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International arbitration in wrestling

Abstract. Purpose: to study the international sports arbitration court as the sole competent body for appeals against the decisions of national and international sports bodies. **Material and Methods:** the complex of General scientific methods of cognition, systemic method, formal logical, method of analysis and synthesis, method of ascent from the abstract to the concrete, as well as special legal methods: comparative-legal, formal-legal, normative-logical. **Results:** the used works in the field of sports arbitration and sports law, the works of foreign authors were analyzed. There is a “voluntary-compulsory” closed system of dispute resolution that exclude other ways of protecting the interests of athletes and sport organizations, including such as the use of the courts of General jurisdiction. **Conclusions:** the solution to this situation may be making problems of legal regulation of disputes in the field of sport in the sphere of public international law.

Keywords: International Arbitration Court for Sport; wrestling; Sport Arbitration Code.

Introduction. In the early 80-ies of the last century has dramatically increased the number of disputes in the field of sports. This situation became the impetus to create specialized legal organizations, the mission of which would be consideration of disputes, directly or indirectly associated with the sport, and making decisions on them. The idea of establishing an international court of arbitration for Sport, owned by the International Olympic Committee President Juan Antonio Samaranch was presented to them at the IOC session in Baden-Baden. In 1981, the IOC adopted the decision to establish a specialised body to resolve sporting disputes. In 1982 the working group of the IOC drafted Charter of the court of arbitration for Sport (CAS), which was adopted in 1983 and entered into force on 30 June 1984. Together with the Charter was adopted and the first of the Rules of court. In accordance with the regulatory documents of the court of arbitration for Sport consisted of 60 members whose work was paid for by the IOC. The annual budget of the court of arbitration for Sport approved by the IOC President. In the first years of its existence, the court of arbitration for Sport, essentially, focused on activities in two main areas:

- on the claims of sports organizations and individuals regarding disputes in the field of sports, regardless of their nature;
- providing advise on the various sport organizations and individuals in relation to problems and issues arising in the field of sports that can potentially lead to a conflict of interests.

In 1991 the court of arbitration for Sport activities there was one direction, the appeals filed against the decisions of various disciplinary bodies of sports organizations.

In the early 1990-ies of XX century, there is a need to revise the status of the court, as had been challenged the independence and impartiality of the CAC because of its close organisational and financial connections with the IOC. The result of the court reorganization was the adoption in 1994 of the code of international sports arbitration and to the Treaty establishing the International Council for sports arbitration.

The proposed two-tier system was designed to share organizational and judicial functions of the court, where the international Council for sports arbitration (AMIS) was supposed to solve organizational issues (oversight and funding of the court of arbitration for Sport), and SAC - in fact to resolve disputes. Thus, the international Council of arbitration in sport has assumed in relation to Sports arbitration court, the execution of functions formerly belonging to the IOC. New founders court of arbitration for Sport - the IOC, the Association of national Olympic committees, the Association of winter sports, the Association of summer sports - Fund of the court in equal shares. An important aspect of the reform was the creation within the court of arbitration for Sport two permanent entities, the chambers of the ordinary and appeals arbitration. In addition, under the SAC have set up specialized structural units, which received the name of house “ad hoc” (“this” case). These units are designed to resolve disputes arising during the Olympic games. They became operational since 1996 at the XXVI Olympic games in Atlanta. In addition, the structure of the court of arbitration for Sport includes the so-called decentralized units in the form of permanent offices established in 1996 in Sydney (Australia) and Denver (USA). The last of these offices in 1999, was transferred to new York. The seat MASS and SAC - Lausanne, Switzerland.

The code of international sports arbitration, which entered into force on 22 November 1994, effective. However in 2003, the Code underwent substantial processing on the basis of legal principles developed by the jurisprudence of the court. New edition of the Code includes two parts: constituent (S) and procedure (R). A constituent part contains provisions about the organs of the court, in the procedural arbitration rules, appellate rules, rules of conciliation procedures with participation of mediator (mediation) and provision of Advisory opinions of the SAJ. The rules for the resolution of disputes arising during the Olympic games, is part of the code of international sports arbitration.

The connection of the research with scientific programs, plans, themes. Work performed under the research plan of the National technical University «Kharkiv Polytechnic Institute».

The purpose of the study: the study of international sport arbitration as the main instrument for resolving disputes directly or indirectly linked to sport.

Material and research methods. The methodological basis is the complex of General scientific methods of cognition. It includes: system method, formal logical, method of analysis and synthesis, method of the ascent from the abstract to the concrete, as well as special legal methods: comparative-legal, formal-legal, normative-logical and other theoretical and methodological, regulatory and information base was on private international law, international legal acts

in the field of sports law: the international sporting Code of arbitration dated November 22, 1994, the Olympic Charter, the European sport Charter, the international Charter of physical education and sport (the UN Declaration of November 21, 1978), the jurisprudence of the international court of arbitration for Sport. Used in research works in the field of sports arbitration and sports law such Russian authors as Brilliantova A. M., V. V. Kuzin, M. E. Kutepov and others. Analyzes the works of foreign authors: Callucci A., F. Fallon, G. and Schwaar other. Due to the fact that the subject of international sport arbitration is relatively new, the article is an attempt first to introduce into scientific circulation data of judicial practice of resolving disputes that arise during the world Championships in wrestling, Championships of Europe, case law of the court of arbitration for Sport participation in cases involving allegations of doping, decisions of the international sports arbitration in respect of Ukrainian athletes and federations.

The results of the study and their discussion. The basis of the specificity of sport is a competitive activity. The competitive activity and its features stimulate the emergence of conflicts in the sports environment. As signs of competitive activity we can highlight the following: firstly, as the competitive activity participants try to outdo each other in sporting skills, competitions always are of special importance for the athlete, the increasing presence of spectators and the referees who assess athletes; secondly, a high degree of uncertainty is typical for competitive activities. The result of the competition is influenced by various internal (emotional state of the athlete, the level of his physical training) and external (weather conditions, subjectivity of judging) factors; thirdly, a strictly limited period of time is typical for adoption and implementation. These characteristics stimulate the emergence of athletes condition of mental stress, which is often one of the sources of conflicts in the sports environment. In addition, the competitiveness of sports brings sports relationship with entrepreneurial activity, because entrepreneurial activity is always competitive (competitive). In modern sport, as we know, a very strong financial component, so the struggle for a cash reward also leads to conflicts between the subjects of sports activity. Wrestling is one of the oldest sports, a combat of two athletes according to certain rules with the help of special techniques. Unlike martial arts, striking techniques, wrestling fight is conducted not only in the rack, and in orchestra seats (when one of the wrestlers is on his knees, lying on the breast, on the side, etc.). The purpose of fighting is to force the opponent to touch the carpet with both blades and hold it in this position for at least 2 seconds. If during the fight any of the opponents you cannot do that, the winner is the athlete with the higher number of points for successful techniques. Modern wrestling is divided into freestyle and Greco-Roman (classical). Freestyle and Greco-Roman wrestling included in Olympic program. Victory in both types of struggle counted in the following cases: pure victory is awarded ahead of schedule when fixing the blades of the enemy on the carpet (touch - from the French toucher), disqualification of the opponent or the advantage of one of the fighters in 10 and more points; win on points - awarded after the match when the difference in the score less than 10 points. The combat consists of two three-minute rounds with a break of 30 seconds. When the score is equal after normal time the fight is renewed for another three minutes. A draw in the match can not be, but to win the difference has to be more than three points. If any of the wrestlers unable to score points or a difference in the account is less than three points, the partners are put in the cross capturing, identifying advantage in capturing by lot (the referee tosses a coin). In this case, a point is awarded to the one who will be able to hold the first attack action. The wrestler may appeal against the official results of the match in writing within 30 minutes after the end of the fight. If the appeal is accepted and the jury of appeal supported the protest, are being re-fight. Compliance with the rules of wrestling, appearance and equipment of athletes are monitored by the referees, who also fixes the score. The team includes a referee (the referee on the Mat), side referee, the Mat Chairman. For the duration of the fight watching the judge-timekeeper.

As in any other sports, in Borba, there are conflict and disputes over the results of the end of the event or the individual fights. Repeated instances of filing the athletes and teams of the allegations in the CAC about the outcome of the battle and about the decisions of arbitrators. There is also the international Convention against doping, which entered into force on 1 February 2007 the Important point was the adoption on 5 March 2003, the world anti-doping code (Code) at the second world conference on doping in sport. This document sets out a comprehensive framework for the protection of the fundamental right of athletes to participate in doping free sport and ensure the implementation at the international and national levels are harmonized, coordinated and effective anti doping programs with regard to detection, deterrence and prevention of doping (WADA, 2003). An important event in the field of wrestling was the decision to exclude wrestling from the program of the Olympic games.

Conclusions. The work of the international court of arbitration for Sport characterized by the following features:

- independence, confirmed by the course and results of the activities and competent opinion of the Swiss Federal court;
- privacy policy, manifested in the restraint of the court when deciding about the publication of materials, despite the opportunities provided to him in accordance with normative-legal documents – Regulations and bylaws;
- quickness of procedure, which provides, inter alia, the possibility of immediate sentencing at the request of the parties to the dispute, the absence of the possibility of rendering a partial decision;
- cost savings associated with funding the court's activities mainly by the International Olympic Committee, the provision of free consultation;
- professional competence of members of the court, confirmed the fact that the composition of the court are elected by professional lawyers with recognized competence in the field of sports. The appointment shall be made by the International Olympic Committee, international federations, national Olympic committees and the President of the International Olympic Committee;
- provides for the possibility of negotiation between the parties to the dispute language will be a hearing in court;

international Sports arbitration court is the only competent judicial body for appeals against the decisions of national and international sports bodies. Reservations about this is included in the articles of Association and other documents regulating the activities of various sports organizations. In addition, the international Olympic Committee has achieved a

significant increase in the commitment of international and national federations and associations by the inclusion of clauses aimed at compelling the disciplinary disputes type of appeal jurisdiction of court of arbitration for Sport. Unfortunately, not always observed, and also another principle of justice – objectivity and comprehensiveness in the proceedings. Sports arbitration court in Lausanne sometimes relies on only profitable to subject the facts and the precedents, building internally consistent hypotheses that go not only beyond the law but also beyond common sense. However, the most difficult problem in international arbitration for sports activity can be a problem of «supranational», the closed nature of dispute resolution in the field of sports.

The national sports federations entering in international associations and federations, signed documents on refusal to consider the possible disputes in any other court, except the international court of arbitration for Sport, are obliged to accept its decisions are final and binding. Similar provisions are included in the statutes of the national federations. In any international competitions (especially for all Olympic sports), the athlete cannot participate without being a member of the national Federation, the Charter of which provides for consideration of only the arbitration of sports disputes. Moreover, a prerequisite of participation of a particular athlete in the Olympics is a written agreement about the consideration of possible disputes, including doping, exclusively in the court of arbitration for Sport. There is a «voluntary-compulsory» closed system of dispute resolution that exclude other ways of protecting the interests of athletes and sport organizations, including such as the use of the courts of General jurisdiction or, for example, the European court of human rights. However, it is clear that even voluntary and written statements of subjects about the waiver of any rights cannot infringe upon or diminish «their» internationally recognized rights and freedoms. «Without the knowledge» of national parliaments and courts a whole layer of social relations, as a rule, very sensitive to public opinion, deduced from sphere of legal regulation of the state, essentially, to the detriment of his sovereignty. The solution to this situation may be making problems of legal regulation of disputes in the field of sport in the sphere of public international law. In this regard, in our view, will require preparation and signing of international legal agreements (conventions).

The prospects for further research: to analyse the activity of international arbitration in Ukraine, a comparison of the activity of the Arbitration Court of Ukraine with the leading European arbitration commissions.

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