Man In India, 97 (22) : 65-82

LAW AND SPORT: ACTUAL PROBLEMS

Lilija Mansurovna Allanina[*] Maria Sergeevna Zhuleva[*] and
Aleksei Gennadjevich Pshenichnikov[**]

Abstract : The sport is a tool for social integration, cooperation, solidarity and tolerance at the national and international levels. However, some legal rules governing sport relations need remedial amendments.

The purpose of the work is to carry out a legal scientific comparative analysis of the main problems of sports. The authors analyze actual legal problems faced by sportsmen and sports organizations.

Methods : Include empirical methods of comparison, interpretation; general methods of analysis, formal logic; specific scientific methods: legal dogmatic method, legal comparison and method of legal norm interpretation.

Results: The article notes that the fundamental principles and categories of the World Anti-Doping Code need to be adjusted to new realities, and the concept of the athlete's rights and interests must be broaden, taking into account a competitive spirit of the sports activity. The paper explores the problems of sporting reputation and its protection. It also covers the problems of the sports law existence in the Russian Federation.

Conclusion: It is to be noted that the lack of a unified classification of sporting disputes makes it difficult to identify the appropriate jurisdiction. The article presents the role of the Court of Arbitration for Sport in Lausanne (CAS) in resolving a wide range of disputes that arise in sports. It raises the controversial issues of appeals, especially the appeals against decisions of the International Olympic Committee (IOC). Such appeals are still more restricted. The next problem is the World Anti-Doping Agency's independence. The authors analyze its competence and power.

Keywords: Sports law, international law**,** the Olympic Charter,Court of Arbitration for Sport in Lausanne, athlete's rights and interests, legal sport relationships, sporting reputation, sports image of the athlete.

INTRODUCTION

Development of any sports movement is impossible without fundamental role of law. The law, in turn, is an essential tool for the regulation of sport. The law forms and improves all legal sport relationships. The encouragement of a healthy lifestyle,the tackling demographic challenges,and the enhancement of the achievements and authority of the countries on the international sporting arena are impossible without appropriate development of the mass sport in the world.

In Russia, in order to implement the national strategy for the development of sport and physical culture up to 2020, the President set the task to involve in sporting activity at least 50% of adult population and 85 % of children and youth by 2020. The main goal is to turn the sport, which is being an inaccessible necessity, into "an agreeable must have". First of all, it can be achieved only by the proper legal

[*] Industrial University of Tyumen, 625000, Russia, Tyumen, Volodarskogo Street, 38

[**] Tyumen State University, 625003, Russia, Tyumen, Semakova Street, 10

regulation and by creation of the full-scale sports legislation involving all segments of the population. Lately, the conflicts between the actors have considerably become complicated and have appeared to be more complex than ever, due to the commercialization of the modern sport. Different disputes and conflicts are inevitable in sport, because a competitive spirit is inherent to the sport relations. The sport is built on the principle of generalized competition. There is always a winner and a loser in a sports game. At the heart of the any Championship lies a competition. However, it seems that the normative acts in effect, related to the sport, at both the national and international levels, do not sufficiently take into consideration this specific feature.

METHODS

Include empirical methods of comparison, interpretation; general methods of analysis and formal logic; legal dogmatic method, legal comparison and method of legal norm interpretation.

The Problem of Sports Law

The problem of the sports law existence is characteristic, primarily, of Russia. It is interesting that in the western law science, the "sports law" concept has existed for a long time: "sports law" (England), "droit du sport" (France), "sporttech" (Germany). For example, recognized academic degrees in sports law can be obtained at the Manchester Metropolitan University. There is a National Institute of the sports law at the Marquette University (the United States of America) (Beloff, et. al., 1999).

This concept covers an application of the different sort of rules, the legal regulation of the relations between the sport related participants (fans, athletes, coaches, sports organizations) (McLauren 1998). Anyway, the distinction between sports law concepts, based on the categories "branch of law" and "branch of legislation", is a tendency that characterizes Russia. The branch of law is traditionally understood as a body of unimodal legal rules of human conduct regulating the unimodal sphere of the social relationships by a special, unique method. It can exist only within the framework of the system of law on the whole, and it is one of her internal structural elements.

The system of law represents an internal structure of law reflecting the unification and differentiation of the legal norms. The system of legislation is a set of legal normative acts, which objectify the internal and substantial characteristics of law. It is an external form of the law expression, and it reflects its internal content (Allaninaand Khairullina 2016). I. S. Kuznetsov defines the sports law as a branch of legislation. This branch covers the normative acts governing the social relations arising during the process of preparing the athlete for sports competitions, and also related to the participation of the sports organizations in the activities connected

with sporting events, both at the national and international levels. In his opinion, the main difference between the branch of legislation and branch of law is that the branches of legislation, regulating certain spheres of social life, are identified by a subject of legal regulation, and they do not have any uniform method. Besides, the subject of the branch of legislation includes various relationships, and therefore, the branch of legislation is and trainers who were the first to have faced legal challenges at the international sports competitions. For example, two leaders of the world rhythmic gymnastics A. Kabayeva and I. Chatchina were disqualified for a year for doping offenses at the World Cup in Brisbane. At that time, Russian sportsmen and trainers did not know what sports law was, they not so unimodal as the branch of law (Kuznetsov 2004). In contrast, the Russian sports law expert S. V. Alekseev considers the sports law as a branch of law (Alekseyev 2015). In Russia, the legal regulation of the sports will reach an appropriate level only after the sports law has reached the status of the independent branch of law, not legislation. Now, there is plenty of time for that. At the same time, the tendency of the sports law development has been supported by those athletes did not know any information about doping procedures and appeals. As a result of this lack of knowledge, Russia, having the best achievements in sport, has lost in legal intricacies. It was one of the first signals indicating the lack of appropriate legal support to the Russian athletes.

Facultatively,we should address the issue of a correlation between the international sports law, lex sportiva and the sports law. Without going into detailed analysis of the specified correlation, demanding a separate deep research, it should be noted, that lex sportiva cannot be equated by analogy with lex mercatoria, as Frédéric Buille and Jeanne Michèle Marmeillu consider (Buy, et. al. 2009), as lex sportiva ought to be competitive, but competitiveness is not peculiar to lex mercatoria. Lex sportiva is closely intertwined with the sports law and must become an integral part of it. Therefore, there is no sense to differentiate these concepts. The states de facto and de jure recognize lex sportiva. For example, Item 3 of Article 3 of the Federal Law of the Russian Federation "On Physical Culture and Sport in the Russian Federation" establishes the principle of governmental regulation and self-administration in the field of physical culture and sports.

Lex sportiva cannot be equated to the international sports law, as Belof, Tim Kerr, Mari Demetriu (Beloff, et. al. 1999) and also B. Kolev (2008) have pointed. In our opinion, it is incorrect to use the term "international" or "transnational" to all kind of bodies of different norms and rules regulating the sport outside the state. So, the norms of domestic law cannot be regarded as the international sports law, as they belong to the legal order. This legal order is fundamentally different from the public international law and private international law. They are, in fact, the domestic law rules vitally linked to the public international law.

Coming back to the Russian problem of determination of the sports law, another theoretician S.S. Alekseev wrote that it was necessary to distinguish the structure of law from the structure of legal sources, in particular, the system of legislation. If the first is an objective division within the law (within the framework of its content), then the second represents a composition, a correlation, a construction of legal sources and external forms of law, including the legal acts, isolated by the subject and target criteria (Alekseyev 1995)

The problem of identifying the sports law as a separate branch of law is not of so much discussion, and has mainly facultative, additional character. Here it is more important not the fact of codification of the Russian sports legislation, but its inner deep content, requiring further in-depth study and improvement.

It seems that qualitative sports legislation can perfectly exist both in the form of a set of legislation (branch of legislation), as well as in the form of the branch of law. Proof of this is the sports legislation of the USA and Europe. There is no even special federal law on sport, not to mention its codification, in the United States of America. On the contrary, in Europe there is special sports legislation, up to the French Sports Code. Both forms of the sports rules existence allow to protect properly the rights of the subjects involved (sportsmen, sports organizations, etc.) and to achieve all necessary goals and targets. Thus, the specificity of sports relations requires its own special approach.

The Problem of Defining Sports Disputes

Sports disputes have existed for a long time. There was a financial support for sporting activities (sponsorship), and the development of sports was promoted in Ancient Rome. For example, loans were extended to the athletes in order to overcome their financial difficulties during the period of preparation for the competition, which they were supposed to return after the competition (Nafziger 2004).

It has to be kept in mind that the concept of "conflict" has a more extended sense than "dispute". The dispute appears after differences have created such uncertainty in relations or such obstacles in the realization of the rights and interests, that neither of the parties is able to overcome them. Then, either constructive interaction among the parties or the third-party involvement is required to remove these obstacles.

Therefore, the dispute, in fact, opens the next stage in the evolution of the social conflict. In fact, one of the forms of social conflict is a legal dispute. T.V. Hudoikina defines the legal dispute as a confrontation between the subjects of law with conflicting legal interests arising in connection with the use, modification, violation or interpretation of the law (Khudoykina 2015). Both the conflict and dispute are controversy, but the conflict remains per se until one party makes the corresponding procedural efforts to resolve existing contradictions. In other words, the legal dispute represents a conflict considered by the jurisdictional organ or mediator.

First of all, the conflict means the conflict of interests, where interests are not a benefit as such, but those positions of the personality which provide a possibility of this benefit. The conflict of interests in sports may also be a subject to the proceedings of the Court of Arbitration for Sport (CAS) in Lausanne. So, in the case of AEK and "Slavia" against the Union of European football associations" the Arbitration Panel notes that any fact of simultaneous participation in certain sports clubs owned by the same owner, implies a conflict of interests representing a potential threat to the credibility of the whole match results (CAS (20.8.1999-98/2000).

The sports disputes can be divided into two categories: the first one covers the disputes tried by the state courts. They have a general character. The state courts dispense justice on behalf of the State. Their decisions are enforceable. However, it is reasonable to involve the expert, who can help the judge to understand all specific nuances and subtleties of the dispute and make an informed and lawful decision.

It should be noted that the disputes resolved within the system of the state courts, are few in number. Anyway, an application of the law is nothing more than a selection of appropriate forms of legal protection, on the basis of which an individual decision on the legal case is to be made. The second category covers specific disputes that are being considered by the specialized review and disciplinary commissions of the sports organizations or sports arbitration. As a rule, the obligation to apply, firstly, to the internal jurisdictional bodies,is imposed by the Statutes of the sports organizations. The procedural rules provide that in case of dispute, the subjects are obliged to contact the jurisdictional authority of the appropriate Federation (Association, Union, League) (Statute of the Russian Football Union, *n*. *d*; World Anti-Doping Code, *n*. *d*).

K. Newmark specifies that the sports disputes represent a mixture of various conflict situations. Some disputes are purely commercial (for example, disputes between the athlete and sponsor).Other disputes have a regulatory nature (for example, the disputes about the legality (illegality) of actions of the sports organizations) or quasi-criminal nature (for example, doping disputes) (Newmark 2002). Therefore, the problem of a right choice of the jurisdictional authority and procedure arises for resolving specific sport disputes.

Differentiation of sports disputes is connected with the sport specifics and its versatility. This fact, in turn, predetermines the existence of huge variety of legal conflicts in the modern sport (Smyth 2002). It predetermines the need of individual approach to the selection of appropriate form of the sports arbitration. For example, in Russia, the problem is that there is no legal definition of the category "sports dispute" yet.E. Pogosyan defines the sports disputes as "disputes between the participating in the sports relations actors on their mutual rights and obligations and disputes on the non-sport relations having impact on the athlete's rights"(Pogosyan 2009).

Sometimes, the absence of the uniform classification of the sports disputes in Russia does not give the chance to define clearly the jurisdiction of the cases that consequently leads to the confusion in the process of selecting the jurisdictional body and procedures. Therefore, in our opinion, the unique classification of sports disputes should be further developed and incorporated in the normative legal act, for instance, in the Federal Law of the Russian Federation "On Physical Culture and Sport in the Russian Federation".

Therefore, there is a need for detailed formulation of the unified approach to the forms of sports disputes resolution and their classification, as well as the need for consolidation of general adjudication rules and procedures governing the settlement of disputes of the federations, unions, associations, leagues and other sports organizations.

Judicial and Extrajudicial Settlement of Disputes

S.V. Kurylev represents an interesting approach to the classification of the forms of civil rights protection. He classifies them by the character of connection between the jurisdictional authority and disputing parties. He divides them into three groups. The first one implies the disputing party's jurisdictional act as a form of the dispute solution. The second implies the dispute solution by the act of the body. The body is not the participant of the dispute, but has some connections with one or both dispute participants. The third one implies the dispute solution by the act of the non-participant,who has not any connections with one or both disputing parties (Kurylev 1957).

In our opinion, once a dispute arises on somebody's rights or interests, the authoritative intervention in the form of application of the law and brining a legal action before the competent State organ are needed. Any interested sportsman must have some kind of recourse representing the legitimate activities for the protection of violated subjective rights. The peculiarities of the sport disputes settlement are predetermined by the special nature and multisubjectivity of the sports relations. This special nature is evident through the fact that they are regulated by the norms of different branches of law. Along with the civil law defining the legal status and activity of the sports organizations, there are also norms of labor law. They determine the legal status of the professional athlete. And we can find the administrative rules, tax law rules relating to the public administration in the field of professional sport. At the same time, there is no complex legal system governing relations in this field in Russia yet. This fact, in turn, affect the procedural aspects of the sports disputes settlement, as courts of general jurisdiction and arbitration courts make decisions based solely on the current legislation. For comparison, American state courts submit to the general rules of so-called "due process" (due procedure), under which the parties have to be acquainted with each other's arguments prior to the start of

the dispute consideration. They also must be given the opportunity to participate in the process and to appeal against the court's decision (Davis, et. al. 1999). Such approach characterizes the cohesion of the civil process providing more effective protection of the athlete's rights and interests. But, in Russia,it does network. One of the main causes for such situation is the lack of a proper legal frame work for regulating dispute system and other sports related problems, including problems connected with defining of the professional athlete's status, the status of the sports organizations and other subjects of professional sport.

There is also extrajudicial settlement of the sports disputes, which is understood as the actions for protection of the rights realized independently, without appeal to the competent public authorities. The very notion "alternative forms of dispute settlement" has emerged for identifying flexible and informal procedures of conflict settlement as opposed to the difficult and cumbersome formal justice (Lennuar 2004).Today, alternative forms of dispute settlement are widely used in the United States of America and in Europe. In the countries with Romano-Germanic legal tradition, the courts encourage the disputing parties in non-judicial conflict resolution procedures and delay the commencement of new trials in case of arbitration clause or the contract condition concerning some alternative forms (mediation and others). For example, there is a statutory requirement that the parties must comply with compulsory pre-trial procedure for settlement of sports disputes by using mediation and conciliation (acto de conciliation-conciliation) in Spain (Blackshaw 2002).

Alternative procedures have certain advantages. Firstly, speed and confidentiality of dispute settlement are important for the athletes as for nobody else. The rapidity is important because their career is not too long, and they need to be able to participate in the next competitions as soon as possible. Secondly, athletes are interested in resolving disputes by an independent arbiter having special knowledge in the sphere of sport and, therefore, capable to take into account all peculiarities of each conflict situation. The essential point is that such an independent mediator, one may say, does not make the decision for the parties, but merely assists in resolving the dispute. Only if the parties fail to reach an agreement, the mediator provides final written recommendation on the case, which is not, however, binding and enforceable. Thirdly, the positive moment of alternative methods of dispute settlement is their variety. The parties always have a choice what kind of procedure to use. So, in the world practice, there are some special alternative forms of dispute resolution: conciliation, mediation, an independent expert opinion, the combination of mediation and arbitration, the Ombudsman. In opinion of Ph. Morrice, an appeal to the Ombudsman should be caused by the exhaustion of all other remedies. At the same time, the sports Ombudsman has to have the right to appeal to the State Court for the cancellation of the decisions made by the organs of sports justice (Morris 2000).

In common law countries, courts interfere in the resolution of sports disputes only exceptionally, as a rule, if violation of equity law has taken place. There is a tradition, according to which the court gives the palm of supremacy to the alternative methods of sports disputes settlement in England. Lord Denning in the case "Ender by Town Football Club Ltd v Football Association Ltd" points out that justice is often much more efficient in "internal tribunals" led by amateurs,rather than state court sheaded by professional judges 9 Endebry Town Football Club Ltd, 1971).The American approach to the sports dispute settlement is similar to England. Courts have the right to interfere with the sports dispute only under extraordinary circumstances, namely, if the sport associations violate their own regulations, and such violations inevitably cause serious and irreparable harm to the plaintiff, who, in turn, has exhausted all non-judicial methods of protection of the rights. But even in that case, the sports dispute cannot be fully considered by the court (all over again). The judge only redresses violations committed by the sports organization (for example, the decision made by the district court in the case "Harding v United States Figure Skating Association)(Harding v United States Figure Skating Association, 1994).

However, with respect to the disciplinary disputes (related to the sportsman's capability to participate in the Olympic Games), the history of dispute resolution in the Court of Arbitration for Sport shows a negative trend. Almost all appellants (athletes) have failed to win the case. Such dynamics can be observed throughout all existence of the Court. This is an occasion to ponder about the effectiveness of the present dispute system.

The Problem of Appeal

The core of the modern international sports system is the International Olympic Committee (IOC) - the supreme authority of the Olympic Movement. In terms of legal status, the IOC is an international, non-governmental, non-profit organization in the form of association with the status of the legal entity recognized by the Swiss Federal Council. The International Olympic Committee is founded as association of private law pursuant to Article 60 of the Swiss Civil Code.

Currently, most international sports federations include the arbitration clause in their Charters and obligate to do the same all their members. As a result, the national federations are obliged to apply only to the Court of Arbitration for Sport in case of dispute(for example, in case of the dispute with some kind of international federation). All sport organizations recommend including standard arbitration clauses in the text of the Agreements. The examples of such clauses can be found in Appendix 1 of the Code of the Court of Arbitration for Sport (Code of Sports-related Arbitration, 2010). Now, it is the Code of Sports-related Arbitration being in force since 1 January, 2017 (Code of Sports-related Arbitration 2017). In fact,

the athletes have no alternative other than Court of Arbitration for Sport. But there must be such alternative. The International Olympic Committee decisions made on the basis of provisions of the Olympic Charter are peremptory. Any dispute relating to their application or explanation can be solved only by the Executive Board, and in some cases – by the Court of Arbitration for Sport. Experts note that the International Olympic Committee is, as a matter of fact, the final instance in all matters relating to the Olympic Games (Bournazel, n.d.). In our opinion, such situation does not correspond to the current level of law.

The mere fact, that it is actually the main and the last instance to resolve legal disputes means only that the current situation should be changed. A new alternative to the Court of Arbitration for Sport is to be established with a dislocation in a country other than Switzerland. It is enough to recall Larisa Lazutina and Olga Danilova who were disqualified for doping offenses during the Olympic Games in Salt Lake City. Their appeals were unsuccessful, both in the Court of Arbitration for Sportand the Federal Supreme Court of Switzerland: "although the Court has recognized the fact of some violations during the drug-control procedure in Salt Lake City, but has not overturned two years' disqualification"(Ski run up to Strasbourg: Larisa Lazutina and Olga Danilova submit a complaint to European Court of Human Rights, 2003). The Russian champions complained about the breach of principle of equality, and that the Court of Arbitration for Sport could not be considered as independent Court in this case. Their right to get access to the evidence materials necessary to organize points of arguments was violated too. Besides, the Court's non-acceptance of their application to take away the written testimonies without signatures of the witnesses was challenged too. The next procedural irregularity was connected with the admission of the witnesses in the courtroom long before the start of testimony proceedings. Such admission could undermine their impartiality. All these facts can be considered as a significant non-compliance with procedures (meaning substantial violations),under Russian law. However, in this case the Federal Supreme Court of Switzerland unconditionally did support the decision of the Court of Arbitration for Sport and recognized its independence and correctness (CAS 2002/A/370).

This case is an illustrative example of the fact that athletes and their representatives sometimes find themselves like "hostages of situation", when they have to protect the rights under the rules of another country. Now, it is necessary to establish a new sport Supreme International Court of Appeal with supervisory functions to hear appeals against the decisions of the Court of Arbitration for Sport. The new Court should not be connected with the International Olympic Committee. The competence to deal with complaints against all CAS decisions (which is currently lacking),not by the legislation of Switzerland,should be the main distinctive feature of the Court. The new process of international sports norm codification (including procedural rules), involving all leading countries of the world, is also

currently required. The result of this work should be the harmonious system of sports legislation reflecting the latest achievements of the world legal technique and world practice of sports disputes resolution. The Swiss standards and norms are not consistent with the level of development of the procedural legislation of the most countries with a mature legal system. The system of selection of judges to the new Supreme Court should be more ordered and democratic than current selection system. The current situation with this Court is almost absurd. We have, in fact, the only sports-related Court, and its decisions cannot be reviewed (behind some exceptions) by any another independent court. And this Court resolves disputes only by the legislation of the country with such monopoly positions (Pitchen 2011). To return to the beginning of this article, the monopoly in sport is unacceptable. To a certain extent, this also applies to the sports law.

The Problem of Applicable Law

Let us take the Clause 4 of Item 2 of Article 26.1 of the Federal Law of the Russian Federation "On Physical Culture and Sport in the Russian Federation". According to this norm, the Russian Anti-doping Agency (Rusada) holds hearings on application of sanctions against the athletes, coaches and other professionals in the field of physical culture and sports, who accused of drug-offence, unless otherwise provided by anti-doping rules adopted by the relevant international sports Federation. Rusada coordinates the work of two independent committees in accordance with the World Anti-doping Code, international standards and domestic normative acts. The responsibility for doping violations is established in accordance with the legislation of the Russian Federation, the World Anti-Doping Code and anti-doping rules of the Russian Federation (under Item 12 of the Order of the Ministry of Sport, Tourism and Youth Policy of the Russian Federation 293 dated May 13, 2009 "On Approval of the Order of Carrying out a Drug Test").

On the basis of this, we can conclude that the Russian legislator recognizes the validity of the international anti-doping rules adopted by any international sports federation in the relative kind of sport, as well as the norms of the World Anti-Doping Code,along with the domestic law. For example, the European Anti-Doping Convention (Strasbourg, 1989) was ratified by the USSR in 1990. This raises the problem of the supremacy of the relevant international sports norms (law) over the domestic law.

The Constitution of the Russian Federation provides that the universally recognised principles and norms of international law and international treaties of the Russian Federation are a component part of its legal system. According to Part 4 of Article 15 of the Constitution of the Russian Federation, if an international treaty or agreement of the Russian Federation fixes other rules than those provided by law, the rules of the international agreement shall be applied. This means that

the international treaties of the Russian Federation are directly applicable, except so-called implementation cases when application of the international treaty requires the promulgation of a domestic act. The problem is that the notion "universally recognised principles and norms of international law" is polysemantic, multivalued and is understood differently by the members of international community. On the contrary, the rules of specific international agreements ratified by a particular State provide for concrete things: concrete rights and obligations of the State. Not every scientist in such area as international law believes that the principles of international law must have a regulatory basis and be normative. Moreover, there is an informal understanding that the principles of international law can be expressed in the form of different ideas, attitudes and beliefs and cannot be fixed in the rules of international law.

But the ideas, attitudes and beliefs that dominate in different countries may be different and very often – contradictory, opposite in nature. Therefore, it is not obvious that the principles of international law being understood in such way should be considered as the basic and generally binding rules in the field of the international as well as domestic law.

In order to improve the existing procedures for the sports disputes settlement in Russia it is necessary to exclude from the Constitution of the Russian Federation provision according to which the universally recognised principles and norms of international law and international treaties of the Russian Federation are a component part of its legal system. The notion "legal system" is flexible and subjective. It is very complex, integrating category reflecting the legal organization of society, complete legal "superstructure", that is an association of the various legal phenomena. Such very contentious provisions cannot make the constitutional basis of the Russian state. In our opinion, the inclusion in the Constitution of the Russian Federation of the primacy of international law over the domestic one generates the intra-constitutional conflict, because it gives the document precedence over itself (the Constitution of the Russian Federation). Moreover, in case of derogation of any constitutional right by the international document there is no an adequate mechanism of legal protection of the violated right.

In this regard, the Constitutional Court of the Russian Federation has given to itself the authority to recognize unenforceable the decisions of the European Court of Human Rights upon the President's or the Government's request (in conformity with the Resolution dated July 14, 2015). For example, on April 19, 2016, the Constitutional Court of the Russian Federation satisfied the complaint filed by the Ministry of Justice and recognized unenforceable the judgment of the European Court of Human Rights in the case "Anchugov and Gladkov v. Russia" obliging Russia to differentiate restrictions on electoral rights of prisoners. For comparison, in other countries the issue of primacy of the international law over domestic acts never resolved in an almost unique manner, unambiguously.

Proponents of the Hegel's idea of the primacy of domestic law (V. Danevsky, etc.) recognized an absolute sovereignty of any State and considered the rules of international law contradicting it null and void. Followers of an opposite view (G. Kelzen, H. Lauterpacht) proceeded from the complete subjugation of domestic law. If we look at article 6 of the Constitution of the United States of America, then we can see that the international treaty and domestic federal law have an identical legal status and legal effect. But at the same time it is important that the American constitutional legal doctrine divides the international agreements into self-executable (the implementation of which does not require any changes in the national legal system) and those which involve changes in the domestic law. In the last case the international treaties cannot be applied until their implementation into the national legal system through the legislative process. In this regard, the problem of a potential contradiction between international agreements and domestic statutory acts does not even arise. In case of conflict between self-executable international treaty and domestic American law taking into account their equal legal force, the act issued of a later date shall be applied. Thus, the legislator in America may terminate the legal effect of the international treaty by issuing a new contradicting Act. But the State formally remains a party to the international agreement. In the constitutions of Norway, Finland, Sweden it is provided that the norms of international law are to be implemented in the national legal system to achieve legal force. This issue is not regulated at all in Denmark and Iceland, but the constitutional provisions provide that some priority issues can be regulated only by domestic laws. The primacy of the domestic acts is directly enshrined in the legislation of Brazil and India.

Thus, the criteria for defining a reasonable correlation between international and domestic law in the sphere of sport must be determined, on the one hand, by the actual political status of the State, and, secondly, by its strategic and geopolitical interests. In this respect,the concept of national sovereignty with its geo-political, economic, historical and philosophical aspects is also important, along with so-called universal values, in the field of sports.

Doping Disputes

A significant number of doping scandals involving names of famous athletes, including the athletes from Russia, have recently discussed in mass media. It is very regrettable to observe the situation in the form of doping scandals instead of the form of legal disputes. The difference between doping scandals and doping disputes is obvious: the disputes have to be resolved in keeping with the legal proceedings.

In this respect,the World Anti-Doping Agency's legal status as a subject of international sports law plays an important role. The term "international sports law" here is contingent, conditional. Most researchers are supposed to understand it as a consolidation of contract law regulations and soft law rules in the sport sphere

(Alekseyev 2008). International sports law in its broader sense is considered to be a system of the various rules governing sports relations in more than one State, a consolidation of international public law and international private law rules, corporate rules of different international sports organizations. However, in the view of M.A. Margulis, corporate rules in this aspect are "quasi-legal rules"(Margulis 2005). The World Anti-Doping Agency as a subject of the international sports law plays now a key role in the doping control process in the world sport. It cannot be described as a non-governmental organization in the strict sense of the word. It represents the unique organization that cooperates with intergovernmental organizations, governments, public authorities, representatives of the Olympic Movement and other public and private bodies fighting against doping in sport (Constitutive Instrument of foundation of the World Anti-doping Agency).

The athlete as an individual is one of the most vulnerable points among subjects of the international public law. Despite the fact that the sport cannot exist without individuals, nevertheless, the international legal personality of the athletes raises questions in the theory of sports law. The most difficult problem is the athlete's law-making power. Individuals do not have such capability in the sphere of sports regulation, that is why sports law researchers do not consider them as subjects of the international sports law. But the athlete can be an addressee of the legal norms (Zakharova 2010)

In our view, it is necessary to firmly establish the legal status of the individual as sportsman and to recognize him as the independent subject to law. Certainly, in the sphere of international sports the individual has some rights and obligations. But they are few in number. In particular, "the practice of sport is a human right, and every individual must have the possibility of practising sport, without discrimination of any kind" according to Article 4 of the Olympic Charter (Olympic Charter 2015).

The elaboration of a theoretical basis for the categories "athlete", "rights and legitimate interests of the athlete", "sports reputation" and "image of the athlete" is required too. Lack of or insufficient legislation could not be compensated by referring to judicial practice. These fundamental categories are enshrined in neither the World Anti-doping Code, nor the Olympic Charter.

Meanwhile, the legal characterization of the athlete's status should reflect the main feature of sport – competitiveness and adversarial system in sports activities. At the present state of work on this subject, no one is able to put forward definitions "sport's reputation" and "sports image (athlete's image)" acceptable to all. Nevertheless, in our opinion, sport's reputation as a kind of intangible assets represents an assessment of the athlete's activity from the point of view of his (her) sporting qualities and achievements. It is a result of human intellectual activity having monetary valuation, the intangible asset being inviolable and inalienable. It also must include a public image assessment of the athlete. Sports image provides a concept of the athlete, a sports representation that is projected to the public.

At the same time, it is rather obvious that neither the sports reputation, nor sports image are compatible to a phenomenon of collective responsibility. The problem of protection of individual freedoms and rights of the athlete is especially important during the Olympic Games. Any disqualification of a team from the Olympic Games or other competition as a form of collective responsibility should be objectively interpreted as a pure anachronism of the World Anti-doping Code. However, the fact remains that the phenomenon of collective responsibility in the sports law does still exist. We can observe it in Article 11.2 and in Article 11.3 of the World Anti-doping Code. The Code itself as an authoritative and systematic statement of the legal rules and principles represents an example of corporate regulation.

The Code does not contain the international law norms in the traditional sense. But its provisions are normative in nature. The World Anti-Doping Code is mandatory for the whole Olympic Movement(under Article 43 of the Olympic Charter). Therefore, the question remains whether the provisions of the World Anti-doping Code are compulsory. Some authors consider that the Code represents a corpus of the international soft law adopted in order to develop unified approaches in fighting against doping in sport (David 2008).Under Article 11.2 of the World Anti-doping Code if more than two members of a team are found to have committed an anti-doping rule violation, the ruling body of the Event shall impose an appropriate sanction on the team, up to Disqualification from a Competition or Event. In accordance with Article 11.3 of the Code, the ruling body for an Event, may elect to establish rules for the Event which impose consequences for team sports stricter than those in Article 11.2 of the Code for purposes of the Event. For example, the International Olympic Committee may establish rules which would require disqualification of a team from the Olympic Games based on a lesser number of anti-doping rule violations during the period of the Games. Thus, Articles 11.2 and 11.3 of the World Anti-doping Code establish the principle of collective responsibility.

Collective responsibility is expressed in the imposing liability, rewards and punishments to the Group (team) as a whole, without taking into account its structure and the role of each individual member in the group (team) and their contribution to the team's activities. Currently, the idea of collective responsibility is debatable because it implies assignment of responsibility for the violation to those who is not guilty or is not involved. In this regard, the problem of non-fault liability arises. A precedent with application of the collective responsibility principle to the Russian athletes received wide press coverage in 2016 when a number of strongest innocent and non-involved sportsmen were disqualified from the Olympics in connection with the doping scandal in which All-Russia Athletics Federation was involved.

It seems that the problem of collective responsibility and collective guilt should not be left without the attention of scientists and lawyers. Therefore, the principle of collective responsibility enshrined in the World Anti-doping Code needs to be

reconsidered and streamlined. The individual should be liable only for fault. As we know, the team can be held liable in sport, but such situation does not take into account the necessity for striking a balance between individual rights and public interests. This is contrary to the legal nature of relationships arising in this regard.

The notion "anti-doping rule violation" in terms of the World Anti-doping Code cannot strictly be equated with the legal notion "offence". But it is all food for thought. The "anti-doping rule violation" may be upgraded to the "sporting offense" with its main characteristics, subjective and objective attributes. Such kind offenses generate the private-law legal relationships. They directly affect the rights and duties, sports image and sports reputation of each athlete in team. Nevertheless, the relations connected with investigation of the offense can belong to the category of disciplinary relationships. For comparison, in Russia the disciplinary relations are traditionally considered as the secondary form of the private-law relationships.

Therefore, the most important thing here is a further analysis and careful interpretation of the legal linkages in this sphere. As it is always difficult to achieve balance between private and public interests without a significant measure of justice,so in order to understand the "fairness" of the collective responsibility principle in sport, in our view, it is necessary to analyze the legal content of the relationships.

The differentiation of responsibility should lie in the areas of implementation. In this regard, the provisions of the World Anti-doping Code providing for so-called collective responsibility need to be adjusted and amended. First of all, it should be clarified, whether a doping or other sporting offense is a guilty act or not. In our opinion, the doping or other sporting offense should be understood as the commission of a guilty, socially dangerous action containing such a subjective attribute as a guilty mind in the form of mental attitude to the action and its consequences. But unlike any organization, group or team, only individual can have a mental activity (Krylova 2009)

Thus, collective responsibility for doping and other sporting offenses contradicts to the legal nature of the offense. The problems of collective responsibility, sports image of the individual and sporting reputation raises the problem of legal status of the witnesses, informants, judges and those who have security clearances for sample and sample results.

RESULTS

There is a need for detailed formulation of the unified approach to the forms of sports disputes resolution and their classification, as well as the need for consolidation of general adjudication rules, procedures governing the settlement of sports disputes.

It seems that qualitative sports legislation can perfectly exist both in the form of a branch of legislation as well as in the form of the branch of law. The specificity of sports relations requires its own special approach.

However, with respect to the disciplinary disputes, there is an occasion to ponder about the effectiveness of the present dispute system. Switzerland is not the native country of the Olympic Games, and its legislation is not consistent with the level of development of the procedural legislation of the most countries with a mature legal system. We have in fact the only sports-related Court, and its decisions cannot be reviewed (behind some exceptions) by any another independent court and which resolves disputes only by the legislation of the only one country.

The criteria for defining a reasonable correlation between international and domestic law in the sphere of sport must also be determined, on the one hand, by the actual political status of the State, and, secondly, by its strategic and geopolitical interests.

It is necessary to firmly establish the legal status of the individual as sportsman and to elaborate a theoretical basis for the categories "athlete", "rights and legitimate interests of the athlete", "sports reputation" and "image of the athlete". In order to understand the "fairness" of the collective responsibility principle in sport, we need to analyze the legal content of the relationships and to correlate personal rights of the athlete and the reasons for their restriction.

CONCLUSION

In today's world, the meaning and significance of sport is based on recognition of its importance for the individuals, society and humankind, as a whole. At the same, it is on the basis of peace, humanism and mutual respect that the individual and his happiness, health, freedom, dignity and harmonious development remain the highest values.

The analysis of current legislation and the international practice for the application of its provisions shows that the structure of the sports law and lex sportiva need further adjustments and correction. It is also essential to elaborate a coherent body of normative acts regulating the international sports process under the new rules. The system of sports dispute resolution is also in need of legal reform. The reform may include the core research and development of the fundamental principles and categories of the World Anti-doping Code (including suchnotions as "the athlete", "the rights and legitimate interests of the athlete", "the sports image of the athlete", "the sports offense"), taking into account the competitive spirit of sports activities, with emphasis on the sports reputation of the athlete.

References

Allanina L. M. and Khairullina N. G.et al.,2016. Corporate Decisions: Innovations of the Russian Law and Practice. Journal of Advanced Research in Law and Economics, Volume VII, Spring, 2(16): 191–202,

Alekseyev S.V. 2015. Topical issues of the disputes resolvement in the field of sports movement. Labour law in Russia and abroad, 2, 38 – 44.

Alekseyev S. V., 2008. International sports law. Moscow, pp. 46-47.

Alekseyev S. S.,1995. The theory of State and law. Moscow. Norma, 187.

Code of Sports-related Arbitration. (Appendix 1).Vom 1. Januar 2010. Beispiele gibt es fur alle Verfahrensarten (ordentliches, Berufungs- und ediationsverfahren).

BeloffM., Kerr T. and Demetriou M. (1999). Sports law. Oxford: Hart.

Blackshaw I.S. (2002). Mediating Sports Disputes. National and International perspectives. T.M.C. Asser Press, Haque, the Netherlands, pp.6.

Bournazel E. (n.d.). Jeux olympiques. In F. Alaphilippe, J.-P. Karaqillo (Eds.). Op. cit. (Note 12), pp. 221 - 223.

Buy F., Marmayou J.-M., Poracchia D. and Rizzo F. (2009).Droit du Sport: Manuel. 2 édition. Paris: Lgdj, pp. 159-160.

CAS (20.8.1999-98/2000) AEK Athens and Slavia Prague v UEFA. Reeb (Hrsg) Digest of CAS Awards II 1998 - 2000. (2002), pp. 38, 103.

CAS 2002/A/370 Lazutina v/IOC, BGE 129 III 445.

Code of Sports-related Arbitration 2017. Court of Arbitration for Sport. Date views 09.03.2017www.tas-cas.org/en/index.html /

Constitutive Instrument of foundation of the World Anti-doping Agency.Date views 09.03.2017 www.wada-ama.org/sites/default/files/resources/files/new_statutes_-11_april_2016.pdf

Davis T., Mathewson A.D. and Shropshire K.L. (1999). Sport and the Law. A modern anthology. Carolina Academic Press, North Carolina, pp.321.

David P. (2008). A Guide to the World Anti-doping Code. Cambridge: Cambridge University Press, pp. 40.

Endebry Town Football Club Ltd.(1971). All ER 215.

Harding v United States Figure Skating Association. (1994). 851 FSupp 1476 741 F. 2d 155, at p. 159 (7th Circ. 1994).

Nafziger, J. (2004). International. Sports Law, pp.181.

Kolev B. (2008). Lex sportive and Lex Mercatoria. The International Sports Law Journal, 1-2, 60-62.

Krylova N.E. (2009). Criminal liability of the corporations: the comparative analisys. The correlation between international and comparative criminal law: training manual, pp. 78-79.

Kuznetsov I.S. (2004). Sports law of Russia as a branch of Russian legislation. Sports: economics, management, law, 4, pp. 2.

Kurylev S.V.(1957). Forms of protection and enforcement of subjective rights and rights of action. Collection of Scientific Works of the Irkutsk State University. Juridical sciences, 3, 162

Khudoykina T. V.(2015). Legal conflict as a legal obstacle to the realization of the rights and legitimate interests: from starting in theory to practice and resolution. Legal obstacles in the implementation of the rights and legitimate interests: theory and practice problems. Moscow: Yurlitinform, pp. 180 – 224.

Lennuar N.N. (2004). Alternative dispute resolution: mediation and negotiation: Educational handbook. SaintPetersburg, pp. 100

Ski run up to Strasbourg: Larisa Lazutina and Olga Danilova submit a complaint to European Court of Human Rights. (2003). Kommersant, 113, 16.

Margulis M.A.(2005). The rulemaking of the corporate associations in the field of sport. PhDthesis, Moscow, pp. 32-36

McLauren R.A. (1998). New Order: Atheletes Rights and the Court of Arbitration at the Olempic games. Olempica: The International Journal of Olympic Studies, VII, 1.

Beloff, M.J., Kerr, T. and Demetriou M. (1999). Sports Law. Oxford; Portland (Oreg.): Hart, pp. 1 - 2.

Morris P. (2000). The role of the Ombundsman in Sporting disputes: some personal thoughts. Sports Law Bulletin, 3(3).

Newmark C. (2002). Is mediation effective for resolving sports disputes? T.M.C. Asser press, the Haque, the Netherlands, pp. 80.

Olympic Charter 2015. Date views 07.03.2017 https://stillmed.olympic.org/Documents/olympic_charter_en.pdf

Pitchen J.(2011). The Court of Arbitration for Sport (CAS) in Lausanne: International Court of Arbitration for Sport and the Olympic arbitration procedure. Sports: economics, law, management, 3,17 - 18.

Pogosyan E.(2009). Sports disputes: concept and classification. Arbitration and civil procedure, 8, 33 – 36.

Smyth L. (2002). Barriesters and Solicitors. From little leaque to Ben Johnson: alternatives for resolving sport disputes. Toronto, Canada, pp. 1.

Statute of the Russian Football Union. (n. d.). Date views 06/03/2017 http://www.rfs.ru.

World Anti-Doping Code. (n. d.). Date views 06.03.2017 www.wada-ama.org/sites/default/files/resources/files/wada-2015-world-anti-doping-code.pdf

Zakharova L. I.(2010). World Anti-Doping Agency and other subjects of international sports law. The International law,4 (44), 64-70.