

ADR in Sport on the Example of Association Football in Poland and Ukraine

Piotr Sławicki

Dr., Assistant Professor of Faculty of Law, Canon Law and Administration, The John Paul II Catholic University of Lublin, correspondence address: Al. Raclawickie 14, 20-950 Lublin, Poland, e-mail: piotr.slawicki@kul.pl

 <https://orcid.org/0000-0003-4570-9366>

Viktor Kryzhanivskyi

Dr., Associate Professor of the Institute of Law, Taras Shevchenko National University of Kyiv, correspondence address: Odlewnicza Street 6/18, 20-219 Lublin, Poland, e-mail: vvkry@ukr.net

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Abstract: The subject of this article is the use of ADR in sports disputes in association football under the Polish and Ukrainian law. Professional and amateur sport generates various types of disputes related to both disciplinary and civil cases, an example of which may be disputes arising during the execution of contracts binding players and football clubs. In the first part, the scope of disputes that are subject to ADR in association football is outlined. The next part presents legal solutions adopted under the Polish law in this respect, of which the activity of the Football Arbitration Court of the Polish Football Association is a particular example. The last chapter is devoted to the Ukrainian perspective on the resolution of disputes in association football.

1. Introduction

Alternative dispute resolution methods are a commonly known tool for resolving legal disputes which is widely applicable in civil, labor, and criminal law cases. Because of their advantages,¹ they are increasingly used in

¹ For more information on the advantages and disadvantages of sports arbitration, see: Andrzej Wach, “Zalety i wady arbitrażu sportowego,” in *System prawa handlowego. Arbitraż handlowy*, vol. 8, ed. Andrzej Szumański (Warsaw: C.H. Beck, 2010), 837–839.

disputes of a particular type, including sports law disputes,² which is related to their specific nature, due to which they can range from civil disputes concerning the performance of a sports contract to issues related to disciplinary liability of players and sports officials.³

Being one of the world's most popular sports, association football has an extensive organizational structure at the global, regional and national levels. This is also reflected by the large number of internal legal instruments governing the disciplinary responsibility, the organization of sports competitions and, finally, issues related to the rights and obligations of the players and clubs themselves. This often leads to disputes which are attempted to be resolved using union procedures.

The specific nature of sports disputes lies in the autonomy of sports associations and the specific rules of participation in the structures of a particular sports association. Membership in these structures is voluntary, however one needs to comply with the rules of a given sports association, also in terms of dispute resolution, to actually engage in sports at the professional or amateur level.

The resolution of sports disputes is particularly important in the case of international competitions or the organization of the Olympic Games. At the global level, the primary institution set up to settle sports disputes is the Court of Arbitration for Sport in Lausanne (CAS).⁴ Individual sports

² For the nature of disputes in the field of sport, see: Eligiusz Jerzy Krześniak, "Wybrane elementy z problematyki rozstrzygania sporów w obszarze sportu na drodze arbitrażu," in *Usus magister est Optimus. Rozprawy prawnicze ofiarowane Profesorowi Andrzejowi Kubasowi*, ed. Barbara Jelonek-Jarco, Rafał Kos, and Julita Zawadzka (Warsaw: C.H. Beck, 2016), 696–698.

³ Sports disputes also apply to e-sport, see: Łukasz Klimczyk, "E-sport – odpowiedzialność dyscyplinarna i rozstrzyganie sporów w aspekcie krajowym i międzynarodowym," in *E-sport. Aspekty prawne*, eds. Łukasz Klimczyk and Michał Leciak (Warsaw: C.H. Beck, 2020), 115–123. On the place of e-sport in the traditional dispute, see: Michał Biliński, "Problemy prawne działalności z zakresu e-sportu," in *E-sport. Aspekty prawne*, eds. Łukasz Klimczyk and Michał Leciak (Warsaw: C.H. Beck, 2020), 4–8.

⁴ See: Paweł Cioch, "Trybunał Arbitrażowy ds. Sportu w Lozannie," *Kwartalnik ADR. Arbitraż i Mediacja* 8, no. 4 (2009): 72–88; Elżbieta Bogucka and Piotr Nowaczyk, "Sąd Arbitrażowy przy Krajowej Izbie Gospodarczej na te najważniejszych instytucji arbitrażowych w Europie," *Kwartalnik ADR. Arbitraż i Mediacja* 14, no. 2 (2011): 10; Eligiusz Jerzy Krześniak, "The Court of Arbitration for Sport at the Polish Olympic Committee v The Court of Arbitration for Sport (CAS) – Background, Powers and Authority," *Arbitration Bulletin*.

associations autonomously regulate their internal dispute resolution procedures, FIFA being an example of this.⁵ Certain countries have established national or regional institutions to resolve disputes at the national or local level.

Despite the increasing popularity of amicable dispute resolution and the high level of interest in sports, the issue of sports dispute resolution has not been the subject of a significant analysis in legal sciences. Taking the prospect of the development of ADR into consideration, in particular sports arbitration, it is reasonable to present the basic legal solutions in this field. In order to provide a broader context for the issue being discussed, a comparative approach in the form of an analysis of the basic sports law regulations in this area in Poland and Ukraine will be employed.

The purpose of this study is to demonstrate that alternative dispute resolution methods are used to resolve sports disputes on the example of association football. In the first chapter, the analysis deals with the range of disputes in football that can be subject to ADR. The next section presents the dispute resolution as governed by the Polish law, in particular in the operations of the Polish Football Association. The last chapter focuses on the legal regulation of the amicable resolution of football disputes against the background of Ukrainian solutions.

2. The Scope of ADR in Association Football

The discussion should start from outlining the scope of the subject and analyzing the disputes resolved using alternative methods in association football. Experience has shown that both civil law claims and issues concerning disciplinary liability are the subject of sports disputes. While the use

Young Arbitration, no. 24 (2016): 200–203; Jakub Tartak, “Alternatywne metody rozwiązywania sporów w świecie sportu na przykładzie działania sądu concyliacyjnego w Lozanie,” *Forum Prawnicze* 52, no. 2 (2019): 54–64; Andrzej Wach, “Sportowe sądownictwo polubowne,” *Biuletyn Arbitrażowy*, no. 4 (2007): 74–76; Rafał Piechota, “Pozasądowe formy rozwiązywania sporów sportowych,” *Problemy Współczesnego Prawa Międzynarodowego, Europejskiego i Porównawczego* 4, (2006): 36–45; Magdalena Jaś-Nowopolska, “Międzynarodowy sąd arbitrażowy – CAS,” in *Arbitraż sportowy*, eds. Michał Biliński and Magdalena Jaś-Nowopolska, and Olga Zinkiewicz (Warsaw: C.H. Beck, 2019), 69–101.

⁵ For dispute resolution within FIFA, see: Eligiusz Jerzy Krześniak, “Prawne mechanizmy zabezpieczenia realizacji zasady autonomii sportu na przykładzie struktury i sposobu funkcjonowania Międzynarodowej Federacji Piłki Nożnej (FIFA),” *Przegląd Prawa Handlowego*, no. 2 (2016): 17–20.

of ADR in the former case seems natural and uncontroversial, using out-of-court methods in the case of disciplinary proceedings may raise some doubts. In view of these doubts, it should be pointed out that the jurisdiction of common courts is excluded in the case of disciplinary disputes and that these disputes can be settled by internal bodies expressly under regulations on the functioning of these entities as exemplified by the provisions of the Polish Sports Act.⁶ Hence, it must be emphasized that the internal procedure for resolving disciplinary disputes does not violate the constitutional right to a trial.⁷

Moving on to the presentation of the scope of the subject matter of sports disputes that can be the subject of amicable methods, it should be pointed out that the doctrine identifies five categories of disputes: civil law disputes, disciplinary disputes,⁸ strictly sports disputes, administrative and financial disputes and inter-institutional disputes.⁹

Undoubtedly, civil disputes that arise from contractual claims, both related to contracts between sports clubs and players, as well as sponsorship, advertising or television rights contracts, are particularly relevant from the perspective of the sports law.¹⁰ Issues related to disputes over infringement of personal rights, membership in a sports association or employment issues may also arise in this area.

The second major group of disputes are disciplinary disputes. They constitute an important part of the jurisprudential activity of the jurisdictional bodies of trade unions. A particular subject of disciplinary responsibility are cases involving the use of doping by athletes.¹¹ However, these types of disputes are not the domain of the amicable dispute resolution

⁶ Article 45b of the Act on Sport of June 25, 2010, Journal of Laws 2022 item 1599 – hereinafter Polish Sports Act.

⁷ Court of Appeal in Warsaw, Judgement of June 27, 2018, Ref. No. VII AGa 386/18, Legalis no. 1874700.

⁸ For disciplinary liability, see: Piotr Sławicki and Paweł Sławicki, “Odpowiedzialność dyscyplinarna w sporcie w świetle nowej ustawy,” *Państwo i Prawo* 67, no. 4 (2012): 67–77.

⁹ Andrzej Wach, *Alternatywne formy rozwiązywania sporów sportowych* (Warsaw: LIBER, 2005), 52.

¹⁰ *Ibid.*

¹¹ For changes in the settlement of doping-related disputes, see: Andrzej Wach, “Ewolucja w zakresie trybu rozstrzygnięcia sporów dopingowych,” *Przegląd Sądowy*, no. 5 (2022): 27–41. For doping in e-sports, see: Michał Rynkowski, “Prawne problemy dopingu

methods, which is highly important in terms of sports law. Consequently, they can be subject to an arbitration procedure, the best example of which is the activity of the Court of Arbitration for Sport in Lausanne. At this point, it should be pointed out that the disciplinary disputes are linked to disputes of a strictly sports nature which concern violations of technical rules relating to the course of a sports competition. Essentially, they are the subject of proceedings before bodies operating within the structures of a specific sports association, an example of which are the disciplinary committees operating in provincial football associations in Poland, usually associated with the assessment of the disciplinary liability of a person who has breached sports rules. Hence, these kinds of disputes are subject to amicable methods to the same extent as disciplinary disputes.

Disputes of an administrative nature or competence-related disputes, in the scope of jurisdiction of individual bodies, are resolved in the course of relevant proceedings.¹² It is not excluded that they will be subject to arbitration or mediation proceedings, however, due to the framework of this study, they remain outside the scope of interest.

3. ADR in Association Football under Polish Law

The basic legal act governing the sports law in Poland is the Sports Act. It sets out the principles for practicing and organizing sports.¹³ In detail, this regulation covers provisions concerning sports clubs and associations,¹⁴ rules of operation of Polish sports associations,¹⁵ supervision over Polish sports associations,¹⁶ rules of support of the national Olympic movement¹⁷ and of sports by public authorities,¹⁸ safety rules in sports,¹⁹ professional qualifications in sports²⁰ and penal provisions related to infringements of sports

w e-sporcie,” in *E-sport. Aspekty prawne*, eds. Łukasz Klimczyk and Michał Leciak (Warsaw: C.H. Beck, 2020), 107–111.

¹² See: Wach, *Alternatywne formy rozwiązywania sporów sportowych*, 54–60.

¹³ Article 1 of the Polish Sports Act.

¹⁴ Articles 3–6 of the Polish Sports Act.

¹⁵ Articles 7–15 of the Polish Sports Act.

¹⁶ Articles 16–23 of the Polish Sports Act.

¹⁷ Articles 24–26 of the Polish Sports Act.

¹⁸ Articles 27–36 of the Polish Sports Act.

¹⁹ Articles 37–38 of the Polish Sports Act.

²⁰ Article 41 of the Polish Sports Act.

law.²¹ As far as the subject of this study is concerned, the legal solutions contained in Chapter 9A, “Disciplinary responsibility and dispute resolution in sports”, are of particular interest.²²

The Polish legislator has assigned a fundamental role in resolving sports disputes to the Court of Arbitration for Sport of the Polish Olympic Committee.²³ The Court is a permanent arbitration court operating under the rules set out in the provisions of the Act of November 17, 1964 – Code of Civil Procedure,²⁴ but it is not a court exercising justice in the constitutional sense.²⁵ The proceedings are organized and held and fees and costs of the proceedings are incurred as set out in the statute of the Court adopted by the Board of the Polish Olympic Committee.²⁶

The Court is composed of 24 arbitrators appointed by the Board of the Polish Olympic Committee for a 4-year term of office.²⁷ An arbitrator of the Court may become a person who: 1) enjoys full civil rights; 2) is of impeccable integrity and by the record of his or her conduct gives a guarantee of proper performance of the function of arbitrator; 3) has not been convicted by a final and binding ruling for an intentional offence or an intentional fiscal offence; 4) has a university degree in law and has passed a judge’s, prosecutor’s, solicitor’s, barrister’s or notary’s exam or holds

²¹ Articles 46–52 of the Polish Sports Act.

²² Art. 45a–45e of the Polish Sports Act.

²³ Article 45a(1) of the Polish Sports Act; the original version of the Sports Act did not contain a regulation concerning the Court of Arbitration for Sport of PKOl [Polish: Polish Olympic Committee]. See: Paweł Cioch, “Rozstrzyganie sporów sportowych w świetle ustawy o sporcie,” *Kwartalnik ADR. Arbitraż i Mediacja* 14, no. 2 (2011): 20–24.

²⁴ Article 45a(2) of the Polish Sports Act. See: Michał Biliński, “Stale sądy arbitrażowe w Polsce,” in *Arbitraż sportowy*, eds. Michał Biliński, Magdalena Jaś-Nowopolska, and Olga Zinkiewicz (Warsaw: C.H. Beck, 2019), 104–105.

²⁵ Polish Supreme Court, Judgement of December 18, 2014, Ref. No. III PK 47/14, OSNP Journal 2016 No. 7, Pos. 85.

²⁶ Article 45a(8) of the Polish Sports Act. See: the Statute of the Court of Arbitration for Sport of the Polish Olympic Committee adopted by a resolution of the Board of the Polish Olympic Committee on June 20, 2017, accessed June 13, 2023, https://www.trybunalsport.pl/userfiles/download/14_1.pdf – hereinafter the Statute of the Court of Arbitration for Sport of PKOl.

²⁷ Article 45a(4) of the Polish Sports Act. See: Marek K. Kolasiński, “Bezstronność i niezależność sportowych sądów polubownych,” *Państwo i Prawo* 76, no. 6 (2021): 69.

a degree of a Doctor of Science in Law.²⁸ The term of office of an arbitrator of the Court expires in the event of 1) death; 2) resignation from office; 3) illness making it permanently impossible to perform the function; 4) conviction by a final and binding ruling for an intentional offence or an intentional fiscal offence; 5) a final and binding ruling depriving one of public rights as a punitive measure; 6) limitation or loss of legal capacity.²⁹

The subject matter of the Court's proceedings includes cases concerning the review of disciplinary decisions³⁰ as well as other cases that may be subject to proceedings before common courts, such as labor courts.³¹ In order to initiate proceedings before the Arbitration Court, it is necessary to draw up an arbitration clause³²; however, regardless of the drawing up of such a clause, the Court resolves disputes arising from appeals against final decisions in disciplinary cases.³³ As regards the modes of proceedings before the Court, the Court conducts proceedings: a) in the arbitration mode; b) as a dispute resolution body.³⁴ One is not entitled to file a complaint to the Court in cases concerning the technical rules of the game.³⁵

A complaint may be filed to the Court by a party to the proceedings or – under the rules applicable in a given association – by other entities.³⁶ A complaint is submitted to the Court within 14 days from the date of delivery of the decision.³⁷ An entry fee is paid for a complaint filed to the Court, the amount of which may not be higher than twice the average monthly

²⁸ Article 45a(5–6) of the Polish Sports Act.

²⁹ Article 45a(7) of the Polish Sports Act.

³⁰ Article 45a(3) of the Polish Sports Act.

³¹ See: Eligiusz Jerzy Krześniak, "Specyfika arbitrażu sportowego i przydatność stosowanych w nim reguł przy konstruowaniu regulaminów innych sądów polubownych," *Przegląd Prawa Handlowego*, no. 7 (2017): 27.

³² See: Court of Appeal in Warsaw, Judgment of June 27, 2018, Ref. No. VII AGa 386/18, *Legalis* no. 1874700.

³³ Article 1(2) of the Statute of the Court of Arbitration for Sport of PKOl; it is pointed out that this is an example of compulsory arbitration by virtue of the act, see: Karol Wach, "Konstrukcja arbitrażu przymusowego," *Przegląd Prawa Handlowego*, no. 6 (2018): 28.

³⁴ Article 27 of the Statute of the Court of Arbitration for Sport of PKOl.

³⁵ Article 45c(3) of the Polish Sports Act.

³⁶ Article 45c(1) of the Polish Sports Act.

³⁷ Article 45c(2) of the Polish Sports Act.

remuneration for work in the national economy in the previous year announced by the President of Statistics Poland.³⁸

The Court may overturn a disciplinary decision of a Polish sports association and send the case back for reconsideration if it is necessary to conduct an evidentiary hearing in whole or in substantial part to resolve the case.³⁹ One may file a cassation appeal against a disciplinary ruling of the Court to the Supreme Court in the event of a gross breach of the law or obvious injustice of the ruling.⁴⁰ The cassation appeal is lodged through the Court within 30 days from the date of delivery of the ruling with the statement of the grounds for judgement to the applicant.⁴¹ The Court forwards the cassation appeal within 14 days from the date of its receipt together with the case file to the Supreme Court.⁴² The Supreme Court hears the cassation appeal against the Court's ruling under the rules provided for in the Code of Civil Procedure.⁴³

The Court of Arbitration for Sport of PKOl is an arbitration court with jurisdiction over sports disputes concerning both association football and other sports activities. An example of an autonomous arbitration court whose activity is limited to matters related to association football is the Football Arbitration Court⁴⁴ which is a permanent arbitration court operating within the Polish Football Association.⁴⁵ It is appointed to hear any property disputes or non-property rights disputes that may be the subject of settlement, including those concerning the contractual stability of players, as well as complaints against final decisions of the Appeals Committee

³⁸ Article 45c(4) of the Polish Sports Act.

³⁹ Article 45d(1) of the Polish Sports Act.

⁴⁰ Article 45d(2) of the Polish Sports Act.

⁴¹ Article 45d(3) of the Polish Sports Act.

⁴² Article 45d(4) of the Polish Sports Act.

⁴³ Article 45d(5) of the Polish Sports Act.

⁴⁴ For more information on the historical formation of the Football Arbitration Court, see: Marek Kwiecień, "Piłkarski Sąd Polubowny – część I," *Kwartalnik ADR. Arbitraż i Mediacja*, no. 1 (2021): 51–52.

⁴⁵ § 1(2) of the Rules of the Football Arbitration Court, accessed June 13, 2023, https://www.pzpn.pl/public/system/files/site_content/635/3840-REGULAMIN%20PIŁKARSK-IEGO%20SĄDU%20POLUBOWNEGO%20PZPN%20STAN%20PRAWNY%2023%2003%202021.pdf.

for Club Licenses of PZPN⁴⁶ on the refusal to grant a license, to suspend it or revoke it – arising from the practice, organization, popularization and development of association football as a sport, which may be settled in the course of arbitration proceedings under the statutes or rules of FIFA, UEFA and PZPN.⁴⁷ Players and football clubs operating in the professional football sector may bring separately asserted claims to the Football Arbitration Court concerning the conclusion, determination of the existence, validity, performance and termination of a professional football contract, other non-property claims concerning the assurance of contractual stability and the solidarity mechanism as well as property claims asserted along with them.⁴⁸

The competences of the Football Arbitration Court include, in particular, cases concerning: a) property relationships existing between players, clubs, sports associations and other sports organizations and individuals under the civil law, including those arising from membership, licensing and other relationships related to the qualification of entities to compete in the sport of association football; b) the determination of the amount of compensation for the training or promotion of a player in relation to a change of club affiliation (permanent or temporary); c) disputes concerning the conclusion, determination of the existence, validity, performance or termination of professional or amateur contracts of football players; d) sponsorship, management and agency contracts in the sport of association football; e) contracts between organizers of football events and their partners specialized in the sale of television, advertising and promotion rights; f) all other contracts concluded and performed in connection with the organization and execution of football competitions; g) contracts with technical sponsors concluded in connection with the practice of association football; h) contracts for specific work, mandate contracts or contracts for provision of services under art. 750 of the Civil Code concluded with football coaches and instructors and other entities of the sports movement, including self-employed coaches; i) insurance in the sport of association football; j) requests to determine the existence or non-existence of a legal

⁴⁶ PZPN – Polski Związek Piłki Nożnej [English: Polish Football Association].

⁴⁷ § 4(1) of the Rules of the Football Arbitration Court.

⁴⁸ § 4(2) of the Rules of the Football Arbitration Court.

relationship or right.⁴⁹ In principle, the Football Arbitration Court is not entitled to review decisions of sports organizations taken in disciplinary and intra-organizational proceedings provided for by union or club regulations.⁵⁰

The Football Arbitration Court consists of 32 arbitrators appointed and dismissed by the Board of PZPN.⁵¹ The Board of PZPN appoints the Chairman, Vice-Chairman, Secretary and 2 members of the Presiding Committee of the Court, one of whom is recommended by the community of league clubs and the other by the community of league players, followed by 9 arbitrators, each proposed by the community of league clubs, the community of league players and the Chairman of the Court.⁵² The term of office of the Football Arbitration Court is 4 years and it is equal to the term of office of the Board of PZPN.⁵³ Arbitrators may be reappointed for further terms.⁵⁴ A member of the Arbitration Court cannot be a state judge, however, this does not apply to retired judges.⁵⁵ The Arbitration Court and the Adjudication Panel perform the activities related to the arbitration proceedings with due diligence. They should counteract the protraction of the proceedings and strive to ensure that the settlement is made at the first meeting, if possible without detriment to the clarification of the case, and that the ruling is effective and enforceable.⁵⁶

In principle, the three-member Adjudication Panels are responsible for the recognition and settlement of disputes submitted to the jurisdiction of the Arbitration Court.⁵⁷ Disputes are subject to resolution by a single arbi-

⁴⁹ § 4(3) of the Rules of the Football Arbitration Court.

⁵⁰ § 5(1) of the Rules of the Football Arbitration Court. See: Adam Makosz, “Spory klubów i zawodników rozstrzygnie piłkarski sąd,” *Gazeta Prawna*, October 4 (2011), accessed February 27, 2023, <https://prawo.gazetaprawna.pl/artykuly/553013,spory-klubow-i-zawodnikow-rozstrzygnie-pilkarski-sad.html>.

⁵¹ § 11(1) of the Rules of the Football Arbitration Court.

⁵² § 11(2) of the Rules of the Football Arbitration Court.

⁵³ § 11(5) of the Rules of the Football Arbitration Court.

⁵⁴ § 11(6) of the Rules of the Football Arbitration Court.

⁵⁵ § 11(7) of the Rules of the Football Arbitration Court.

⁵⁶ § 11(9) of the Rules of the Football Arbitration Court.

⁵⁷ § 22(1) of the Rules of the Football Arbitration Court; for more information, see: Marek Kwiecień, “Piłkarski Sąd Polubowny – część II,” *Kwartalnik ADR. Arbitraż i Mediacja*, no. 2 (2021): 34–35.

trator if: a) the value of the matter in dispute does not exceed PLN 10,000; b) the Presiding Committee of the Court has decided so due to a justified request of a party, which was not objected to by the other party within the time limit not exceeding 7 days; c) the case concerns the determination of the amount of the training compensation for a player, irrespective of the value of the matter in dispute.⁵⁸ In factually and legally complex cases, the Presiding Committee of the Court may decide that the case be considered by a three-member Adjudication Panel.⁵⁹ If a dispute is to be resolved by an Adjudication Panel composed of three arbitrators, it is to be formed in such a way that each party nominates one arbitrator and, in the event of an impediment, one substitute arbitrator, and the arbitrators so selected, excluding the substitute arbitrators, elect the Chairman of the Adjudication Panel (Umpire) from among the Chairman, Vice Chairman and Secretary of the Court or arbitrators selected at the request of the Chairman of the Court. Minutes of the selection of the Umpire are drawn up. They should be signed by the Secretary of the Court and, in his/her absence, by the Chairman of the Court, and be immediately attached to the case file.⁶⁰ A single-member Court is formed in such a way that the draw includes arbitrators recommended by the Chairman of the Court, taking into account their current workload regarding cases of this type (considered on a single-member basis), as at the date of the draw, so that the workload of the arbitrators after the draw is at a comparable level.⁶¹

Proceedings before the Court of Arbitration for Sport of PKOl and before the Football Arbitration Court are principally aimed at issuing a ruling binding the parties. This is because these are adjudication proceedings, the result of which is a resolution of a dispute between the parties. It must be emphasized that in sports disputes it is also possible to use amicable methods of dispute resolution, which aim at reaching a settlement. An example is the admissibility of mediation proceedings in cases subject to the jurisdiction of the Court of Arbitration for Sport of PKOl.⁶² Furthermore, in

⁵⁸ § 22(2) of the Rules of the Football Arbitration Court.

⁵⁹ § 22(4) of the Rules of the Football Arbitration Court.

⁶⁰ § 22(5) of the Rules of the Football Arbitration Court.

⁶¹ § 22(9) of the Rules of the Football Arbitration Court.

⁶² Article 1(7) of the Statute of the Court of Arbitration for Sport of the Polish Olympic Committee.

cases where settlement is permissible, the Arbitration Court should seek to reach an amicable settlement at every stage of the proceedings.⁶³ If the parties conclude a settlement, its substance is included in the minutes and signed by the parties.⁶⁴ At the request of a party, the Court may give the settlement the form of a judgement.⁶⁵

Similarly, in the course of the proceedings before the Football Arbitration Court, a conciliation procedure may be carried out with the consent of the other party to reach a settlement between the parties.⁶⁶ The Chairman of the Court or another member of the Presiding Committee of the Court acting on his or her behalf is responsible for setting the date and conducting the conciliation procedure.⁶⁷ Should the parties fail to reach a settlement through the conciliation procedure, an adversarial procedure is initiated at the request of the claimant.⁶⁸ If the claimant does not submit a request for the initiation of adversarial proceedings within 7 days of the conclusion of the conciliation proceedings, the action is deemed not to have any legal effects on the filing of the action.⁶⁹ The settlement reached by the parties in the conciliation proceedings is recorded in the minutes and signed by the parties and the arbitrator conducting the proceedings. Every settlement agreement should end with the phrase: “Podpisano i zobowiązano się realizować w dobrej wierze obowiązki wynikające z niniejszej ugody.” [English: Signed and agreed to perform the obligations under this settlement in good faith.].⁷⁰ If the parties have reached a settlement before the Arbitration Court, the Arbitration Court discontinues the proceedings.⁷¹

⁶³ Article 46(1) of the Statute of the Court of Arbitration for Sport of the Polish Olympic Committee.

⁶⁴ Article 46(2) of the Statute of the Court of Arbitration for Sport of the Polish Olympic Committee.

⁶⁵ Article 46(3) of the Statute of the Court of Arbitration for Sport of the Polish Olympic Committee.

⁶⁶ § 56 of the Rules of the Football Arbitration Court; regarding the previous legal regulations, see: Tomasz Cyrol, “Mediacja sportowa w Polsce,” *Kwartalnik ADR. Arbitraż i Mediacja* 20, no. 4 (2012): 27–28.

⁶⁷ § 57 of the Rules of the Football Arbitration Court.

⁶⁸ § 58(1) of the Rules of the Football Arbitration Court.

⁶⁹ § 58(2) of the Rules of the Football Arbitration Court.

⁷⁰ § 59(1) of the Rules of the Football Arbitration Court.

⁷¹ § 59(2) of the Rules of the Football Arbitration Court.

The above-mentioned provisions confirm the admissibility of the use of out-of-court methods of resolving sports disputes, with noticeable insufficient regulation of mediation methods, since special importance has been attributed to arbitration courts. Undoubtedly, the specific nature of disputes arising in association football speaks in favor of delegating them to arbitration courts, however, an increased role of mediation can be reasonably argued for both at the pre-arbitration stage and after the initiation of proceedings before an arbitration court.

4. ADR in Association Football under Ukrainian Law

Each sports association, regardless of the type of sport, has its own system of sports dispute resolution bodies. In the case of professional football in Ukraine, the system of dispute resolution bodies is currently provided for in the Charter of the Public Association “Ukrainian Association of Football”⁷² in section 11 “Implementation of justice in football,” where such football judicial bodies as the UAF Control and Disciplinary Committee⁷³ and the UAF Appeals Committee⁷⁴ are listed, and the UAF Dispute Resolution Chamber⁷⁵ is established as a body separate from the football justice bodies under the aforementioned Charter.

The UAF Control and Disciplinary Committee⁷⁶ hears and settles cases as a first instance authority and directly supervises other authorities’ decisions and their implementation. The CDC is elected from among 7 persons.⁷⁷ It monitors the compliance of persons involved or working in association football with Ukrainian legislation and the UAF statutory and regulatory documents as well as investigates issues related to violations thereof. Furthermore, it imposes disciplinary sanctions for violations of statutory and regulatory documents when it is not under the jurisdiction

⁷² Charter of the Public Association “Ukrainian Association of Football”, accessed June 13, 2023, <https://uaf.ua/files/Crарyт%20УАФ%202020.pdf> – hereinafter UAF.

⁷³ UAF, “Control and Disciplinary Committee,” accessed June 13, 2023, <https://uaf.ua/about-uaf/justice/2>.

⁷⁴ UAF, “Appeals Committee,” accessed June 13, 2023, <https://uaf.ua/about-uaf/justice/4>.

⁷⁵ UAF, “UAF Chamber of Dispute Resolution,” accessed June 13, 2023, <https://uaf.ua/about-uaf/justice/3>.

⁷⁶ Hereinafter – ADC.

⁷⁷ Article 50 of the UAF Charter.

of another body and determines the presence or absence of facts of legal significance.⁷⁸

The exclusive competence of the CDC as the body of first instance includes the following:

- 1) matters relating to the settlement of cases within the jurisdiction of the Bodies where such matters concern football activities;
- 2) on its own initiative, it may commence and examine disciplinary proceedings and impose disciplinary sanctions for infringements which have not come to the attention of the referees and of which the CDC has become aware from publicly accessible sources (television broadcasts, video transmissions, statements made by referees, players, coaches and other persons involved or working in association football etc.). Such proceedings may be commenced within seven days following the day on which the CDC became aware of facts indicating a possible infringement;
- 3) giving an opinion on a referee's decision to impose a disciplinary sanction in terms of the legal consequences of such a decision and only if such a decision has resulted in an evident error (i.e. misidentification of the football player on whom the disciplinary sanction has been imposed; continued participation in a match by a football player who has received a second yellow card (in one match) or a red card; wrongful exclusion of a player for a second yellow card (in one match) in cases where it was the first yellow card). All other decisions of the referee are final. The legal effects of a review of the referee's decision only apply to the future and have no effect on the course and results of the match during which it was made. Issues covered by this clause are examined subject to the expert opinion of the UAF Referees Committee. Matters relating to the interpretation of the current IFAB Laws of the Game are not subject to examination by the CDC;
- 4) extension of a match suspension that is automatically triggered by removal from the football field;
- 5) imposing of additional disciplinary sanctions (with the exception of a personal penalty imposed by the referee).⁷⁹

⁷⁸ UAF, "Article 41 of the UAF Disciplinary Rules," accessed June 13, 2023, <https://uaf.ua/files/biblioteka/referee/docs/Дисциплінарні%20правила%20УАФ.pdf>.

⁷⁹ Article 41 of the UAF Disciplinary Rules.

The CDC has the right to supervise the legality of the decisions taken by the Bodies of legal entities and may itself commence proceedings to review them in the event of non-compliance with the Rules. Such proceedings may be commenced within one month from the day on which the decision of the legal entity's body was taken. The Committee also controls and supervises the implementation of the decisions taken by the UAF Chamber and may independently commence proceedings in the case of their non-implementation or incomplete/improper implementation. All decisions taken by the UAF Chamber are communicated to the CDC within 10 days following the date when they were made. The decisions taken by the bodies of legal entities are communicated to the CDC within 10 days after the date of the CDC's call. The CDC approves settlement agreements concluded at the stage of implementation of the UAF Chamber's decisions.⁸⁰

The Chairman of the CDC may independently take the following decisions (under a summary procedure without sending a decision to initiate the proceedings in the case and accepting explanations from the parties):

- 1) issue a warning;
- 2) suspend persons for up to and including three matches or for a maximum period of two months;
- 3) impose a mandatory monetary penalty of up to and including 25,000 hryvnyas;
- 4) settle disputes arising from objections brought against members of the CDC.⁸¹

The UAF Appeals Committee⁸² gives its opinion on appeals against the decisions of the CDC and disciplinary bodies of legal entities.⁸³ The AC is elected from among 7 persons.⁸⁴ The Chairman of the AC may independently take decisions concerning:

- 1) appeals against an order to extend a disciplinary penalty;
- 2) settlement of disputes arising from objections brought against the AC members;

⁸⁰ Ibid.

⁸¹ Article 42 of the UAF Disciplinary Rules.

⁸² Hereinafter – AC.

⁸³ Article 43 of the UAF Disciplinary Rules.

⁸⁴ Article 51 of the UAF Charter.

- 3) appeals filed for violation of procedural standards in a decision taken by the CDC on the non-implementation of decisions taken by the UAF Chamber or other football judicial bodies.⁸⁵

An appeal may be made:

- 1) against a decision of the CDC and the disciplinary body of a given legal entity within 10 days of receiving the text of the decision with the justification;
- 2) against the decision of the CDC and the disciplinary body of a given legal entity to refuse to initiate proceedings, to suspend the proceedings, to close the proceedings in the case – within 5 days of receiving the appealed resolution.⁸⁶

The UAF Dispute Resolution Chamber⁸⁷ is an independent body set up in accordance with the requirements of FIFA to examine and resolve disputes arising between football entities.⁸⁸ The Chamber is composed of 12 members.⁸⁹ The Chamber's decision may be appealed to the Court of Arbitration for Sport in Lausanne within 21 days of the party's receipt of the full specimen of the decision.⁹⁰ It has the exclusive competence to examine and settle disputes relating to football activities, in particular:

- 1) between professional clubs and football players and between professional clubs and coaches that relate to employment matters and contractual disputes arising from employment relationships;
- 2) between professional clubs regarding the implementation of transfer-related obligations;
- 3) between professional clubs and amateur clubs or children's and youth sports establishments concerning the calculation and payment of compensations for the training of football players and the solidarity mechanism;

⁸⁵ Article 44 of the UAF Disciplinary Rules.

⁸⁶ Article 80 of the UAF Disciplinary Rules.

⁸⁷ Hereinafter – Chamber.

⁸⁸ UAF, "Article 1 of the UAF Chamber Rules," accessed June 13, 2023, [https://uaf.ua/files/biblioteka/Регламент-2018%20\(style2\).pdf](https://uaf.ua/files/biblioteka/Регламент-2018%20(style2).pdf).

⁸⁹ Article 52 of the UAF Charter.

⁹⁰ Article 60 of the UAF Chamber Rules.

- 4) between clubs and football players regarding any contractual disputes arising from contracts for the training of football players;
- 5) disputes involving intermediaries within the meaning of the Rules of the Federal Financial Supervision Service concerning the activities of intermediaries.⁹¹

Clubs, players, coaches and other football entities under the jurisdiction of the UAF whose rights and interests have been violated, while it is the exclusive competence of the Chamber to examine disputes between them, have the right of appeal to the Chamber. If the player or coach under the authority of another association, the Chamber is only competent to hear the dispute if all parties to that dispute consent to it being settled by the Chamber. Such consent may be given in writing or be tacit (if a party does not actually object to the dispute being settled by the Chamber). In the absence of a written agreement by the parties to the dispute, a party has the right to object to the Chamber's examination of the dispute within 10 days of becoming aware of the dispute pending in the Chamber. Failure to comply with this time limit deprives a party of the right to raise such an objection.⁹²

Concluding the above, it should be pointed out that in Ukraine there is no definition of a sports dispute at the legislative level; when accepting an application, the courts determine precisely whether or not the dispute falls within the exclusive competence of the UAF. For example, one can point to the case of a confrontation between teams FC Karpaty and Volodymyr Hudima in which a player wanted to recover a debt of USD 73,800.00 from the club. Initially, the UAF Chamber made a decision in favor of Volodymyr Hudima and obliged the club to pay the debt while the CDC fined the club and closed the transfer window for not complying with the Chamber's decision. Then, FC Karpaty appealed to the Frankivskyyi District Court of Law in Lviv with a lawsuit which the court fully upheld and overturned all the sanctions that had been previously imposed. Following the court's positive ruling, the club referred the complaint to the Chamber but the Chamber refused to re-examine the footballer's case based on

⁹¹ Article 2 of the UAF Chamber Rules.

⁹² Article 3 of the UAF Chamber Rules.

the newly discovered circumstances. Ultimately, the CAS in Lausanne in case no. 145/05/2014 in its decision found the refusal of the UAF PVA to be justified, the club's debt to the footballer was paid and the dispute was thus resolved.⁹³

5. Conclusions

Undoubtedly, alternative dispute resolution methods are widely applicable, hence their use in the sports law may not come as a surprise. Based on the example of the solutions employed in association football in Poland and Ukraine, it can be pointed out that out-of-court dispute resolution can be successfully applied not only in disputes of a civil nature (e.g. with regard to claims arising from sports contracts), but also in disciplinary cases which constitute one of the core areas of activity of the jurisdictional bodies of sports associations. It can be noted that arbitration is of particular interest in both national and international aspects, although mediation proceedings are also a tool used in such disputes.

References

- Biliński, Michał. "Problemy prawne działalności z zakresu e-sportu." In *E-sport. Aspekty prawne*, edited by Łukasz Klimczyk and Michał Leciak, 3–13. Warsaw: C.H. Beck, 2020.
- Biliński, Michał. "Stałe sądy arbitrażowe w Polsce." In *Arbitraż sportowy*, edited by Michał Biliński, Magdalena Jaś-Nowopolska, and Olga Zinkiewicz, 103–114. Warsaw: C.H. Beck, 2019.
- Bogucka, Elżbieta, and Piotr Nowaczyk. "Sąd Arbitrażowy przy Krajowej Izbie Gospodarczej na tle najważniejszych instytucji arbitrażowych w Europie." *Kwartalnik ADR. Arbitraż i Mediacja* 14, no. 2 (2011): 5–12.
- Cioch, Paweł. "Rozstrzygnięcie sporów sportowych w świetle ustawy o sporcie." *Kwartalnik ADR. Arbitraż i Mediacja* 14, no. 2 (2011): 13–24.
- Cioch, Paweł. "Trybunał Arbitrażowy ds. Sportu w Lozannie." *Kwartalnik ADR. Arbitraż i Mediacja* 8, no. 4 (2009): 71–94.

⁹³ See: Court of Arbitration for Sport, Award of November 24, 2017, LLC CPF Karpaty v. Volodymyr Hudyma, No. 2017/A/5133, available at <https://jurisprudence.tas-cas.org/Shared%20Documents/5133.pdf>.

- Cyrol, Tomasz. "Mediacja sportowa w Polsce." *Kwartalnik ADR. Arbitraż i Mediacja* 20, no. 4 (2012): 25–32.
- Jaś-Nowopolska, Magdalena. "Międzynarodowy sąd arbitrażowy – CAS." In *Arbitraż sportowy*, edited by Michał Biliński, Magdalena Jaś-Nowopolska, Olga Zinkiewicz, 69–101. Warsaw: C.H. Beck, 2019.
- Klimczyk, Łukasz. "E-sport – odpowiedzialność dyscyplinarna i rozstrzygnięcie sporów w aspekcie krajowym i międzynarodowym." In *E-sport. Aspekty prawne*, edited by Łukasz Klimczyk and Michał Leciak, 115–123. Warsaw: C.H. Beck, 2020.
- Kolasiński, Marek K. "Bezstronność i niezależność sportowych sądów polubownych." *Państwo i Prawo* 76, no. 6 (2021): 59–71.
- Krześniak, Eligiusz Jerzy. "Prawne mechanizmy zabezpieczenia realizacji zasady autonomii sportu na przykładzie struktury i sposobu funkcjonowania Międzynarodowej Federacji Piłki Nożnej (FIFA)." *Przegląd Prawa Handlowego*, no. 2 (2016): 12–21.
- Krześniak, Eligiusz Jerzy. "Specyfika arbitrażu sportowego i przydatność stosowanych w nim reguł przy konstruowaniu regulaminów innych sądów polubownych." *Przegląd Prawa Handlowego*, no. 7 (2017): 23–33.
- Krześniak, Eligiusz Jerzy. "The Court of Arbitration for Sport at the Polish Olympic Committee v The Court of Arbitration for Sport (CAS) – Background, Powers and Authority." *Arbitration Bulletin. Young Arbitration*, no. 24 (2016): 199–209.
- Krześniak, Eligiusz Jerzy. "Wybrane elementy z problematyki rozstrzygnięcia sporów w obszarze sportu na drodze arbitrażu." In *Usus magister est Optimus. Rozprawy prawnicze ofiarowane Profesorowi Andrzejowi Kubasowi*, edited by Barbara Jelonek-Jarco, Rafał Kos, and Julita Zawadzka, 691–704. Warsaw: C.H. Beck, 2016.
- Kwiecień, Marek. "Piłkarski Sąd Polubowny – część I." *Kwartalnik ADR. Arbitraż i Mediacja*, no. 1 (2021): 51–70.
- Kwiecień, Marek. "Piłkarski Sąd Polubowny – część II." *Kwartalnik ADR. Arbitraż i Mediacja*, no. 2 (2021): 33–40.
- Makosz, Adam. "Spory klubów i zawodników rozstrzygnie piłkarski sąd." *Gazeta Prawna*, October 4 (2011). Accessed February 27, 2023. <https://prawo-gazetaprawna.pl/artykuly/553013,spory-klubow-i-zawodnikow-rozstrzygnie-pilkarski-sad.html>.
- Piechota, Rafał. "Pozasądowe formy rozwiązywania sporów sportowych." *Problemy Współczesnego Prawa Międzynarodowego, Europejskiego i Porównawczego* 4, (2006): 33–54.

- Rynkowski, Michał. “Prawne problemy dopingu w e-sporcie.” in *E-sport. Aspekty prawne*, edited by Łukasz Klimczyk and Michał Leciak, 107–111. Warsaw: C.H. Beck, 2020.
- Sławicki, Piotr, and Sławicki, Paweł. “Odpowiedzialność dyscyplinarna w sporcie w świetle nowej ustawy.” *Państwo i Prawo* 67, no. 4 (2012): 67–77.
- Tartak, Jakub. “Alternatywne metody rozwiązywania sporów w świecie sportu na przykładzie działania sądu concyliacyjnego w Lozannie.” *Forum Prawnicze* 52, no. 2 (2019): 46–65.
- Wach, Andrzej. *Alternatywne formy rozwiązywania sporów sportowych*. Warsaw: LIBER, 2005.
- Wach, Andrzej. “Ewolucja w zakresie trybu rozstrzygania sporów dopingowych.” *Przegląd Sądowy*, no. 5 (2022): 27–43.
- Wach, Andrzej. “Sportowe sądownictwo polubowne.” *Biuletyn Arbitrażowy*, no. 4 (2007): 73–78.
- Wach, Andrzej. “Zalety i wady arbitrażu sportowego.” In *System prawa handlowego. Arbitraż handlowy*. Vol 8, edited by Andrzej Szumański, 837–839. Warsaw: C.H. Beck, 2010.
- Wach, Karol. “Konstrukcja arbitrażu przymusowego.” *Przegląd Prawa Handlowego*, no. 6 (2018): 25–31.