport arbitration may establish a lot of important precedents for national sports disputes and develop consistent and extensive practice. Thus, the establishment of an institution of sports arbitration would have a positive impact on the resolution of sports disputes. Finally, justice for the athletes and sports organizations becomes more accessible.

LIST OF REFERENCES

1. Adam Samuel, Richard Gearhart, Sporting Arbitration and the International Olympic Committee's Court of Arbitration for Sport, Journal of International Arbitration, Volume 6 (4), 1989.
2. Alan Sullivan, The Role of Contract in Sports Law, Australian and New Zealand Sports Law Journal, 5(1), 2010, URL: http://classic.austlii.edu.au/au/journals/ANZSportsLawJl/2010/2.pdf.
3. Alexander Engelhard, Thomas Wassenhoven, The Sports Law Review: Germany, The Law Reviews, 2021. URL: https://thelawreviews.co.uk/title/the-sports-law-review/germany.
4. Arbitration Act, 1996 (UK).
5. Arbitration Rules of the Sport Resolutions, Sport Resolutions.
6. FC Metallurg v. Lerinc, Court of Arbitration for Sport, 2007/A/1367, 2007.
7. Shakhtar Donetsk v. Ilson Pereira Dias Junior, Court of Arbitration for Sport, 2010/O/2132, 2010.
8. FC Obolon Kyiv v. FC Kryvbas Kryviy Rig, Court of Arbitration for Sport, 2011/A/2462, 2011.
9. Civil Code, 1900 (DE).
10. Code of Sports-related Arbitration of the Court of Arbitration for Sport, 2020.
11. Convention on the Recognition and Enforcement of Foreign Arbitral Awards, United Nations, 1958.
12. Despina Mavromati and Matthieu Reeb, The Code of the Court of Arbitration for Sport: Commentary, Cases and Materials, Wolters Kluwer Law & Business, 2015.
13. Dmytro Koval, Rule of the Game v. Rule of Law: Had Ukraine Finally Resorted to CAS?
14. Gasser v. Stimson, English High Court, 15 June 1988.
15. Gundel v. Fédération Equestre Internationale, Court of Arbitration for Sport, 92/A/63, 1992.

16. *International Rugby Board v Troy case,* Court of Arbitration for Sport, 2008/A/1664, 2008.
17. James H Carter, Advocacy in International Sport Arbitration, in Stephen Jagush QC and Philippe Pinsolle,The guide to advocacy, London : Law Business Research Ltd., K2400 .G852. 2018.
18. Jamie Singer, Oliver White, Cambise Heron, The Sports Law Review: United Kingdom - England & Wales, The Law Reviews, 2021, URL; https://thelawreviews.co.uk/title/the-sports-law-review/united-kingdom-england--wales.
19. Jan Paulsson, 'Arbitration of Sports Law Disputes', Arbitration International, Vol. 9 Issue 4, 359, 361 (1993).
20. Johan Lindholm, The Court of Arbitration for Sport and Its Jurisprudence: An Empirical Inquiry into Lex Sportiva, T.M.C. Asser Press, 2019.
21. Julie Clarke, Clarke v The Earl of Dunraven and Mount-Earl (The "Satanita"), [1897] AC 59, Australian Contract Law Database. URL: https://www.australiancontractlaw.info/cases/database/clarke-v-dunraven.
22. Mark Mangan, The Court of Arbitration for Sport: Current Practice, Emerging Trends and Future Hurdles, 25 Arbitration International 4, 2014.
23. Model arbitration clauses for the German Court of Arbitration. URL: https://www.dis-sportschiedsgericht.de/en/tools-resources/model-clauses.
24. National Sports Tribunal Act, 2019.
25. Official web-site of the Court of Arbitration for Sport. URL: https://www.tas-cas.org/en/general-information/history-of-the-cas.html.
26. Official web-site of the International Bar Association. URL: https://www.ibanet.org/Publications/publications_IBA_guides_and_free_materials.aspx.
27. Official web-site of the National Sports Tribunal. URL: https://www.nationalsportstribunal.gov.au.
28. Official web-site of the Sport Resolutions. URL: https://www.sportresolutions.com/about-us/who-we-are/overview.

29. Official web-site of UK Sport. URL: https://www.uksport.gov.uk.
30. Official website of the German Court of Arbitration for Sport. URL: https://www.dis-sportschiedsgericht.de/en/the-court.
31. Olympic Charter of the International Olympic Committee, International Olympic Committee, 2021.
32. Olympic Committee's Court of Arbitration for Sport, Journal of International Arbitration, Volume 6 (4), 1989.
33. Paul Hayes , Era of Sports Sitting in Judgment on Themselves is Over, The Australian, 2018. URL: https://1f2ca7mxjow42e65q49871m1-wpengine.netdna-ssl.com/wp-content/uploads/2018/03/The-Australian-170527-Era-of-sports-sitting-in-judgment-on-themselves-is-over.pdf.
34. Prudence J Smith, Annie E Leeks, Mitchell J O'Connell, Charlie Guerit, The Sports Law Review: Australia, The Law Reviews, 2021. URL: https://thelawreviews.co.uk/title/the-sports-law-review/australia.
35. Raguz v. Sullivan, New South Wales Court of Appeal (Australia), 2000, NSWCA 240.
36. Report of the Review of Australia's Sports Integrity Arrangements, Department of Health of the Commonwealth of Australia, 2018, Chapter 5. URL: https://consultations.health.gov.au/population-health-and-sport-division/review-of-australias-sports-integrity-arrangements/supporting_documents/HEALTH%20RASIA%20Report_Acc.pdf.
37. Roger Welch, Employment Law in Sport, University of Portsmouth, 2020. URL; https://www.researchgate.net/publication/341521260_EMPLOYMENT_LAW_IN_SPORT_2020.
38. Skeleton of Arbitration Agreement of Sport Resolutions, Sport Resolutions. URL: https://www.sportresolutions.com/images/uploads/files/D_16_-_Skeleton_Arbitration_Agreement-2021.pdf.
39. Sport Arbitration Rules of the German Arbitration Institute, German Arbitration Institute, 2016.

40. Stephanie David, The delicate equilibrium between the international and the domestic, the private and the public in sports regulation – does the Australian Sports Tribunal provide an answer?, 2019. URL: https://www.sportresolutions.com/news/view/expert-analysis-australian-sports-tribunal.
41. Stollery v. Greyhound Racing Control Board, High Court of Australia, 128 CLR 509, 1972.
42. Stuart S McInnes, User Guide to the Court of Arbitration for Sport, Squire Patton Boggs, 2017. URL: https://media.squirepattonboggs.com/pdf/misc/User-Guide-to-the-Court-of-Arbitration-for-Sports-Booklet.pdf.
43. United States Wrestling Federation v. Wrestling Division of the AAU case, US District Court for the Northern District of Ohio, 545 F. Supp. 1053, 1982.
44. Viktoriya Pashorina-Nichols, Is the Court of Arbitration for Sport Really Arbitration?, LLM Research Paper, 2015. URL: https://researcharchive.vuw.ac.nz/xmlui/bitstream/handle/10063/5007/paper.pdf?sequence=1.
45. Vjekoslav Puljko, Arbitration and Sport, 5 Interdisciplinary Management Research 603, 2009.
46. Апаров А.М. Спортивне право України : Навч. посібник / А. М. Апаров. – К.: "Істина", 2012.
47. Бубліченко В. Організаційні засади функціонування Міжнародної арбітражної ради в галузі спорту та Спортивного арбітражного суду / Укр. часопис між нар. права. — 2015. — Спецвипуск. Україна. Теорія і практика між нар. права.
48. Закон України «Про третейські суди», 2004.
49. Офіційний веб-сайт Української Арбітражної Асоціації. URL: http://arbitration.kiev.ua/uk-UA/Galuzevi-arbitrazhi/Sportyvnyj-arbitrazh.aspx?ID=492.

50. Офіційний веб-сайт Української асоціації футболу. URL: https://uaf.ua.
51. Постанова Великої палати Верховного Суду від 27.03.2019 по справі 826/4734/16.
52. Постанова Верховного Суду від 14.05.2019 по справі № 640/1099/19.
53. Постанова Касаційного цивільного суду Верховного Суду від 20.11.2019 по справі № 757/11542/17-ц.
54. Проект Закону про внесення змін до Кодексу законів про працю України щодо визначення поняття трудових відносин та ознак їх наявності, 2021.
55. Проект Закону про внесення змін до Кодексу законів про працю України щодо регулювання деяких питань трудових відносин, 2021.
56. Регламент Міжнародної федерації футболу асоціації по агентам гравців, Українська асоціація футболу, 2007.
57. Регламент Палати з вирішення спорів Української асоціації футболу, Українська асоціація футболу, 2018.
58. Рішення господарського суду Житомирської області від 16 червня 2011 року по справі №16/5007/61/11.
59. Цивільний процесуальний кодекс України, 2004.