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Advantages of Arbitration in Solving Sports Disputes

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Abstract: *The scientific problem addressed has a significant importance that resides in the identification and presentation of some essential arguments in this regard: the development of efficient and fair arbitration methods and practices is crucial for maintaining integrity and justice in sports; the existence and regulation of an effective arbitration system can contribute substantially to the quick and fair resolution of disputes in this field, maintaining the stability of the competition and the sports structure; sport has a strong impact on society and the economy, but delayed disputes or with a prolonged resolution period can affect not only athletes and organizations, but also supporters, sponsors and other parties involved (an effective arbitration system can reduce this negative impact) ; issues related to sports arbitration also represent an opportunity for research and development in the field of law and sport (new approaches can be identified, better practices can be developed and resources can be provided for the continuing education of professionals involved in this field) ; an effective sports arbitration system can help promote ethical standards and integrity in sports (by ensuring a fair and transparent process, public confidence in the fairness and morality of sporting activities can be strengthened). Therefore, research and scientific approach of the issues related to the advantages of arbitration in the resolution of sports disputes are essential to develop better practices, to maintain the integrity of sport and to ensure a healthy and fair sports environment.*

Keywords: *sports dispute, alternative dispute resolution, advantage, procedure, jurisdiction.*

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Introduction

Sport is a social and economic phenomenon in continuous development with an important contribution for the fulfilment of strategic national objectives. Also, an increasing part of the economic value of sport is related to intellectual property rights, copyright, the right to communications and trademarks, image rights and broadcasting rights being seen as a business, in which they can be involved: athletes, coaches, sports clubs, managers, sponsors, sport betting houses and which through exerting contractual commitments are in close connection with direct consumers, respectively, with those who sets in motion the same mechanism. As an effect of the sports activity regulation, establishing the institutional and competitive rules, establishing rights and commitments for its participating actors, may arise conflict situation, regulatory (disciplinary) violations and sometimes administrative/criminal /civil liability can even be engaged as the case may be in accordance with the act committed or sports subject-matter. Thus, we can note that, the organization of sports activity and its practice, like all human activities, is not without controversy, appeal or disputes. In this context, the need of sports jurisdiction arose that through a jurisdictional body, to be solved these disputes in line with sports equity and the legislation in force. As a result, through the arbitration institution can be solved these conflicts, independently of the state bodies (courts), so that the principle of sports autonomy to be respected. Also, from the acts implementation or legal relationships exercised by certain natural or legal persons (belonging to an amateur or professional sports entity) sports disputes may arise (Mirsoleimani, 2013). As a rule, sports disputes are settled by internal bodies with jurisdictional attributions, created and approved by the sports entity through the statutory provisions and which prohibit any appeal in front of the common law courts. This desideratum approaches the arbitration procedure, as an alternative method of solving sports disputes. It is important to specify that the decisions adopted by the arbitral institutions are enforced, even if the decision is not pronounced by the court of common law, which highlights the power of the sports authority that can decide, without an actual trial taking place, but respecting the right to defence, according to the established rules. These rules are found in the regulations, guidelines and recommendations of the International Olympic Committee, in the anti-doping rules, statutes and regulations of the National Olympic Committees and national, international sports federations.

The purpose of the study is the presentation of some peculiarities and advantages of arbitration in settling sports disputes.

The Research present objectives are reflected in determining the peculiarities specific to sports arbitration institution and its advantages as an alternative way of solving sports disputes.

The methods used in the research are those relevant to the scientific study of the scientific specialized research and enshrined in the legal methodology, respectively *analytical methods* (which will involve the study of some legal norms that regulate the criminalization framework of an act), *synthetically* (which will involve the establishment of some national/international and brief doctrinal jurisprudential knowledge and information), *logical* (using deductive reasoning), *quantitative* and *qualitative* (reflects the fact that the rules for carrying out certain operations or procedures are adopted precisely by assessing the number and type of cases encountered in jurisprudence). (Leontyuk, 2006).

Findings and results

Also known as " private justice", arbitration is an alternative to classical justice, with the support of which, certain types of disputes can be resolved by an arbitral tribunal, in accordance with the rules established or selected by the parties. The commercial disputes are most often subject to solving through the arbitration way. This is the reason why the majority institute arbitral institutions are established near to Chambers of Commerce or are called "commercial".

The arbitration institution has the following peculiarities:

- represents a procedure for solving a dispute through a private court, in which each of the parties has the right to appoint their own judges (judges) through a **arbitration** clause;
- parties of sports dispute that opts for the alternative way of solving through arbitration will select a certain form of it:
  - ✔ ad hoc arbitration;
  - ✔ institutionalized arbitration;
  - ✔ equity arbitration.
- the judicial process will take place according to the will expressed by the parties.

The contractual nature of arbitration derives from the fact that this way of selective solving of disputes is based on the agreement of the parties, embodied in an arbitration clause. An important role in efficient solving of sports disputes has the arbitrability finding as well, in the narrow sense, which refers to the identification of the sports dispute, concretely subject to arbitration to the extent of arbitral agreement. Thus, for the investment of

arbitration with jurisdictional power it is necessary to meet at least two essential conditions (Triboi, Budevici-Puiu, 2006):

- the parties agreement;
- the subject matter of the dispute should not be exclusive jurisdiction of courts.

Meeting the legal conditions regarding the arbitrability of disputes is the key factor that determines the validity of the arbitration clause, but also the legality and enforceability of the arbitration award (Buyanova, 2019).

Recourse to solving sports disputes through the alternative way of arbitration, presents a series of benefits (Hoye et al., 2009):

- it is often managed by judges specialized in the sports field, with deep knowledge of the rules and peculiarities of the sport, facilitating a better understanding of the specific disputes in this field;
- the arbitration process can be faster than a traditional judicial process, and the procedures more simplified with strict deadlines for resolving the dispute, thus allowing the parties to obtain a faster solution;
- arbitration procedures are confidential, which means that the details of the dispute do not become public to the same extent as in the case of open court processes;
- the parties involved in the dispute can choose judges and establish the procedural rules, which can provide a greater degree of flexibility and control over the process;
- many sports organizations and international federations recognize the decisions made in sports arbitration and implement them directly, which ensures an easier application of decisions within the international sports community;
- costs may be reduced compared to lengthy and complex judicial processes, making arbitration more accessible to parties, particularly athletes or smaller organizations that may not have the financial resources necessary to accede the ordinary law courts, being longer lasting.

However, it is important to understand that sports arbitration also has some limits and disadvantages, such as the loss of the possibility to appeal to the regular court in some cases, limitations on appeal rights and less control over the decision-making process.

At the same time, we can affirm that the risks of solving sports disputes except the sports jurisdiction are obvious, and the rations are multiple: understanding the nature and specifics of the dispute, the duration of the proceedings, the avoidance of court fees, the possibility of "choosing" the judge etc. (Hoya, 2013). Dynamics of sports movement and issues

related to sport led to the need of connecting the federal statutory provisions with the evolution of sports reality (Hoye et al., 2009).

Moreover, from the perspective of federal justice and the aim of its inclusion in the intra-federal framework, the federations have understood that it is imperative to ensure a fair justice for the affiliated members to instil them the idea of impartial justice, professional and functional one, eliminating the temptation "out in the open", that is, search for the right in common justice. The federal "judicial apparatus" was successively, progressively equipped with both professionals of the right, and with effective mechanisms and procedural guarantees in order to meet the modern justice demands. "International federations such as, for example, the IOC (International Olympic Committee) or WADA (World Antidoping Agency) impose to all sports entities, that any dispute in which they are involved, should be resolved only through arbitration organized within them, and the appeal against such decisions should be resolved by the Sports Arbitration Court in Lausanne".

Hereby it should, in practice, the international federations and their members often avoid the application of Union law, as CAS decisions can only be appealed to the Federal Supreme Court of Switzerland". This results in a certain problem, that "this system of jurisdiction imposes the arbitration obligation in CAS for which the only authority court is the Federal Supreme Court of Switzerland placed in a country that is not in the European Union and whose judges are not bound to apply the European Union law to European asylum seekers ". Also, the European Parliament in its report - European Dimension in Sport (2011/2087(INI)), at point 22 states that "recognizes the legitimacy of the sports courts for solving sports-related disputes, as long as they respect the right of individuals to a fair hearing" and recommends the creation of a European Chamber of Sports Arbitration Court, to be based in Brussels or Luxembourg in order to resolve sports disputes in the European Union (Chaker, 2004).

Concluding we affirm, that the court system proposes a technical language, more or less encoded, but a system of procedural rules as well, able of processing any content with sports specifics. The procedural theme of sports emerged as a real need of sports movement beyond the theoretical formulation of specific action rules. A development of jurisdictional procedures was needed, precisely to express the tendency of sports movement towards autonomy, but also to establish real means of reconciling the divergent interests of the various participants in sports movement and profile events. As a rule two **categories of disputes can be solved by CAS**:

• The commercial ones (enforcement of contracts, such as sponsorship, sales of television rights, organization of sports events, player transfers or relations between players or coaches and clubs or agents, employment or agency contracts, civil obligations) - all these commercial disputes are settled by CAS, as single court;

• disciplinary ones (most of them have as their purpose doping, violence on the play field, abusing a referee, etc.) – these cases are resolved in the first instance by the qualified sports authorities and become the subject of an appeal to CAS, as the last court. The appeal deadline is 21 days after receiving the decision to be appealed. Currently most NOCs and International federations recognize the jurisdiction of this instance. Practically, the conduct of the arbitration proceedings takes place within certain time-space limits. The duration of the arbitration differs from case to case, depending on the complexity of the case. The ordinary procedure lasts between 6-12 months, under the sanction of arbitration lapse. This must be private, otherwise, leads a form of liability for the referees who violate it. (Shapovalov, Koloyartseva, 2015).

Although the disciplinary dispute is important for the organization and disciplining sports competition, it should not be omitted and the other components of the sports phenomenon as well. Thus, non-disciplinary disputes are aimed, in particular, the appeals against federal decisions regarding access to the competitions: denial to grant a license, selection, qualification, relegation, including the approval of the results on the sports fields. In the context, the financial component should not be omitted, especially regarding the involvement of the state in sports, the special union rules, the globalization of sports with all the harmonization consequences or purely financial ones or even trivial labour law disputes between athletes and the employing clubs or even the fiscal perspective related to the qualification of athletes' activity.

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