

regulations of the Football Federation of Ukraine and the Ukrainian Premier League, etc.;

- arbitration – resolution of a dispute by means of a permanent or temporary domestic or international sports arbitration, in which the dispute is resolved by an authorized person chosen by the parties – an arbitrator;

- ombudsman – settlement of sports disputes by filing a complaint to an officially authorized person – the ombudsman [8].

The legislation of Ukraine contains a direct reference to the settlement of sports disputes out of court. In particular, Part 9 of Art. 45 of the Law of Ukraine “On Physical Culture and Sports” provides that the resolution of disputes that arise between entities in the field of physical culture and sports, is carried out in accordance with the law by a permanent sports arbitration court [9].

This rule fully reflects the practice of sports disputes in foreign countries. For example, in the United States and England, courts in almost all cases refer sports disputes out of court. For example, in the case of *Tony Harding v. American Figure Skating Association*, the court noted that courts may intervene in the resolution of sports disputes by sports associations only in exceptional circumstances, namely the association’s violation of its own rules, which could cause serious and irreparable harm, in turn, exhausted all out-of-court methods of dispute resolution. But even in this case, the court does not have the right to resolve the dispute on the merits, but only eliminates the violations committed by the association [8].

The situation is similar in the countries of Romano-Germanic law. Courts usually refuse to hear a sports dispute because all sports contracts have an arbitration clause. However, after consideration of the dispute in arbitration, the parties have the right to go to court.

However, in Ukraine, unlike most foreign countries, there is no clear structure of out-of-court institutions for sports disputes. Among sports federations or associations, only the Football Federation of Ukraine has separate specialized bodies that resolve sports disputes. There are two types of such bodies: the bodies for resolving disciplinary disputes and the bodies for resolving disputes between professional clubs and professional footballers.

In particular, Art. 48 of the Statute of the Football Federation of Ukraine defines disciplinary bodies as bodies of football justice, which include the Control and Disciplinary Committee as a body of the first instance, and the Appeals Committee as a

body of the second instance. Disciplinary disputes may also be considered by the Disciplinary Bodies of Legal Entities, which perform the functions of the bodies of the first instance delegated by the Football Federation of Ukraine to consider cases not related to professional football and not referred to the exclusive competence of the Control and Disciplinary Committee of the Football Federation of Ukraine or the Dispute Resolution Chamber of the Football Federation of Ukraine [10].

The Dispute Resolution Chamber of the Football Federation of Ukraine is an independent, established in accordance with FIFA requirements, instance for consideration and settlement of cases or settlement of disputes and making decisions between football entities by the Regulations of the Football Federation of Ukraine on the status and transfer of players. The Dispute Resolution Chamber of the Football Federation of Ukraine has exclusive competence to resolve disputes between clubs and footballers and coaches concerning employment and contractual disputes arising from employment relationships, as well as disputes between clubs regarding the fulfillment of transfer obligations and payments and calculation of compensation for the training of football players.

It should be noted that the decisions made by the Appeals Committee of the Football Federation of Ukraine can be appealed to the Court of Arbitration for Sport, located in Lausanne, Switzerland. Decisions of the Appeals Committee of the Football Federation of Ukraine regarding violations of the Rules of the game and suspension from participation in matches for up to 4 (four) or a period of up to 3 (three months) are not subject to appeal in the Court of Arbitration for Sport. Complaints against the decision of the Dispute Resolution Chamber of the Football Federation of Ukraine may also be filed with the Sports Arbitration Court on appeal. Such an appeal may be filed by an interested party within 21 days of receiving the full text of the decision of the Dispute Resolution Chamber of the Football Federation of Ukraine [11].

In other national federations or associations, such specialized bodies are generally absent. The executive bodies of the federation are empowered to resolve disciplinary disputes, and the powers to review them on appeal are vested in higher governing bodies (for example, congresses, conferences, general meetings). All this creates situations when sports disputes are considered by federation leaders who do not have the appropriate legal education, or even have a legal education but do not have

the relevant experience in resolving such disputes, which negatively affects the quality of sports disputes, as enough often unfair decisions are made or those that contradict the regulations of international federations in certain sports [12].

That is why the creation of a sports arbitration court in Ukraine is actively discussed, as is provided for in Part 9 of Art. 45 of the Law of Ukraine "On Physical Culture and Sports" [9], to protect the rights and legitimate interests of sports entities and with the mandatory possibility of further appeal to the Court of Arbitration for Sport.

In particular, the Association "Sports Industry of Ukraine" has registered a Permanent Arbitration Court, which was established to ensure fair, speedy and effective justice in disputes and conciliation of persons who appealed to him. The arbitral tribunal operates on the principles of self-government, voluntariness, transparency and self-financing. The court does not set the main goal of making a profit from its activities. The main tasks of the Arbitration Court are:

- protection of the rights and legally protected interests of legal entities, associations of legal entities, citizens-entrepreneurs, as well as individuals who are parties to arbitration, by considering and resolving property and non-property disputes between legal entities and / or citizens-entrepreneurs or individuals; assistance in the implementation of legal economic and other economic activities by legal entities and citizens-entrepreneurs; improving the system of arbitration, improving the legal culture of businesses and citizens;

- assistance in building the rule of law in Ukraine. The Sports Industry of Ukraine Association, as the founder of the permanent arbitration court, has the right to form regional branches of the Arbitration Court, which operate on the basis of the Regulations and Regulations of the Permanent Arbitration Court at the Sports Industry of Ukraine Association; undertakes to ensure the activities of the Arbitration Court (provides the Arbitration Court with premises, equipment and other necessary materials; timely provides the Arbitration Court with the funds it needs to resolve disputes; provides the court with office supplies), but has no right to interfere in activities of the Arbitration Court and judges, which is related to the consideration of cases [13].

The National Olympic Committee of Ukraine is actively discussing the establishment of such a body for resolving sports disputes, and therefore it can be stated that in the future the number of subjects of sports disputes in Ukraine may increase.

According to p. 2.5.24. of its Statute, the National Olympic Committee of Ukraine has the right to establish, if necessary, a Sports Arbitration Court under the Committee. Its personnel, election procedure, powers, and other principles of functioning are approved by the Executive Committee of the National Olympic Committee of Ukraine [14].

International bodies for resolving sports disputes include the Court of Arbitration for Sport, the International Council for Sports Arbitration, as well as bodies for the settlement of sports disputes operating under federations. The latter, for example, includes the FIFA Disciplinary Committee, which by Art. 64 of the FIFA Disciplinary Regulations has the right not to comply with the decision of the Court of Arbitration for Sport if the parties to the dispute did not consider the dispute in the FIFA jurisdiction or the national federation as a court of the first instance and immediately appealed to the Court of Arbitration for Sport [3].

The Court of Arbitration for Sport is an independent international arbitral tribunal authorized to settle sports disputes. The Court of Arbitration for Sport has two separate divisions of the court in Sydney and New York [15]. According to Art. R27 of the Rules of Procedure of the Court of Arbitration for Sport, its main function is to resolve sports or sports-related disputes through arbitration or mediation in the mediation process [16].

These disputes can be divided into two groups. The first one includes commercial disputes arising from contractual relations between professional clubs, between clubs and athletes, sports agents, disputes over the specifics of transfer activities, agreements on the transfer or distribution of television and other media rights, and so on. The second group of disputes includes disciplinary disputes considered by the Court of Arbitration for Sport as a court of the first instance or a court of appeal in the case of a dispute between national authorities. Such disputes arise in cases of violation of established rules, regulations, requirements, or other generally accepted regulations. Most of them are related to the use of doping by athletes or other significant violations of sports rules (for example, intentional use of violence, biased decision-making by a judge, violation of the rules of financial fair play, etc.). In addition, the Court of Arbitration for Sport is carrying out outreach work, developing numerous recommendations and advisory opinions on various legal issues related to sport [17].

As for the International Council on Sports Arbitration, its main task is to facilitate the resolution

of sports disputes through arbitration or mediation and to protect the independence of the Court of Arbitration for Sport and the rights of the parties. The International Council for Sports Arbitration consists of twenty members and is responsible for the management and financing of the Court of Arbitration for Sport.

The Court of Arbitration for Sport has at its disposal a list of arbitrators and provides for the arbitration of sports disputes through arbitration carried out by panels of one or three arbitrators. The exact number of arbitrators at the Sports Arbitration Court is not provided, but there must be at least 150 people. According to the general practice, such a court consists of about 300 arbitrators from more than 85 countries. The powers of the arbitrator are valid for 4 years with the possibility of further extension in case of the re-election of the arbitrator [18].

According to the regulations of the Court of Arbitration for Sport, the place of consideration for sports disputes is the city of Lausanne, Switzerland. This rule also applies to special ad-hoc tribunals, the place of operation of which does not affect the legal address of the arbitral tribunal. As a result, all disputes before the Court of Arbitration for Sport are governed by the Swiss Law "On Private International Law", which guarantees the procedural sequence of all cases before the Court of Arbitration for Sport. Its decisions are final and can only be challenged on some grounds in the Swiss Federal Court.

It is worth noting that in addition to FIFA, many other international sports federations also have their bodies for resolving sports disputes. However, it is difficult to call them independent arbitrations, as they are closely linked to the sports organizations responsible for their formation and operation. For example, the Basketball Arbitration Court, established by the World Basketball Organization

to resolve disputes between clubs, basketball players, and their agents. The cases are considered in Geneva. The Arbitration of the Basketball Arbitration Court is a one-person English-language dispute resolution process.

Important is the fact that an arbitrator is appointed by the president of the Basketball Arbitration Court to resolve a particular dispute. The decision is made within 6 weeks after the hearing. However, hearings are not mandatory but are held only at the request of the party. The arbitrator shall settle the dispute in accordance with the law of justice (*ex aequo et bono*).

In addition, some federations prohibit appealing their decisions in the Court of Arbitration for Sport. Such sports include rugby and Formula 1. The only exception to the rule is to appeal the decisions of the federations of these sports relating to the application of the World Anti-Doping Code (World Anti-Doping Agency) [13]. Such restrictions cannot be called objective, as they do not serve to protect the private rights and interests of the subjects of sports relations. Instead, it can be stated that there is a certain restriction of such an important right of a person as the right to an objective and impartial consideration of issues related to the protection of violated rights and interests of participants in sports relations.

Conclusion. Summarizing the above, we can conclude that to protect the rights and legitimate interests of sports, there is an extensive system of national and international out-of-court bodies for resolving sports disputes. Despite this, Ukraine has an underdeveloped system of such bodies, as only the football sphere has an effective mechanism for resolving sports disputes at the national level, and therefore there is a significant need to establish a Sports Arbitration Court under the National Olympic Committee of Ukraine to protect the rights of other sports.

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EXTRAJUDICIAL INSTANCES IN RESOLVING SPORTS DISPUTES

The article analyzes extrajudicial instances for resolving sports disputes, identifies their role and advantages over courts. It is noted that in practice, sports relations cannot exist without disputes, and the latter can take place between athletes, on the one hand, and coaches, sports organizations, mediators, etc., on the other hand; between athletes (on both sides), or when an individual athlete is not a party to the dispute at all. It is established that the most common disputes today are about objective judging, anti-doping, fair play.

As a result of the analysis of literature sources, it was found that in all national federations of Ukraine or associations (except the Football Federation) such specialized bodies, as a rule, do not exist. The executive bodies of the federation are empowered to resolve disciplinary disputes, and the powers to review them on appeal are vested in higher governing bodies (for example, congresses, conferences, general meetings). This provokes situations where sports disputes are considered by federation leaders who do not have the appropriate legal education, or even have a legal education but do not have relevant experience in resolving such disputes, which negatively affects the quality of sports disputes, as often unfair decisions are made or those that contradict the regulations of international federations in certain sports.

The work of such an independent international arbitration body as the Court of Arbitration for Sport, which is authorized to resolve sports or sports-related disputes, is analyzed. These disputes are divided into two groups; Group I includes commercial disputes arising from contractual relations between professional clubs, between clubs and athletes, sports agents, disputes over the specifics of transfer activities, agreements on the transfer or distribution of television and other media rights, etc., and group II – disciplinary disputes considered by the Court of Arbitration for Sport as a court of the first instance or a court of appeal in the case of a dispute between national authorities.

It is concluded that to protect the rights and legitimate interests of sports entities, there is an extensive system of national and international out-of-court bodies for resolving sports disputes. Despite this, Ukraine has an underdeveloped system of such bodies, as only the football sphere has an effective mechanism for resolving sports disputes at the national level, and therefore there is a significant need to establish a Sports Arbitration Court under the National Olympic Committee of Ukraine to protect the rights of other sports.

Key words: sports dispute, subjects of sports dispute, sports federation, sports association, National Olympic Committee of Ukraine, Sports Arbitration Court.

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ПОЗАСУДОВІ ІНСТАНЦІЇ ДЛЯ ВИРІШЕННЯ СПОРТИВНИХ СПОРІВ

У статті здійснено аналіз позасудових інстанцій для вирішення спортивних спорів, визначено їхню роль та переваги порівняно із судовими інстанціями. Зазначено, що на практиці спортивні правовідносини не можуть існувати без спорів, і останні можуть мати місце між спортсменами, з одного боку, і тренерами, спортивними організаціями, посередниками тощо, з іншого боку; між спортсменами (з обох сторін), або ж коли стороною спору взагалі не виступає окремий спортсмен. Встановлено, що найбільш поширені сьогодні спори щодо об'єктивного суддівства, боротьби з допінгом, чесної гри.

У результаті аналізу літературних джерел було встановлено, що в усіх національних федераціях України чи асоціаціях (окрім Федерації футболу) зазвичай немає таких спеціалізованих органів. Повноваженнями щодо вирішення дисциплінарних спорів наділені виконавчі органи федерації, а повноваженнями щодо їх перегляду

в апеляційному порядку – вищі органи управління (наприклад, конгреси, конференції, загальні збори). Зазначене провокує ситуації, коли спортивні спори розглядаються керівними особами федерацій, які не мають відповідної юридичної освіти, або, хоч і мають юридичну освіту, проте не мають відповідного досвіду розв’язання такого роду спорів, що негативно впливає на якість вирішення спортивних спорів, оскільки досить часто ухвалюються несправедливі рішення або такі, що суперечать реґламентним нормам міжнародних федерацій з окремих видів спорту.

Проаналізовано роботу такого незалежного міжнародного арбітражного органу, як Спортивний арбітражний суд, який уповноважений вирішувати спортивні або пов’язані зі спортом спори. Зазначені спори поділено на дві групи; до I групи віднесено комерційні спори, що виникли з договірних, контрактних відносин між професійними клубами, між клубами та спортсменами, спортивними агентами, спори щодо особливостей трансферної діяльності, договорів щодо передачі чи розподілу телевізійних та інших медіаправ тощо, а до II групи – дисциплінарні спори, що розглядаються Спортивним арбітражним судом як судом першої інстанції чи судом апеляційної інстанції в разі розгляду спору національними органами.

Зроблено висновок, що для захисту прав та законних інтересів суб’єктів спортивної сфери існує розгалужена система національних та міжнародних позасудових органів вирішення спортивних спорів. Незважаючи на це, в Україні не досить розвинена система таких органів, адже лише футбольна сфера має дієвий механізм урегулювання спортивних спорів на національному рівні, а тому наявна значна необхідність у створенні Спортивного арбітражного суду при Національному олімпійському комітеті України для забезпечення захисту прав представників інших видів спорту.

Ключові слова: спортивний спір, суб’єкти спортивного спору, спортивна федерація, спортивна асоціація, Національний олімпійський комітет України, Спортивний арбітражний суд.