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DOI <https://doi.org/10.32782/lexsportiva/2021.1.3>**Davydova Iryna Vitaliivna,**Doctor of Jurisprudence, Professor of Civil Law Department
of National University "Odessa Law Academy"
ORCID: <https://orcid.org/0000-0001-5622-671X>**Bernaz-Lukavetska Olena Mykhailivna,**Candidate in Jurisprudence (Ph.D.) of Civil Law Department
of National University "Odessa Law Academy"
ORCID: <https://orcid.org/0000-0002-2133-1672>

WAYS TO RESOLVE SPORTS DISPUTES: SPECIFIC FEATURES

The article is devoted to the analysis of possible ways to resolve sports disputes, determining their features. It is noted that the peculiarities of consideration of sports disputes in court are due, in the first place, special nature of sports-legal relations, namely, that this group of relations governed by the norms of various branches of law, in particular civil, labor, economic, land, administrative and others. Such groups of litigation such as civil, economic, administrative, and criminals are analyzed. As a result of the analysis made, it is concluded that in order of civil proceedings, the largest group of sports disputes is considered. Sports civil disputes may concern disputes about invalidation or termination of training agreements or contracts between athletes and professional clubs, collection of unpaid wages, refuting inaccurate information, prohibition of illegal use of a trademark, retransmission of sports events, etc. The next fairly widespread sports dispute group is economic disputes, in particular: disputes about invalidation or termination of sports complexes, organization and implementation of matches, providing technical or title sponsorship, extracting counterfeit products containing emblems of a professional club or other registered trademarks, etc. Also, this group includes bankruptcy of sports subjects. The group of sports administrative disputes, which are specific and often occurring in practice, are analyzed. This dispute group may include disputes regarding the appeal of decisions, actions, or inactivity of state authorities or local self-government bodies or their officials relating to the sphere of sports, collecting tax debt, transfer of property to tax collateral and others. Sports criminal disputes are the least widespread, which include disputes concerning tax evasion, fees or other mandatory payments, occupying fictitious entrepreneurship, bribery of an enterprise, institution, organization, proposal or provision of unlawful benefit officials, etc. It is concluded that the courts in solving sports disputes should be guided solely by the norms of current legislation, rather than regulations of professional sports organizations, which in practice causes a greater interest of subjects of sports relations to extrajudicial ways to resolve sports disputes. The use of extrajudicial dispute solutions is due to the speed and confidentiality of their consideration, lower cost compared to litigation, as well as the real execution by the parties to a substantive sports dispute. These ways to resolve sports disputes include negotiations of the parties, mediation, an independent expert opinion, arbitration, the dispute to the Ombudsman.

Key words: sports disputes, subjects of sports-legal relations, judicial resolution of the dispute, extrajudicial resolution of the dispute, legal regulation of relations in the field of sports.

Давидова І.В., Берназ-Лукавецька О.М. СПОСОБИ ВИРІШЕННЯ СПОРТИВНИХ СПОРІВ: ОСОБЛИВОСТІ

Стаття присвячена аналізу можливих шляхів вирішення спортивних спорів, визначенню їх особливостей. Зазначається, що особливості розгляду спортивних спорів у суді зумовлені, в першу чергу, особливим характером спортивно-правових відносин, а саме тим, що ця група відносин регулюється нормами різних галузей права, зокрема цивільного, трудові, господарські, земельні, адміністративні та інші. Проаналізовано такі групи судових процесів, як цивільні, господарські, адміністративні та кримінальні. У результаті проведеного аналізу зроблено висновок, що в порядку цивільного судочинства розглядається найбільша група спортивних спорів. Спортивно-цивільні спори можуть стосуватися спорів про визнання недійсними або розірвання договорів або контрактів на тренування між спортсменами та професійними клубами, стягнення несплаченої заробітної плати, спростування недостовірної інформації, заборони незаконного використання торгової марки, ретрансляції спортивних подій тощо. Наступною досить поширеною групою спортивних спорів є господарські спори, зокрема: спори про визнання недійсними або припинення діяльності спортивних комплексів, організацію та проведення матчів, надання технічного чи титульного спонсорства, видобуток контрафактної продукції, що містить емблеми професійного клубу чи інші зареєстровані торгові марки тощо. Також до цієї групи входять банкрутство спортивних суб'єктів. Проаналізовано групу спортивних адміністративних спорів, які є специфічними і часто зустрічаються на практиці. До цієї групи спорів можуть входити спори щодо оскарження рішень, дій чи бездіяльності органів державної влади чи місцевого самоврядування чи їх посадових осіб у сфері спорту, стягнення податкового боргу, передачі майна в податкову заставу та інші. Найменше поширені спортивні

кримінальні спори, до яких належать спори про ухилення від сплати податків, зборів чи інших обов'язкових платежів, заняття фіктивним підприємництвом, підкуп підприємства, установи, організації, пропозицію чи надання неправомірної вигоди посадовим особам тощо. Зроблено висновок, що суди при вирішенні спортивних спорів мають керуватися виключно нормами чинного законодавства, а не нормативними актами професійних спортивних організацій, що на практиці викликає більший інтерес суб'єктів спортивних відносин до позасудових способів вирішення спортивних спорів. Використання позасудових рішень спорів обумовлено швидкістю та конфіденційністю їх розгляду, меншою вартістю порівняно з судовим процесом, а також реальним виконанням сторонами предметного спортивного спору. До таких способів вирішення спортивних спорів належать переговори сторін, медіація, висновок незалежного експерта, арбітраж, спір до Омбудсмена.

Ключові слова: спортивні спори, суб'єкти спортивно-правових відносин, судове вирішення спору, позасудове вирішення спору, правове регулювання відносин у сфері спорту.

Introduction. Relevance of the research topic. Active development and substantial commercialization of the sports sector during the last two centuries have become a significant increase in the total amount of sports disputes. As a result, there is a need to create an effective mechanism for their solution. Currently, subjects of sporting rights to protect their rights and legitimate interests can use litigation and extrajudicial forms of resolution of sports disputes. Taking into account the practical outlined issues, it is possible to conclude that the topical topics can be concluded, because it may be more important than to comply with private rights and interests of persons, including on resolving sports disputes.

The degree of study of the topic. The outlined problem was paid to such scientists as Gnizdovska [1], Zalizko [2], Zozulya [3], Kireeva [1], Kulish [4], Tkalych [5]. At the same time, the rapid development of digitalization, improvement of procedural legislation, and the development of the sports sector as such makes, it possible to talk about the need for additional scientific research in issues of determining the ways of sports disputes.

The purpose of the article is to characterize the ways to resolve sports disputes, to which the judicial and extrajudicial path, the definition of their features and providing recommendations for their application in the context of analyzed practice.

The main results of the study. Features of consideration of sports disputes in court are conditioned, in the first place, the special nature of sports-legal relations. The special nature of sports relations lies in the fact that this group of relations is governed by the norms of various branches of law, in particular civil, labor, economic, land, administrative, etc., which in turn makes sports right in the integrated branch of law [5].

Despite the complex nature of the sports relations of certain normative legal acts that would fix the corresponding "sports norms", almost do not exist in Ukraine, and this, in turn, significantly affects the procedure for solving sports disputes in court, since

courts solve any courts. Which dispute should be guided solely by the norms of current legislation, rather than regulations of professional sports organizations. Therefore, subjects of sports law usually draw precisely to the extrajudicial ways to resolve sports disputes. But all the same disputes in the sports sphere are considered by domestic courts in a small volume in the order of civil, criminal, economic, and administrative legal proceedings.

One of the most common groups of sports disputes that are solved by the courts of Ukraine are disputes that are considered in the order of civil proceedings. Sports civil disputes usually arise between athletes and trainers, athletes and federations of a separate sport, athletes and the National Olympic Committee of Ukraine (NOC), athletes and professional clubs, etc. They may concern disputes about invalidation or termination of agreements on the organization of training or contracts between athletes and professional clubs, failure of unpaid wages, refuting inaccurate information, prohibition of unlawful use of a trademark, relay (swinging) of sports events, etc.

During recent years, spores have been paid to the collection of wage arrears and average earnings during the delay, since a large number of employers (clubs) violate labor legislation. As an example, it is possible to provide the decision of the Zavodsky District Court of Dniprodzerzhinsk region, in which the requirements of Ivanova to the Limited Liability Company "Professional Football Club "Steel" about the collection of average earnings during the delay of calculation was satisfied and charged with LLC "PFK "Steel" twenty-seven thousand one hundred and forty-eight hryvnias in favor of the plaintiff. The Board of Judges of the Judicial Chamber in Civil Affairs of the Court of Appeal of Dnipropetrovsk region left without satisfaction the appellate complaint of LLC "Professional football club "Steel" [6].

Sports household disputes can also be attributed to the most common. Such disputes usually relate to contradictions that arise between professional clubs and their counterparties. Such disputes may be spores of invalidation or termination of sports

complexes, organizing and conducting broadcasts of matches, providing technical or title sponsorship, extracting counterfeit products containing emblems of a professional club or other registered trademarks, etc. Also, this group should include bankruptcy of sports subjects. In this context, analyze an example of judicial practice, namely the decision of the Commercial Court of Zaporizhzhya Oblast, which is satisfied with the statement of LLC “Professional Football Club of Metallurg-Zaporizhzhia” to the communal enterprise “Central Stadium” on the obligation to return in the natural property transferred to storage, and It is 447 objects of individually defined moving and immovable property since the defendant did not return the property to the first claim to the plaintiff [7].

Sport administrative disputes are rather specific and not so often happen in practice. This group of disputes includes disputes regarding the appeal of decisions, actions, or inactivity of state authorities or local self-government bodies or their officials related to the sphere of sports (the Ministry of Youth and Sports of Ukraine, Antimonopoly Committee, State Regulatory Service of Ukraine, Regional and District State Administrations, District, urban, rayon in cities, settlement and rural councils), tax debt, transfer of property to tax collateral and others. For example, Dnipropetrovsk district administrative court of Ukraine, an administrative lawsuit of the Main Directorate of DFS in Dnipropetrovsk region to the Limited Liability Company “Dnipro” in Dnipropetrovsk region to provide permission to repay the entire amount of tax debt LLC “Dnipro Football Club” at the expense of property that is in tax collateral in connection with the lack of funds on the debtor’s account [8].

Sports criminal disputes also take place among other disputes, but they are the least widespread. This group includes disputes over tax evasion, fees or other mandatory payments, occupying fictitious entrepreneurship, bribery of an employee of an enterprise, institution, organization, proposal or provision of unlawful benefit officials, etc. For example, the Kharkiv district court adopted a conviction of a former footballer professional of a public joint-stock company (PJSC) “Metalist Football Club”, which committed a criminal offense provided for in Part 4 of Art. 354 of the Criminal Code of Ukraine (bribe to the employee of the enterprise, institution, or organization). The materials of the case state that in clause 3.1.13, a football player-professional and PJSC FC Metalist exists a ban on gambling, related to the forecasting or guiding sports results of football teams PJSC FC Metalist or other football teams, Not

to enter any agreements aimed at distorting sports results, immediately inform the club in case of receipt of proposals for distortion of sports results or in the event of appeals that may be related to this, as well as clause 3.1.24 of the contract – not to accept Any money rewards and valuable gifts in connection with its professional activities not provided for by the competition rules and unauthorized PJSC “Metalist”, but the footballer agreed to the proposal for obtaining unlawful benefits as a reward for the organization of a fixed result of the match of one of the teams of PJSC FC “Metalist” [9].

As already noted above, resolving sports disputes in extrajudicial order is the most widespread practice in the sporting sphere. First of all, the use of extrajudicial ways to resolve disputes is due to the speed and confidentiality of their consideration, lower cost compared to the trial, as well as the real execution by the parties to a substantive sports dispute.

In addition, the parties to the sports dispute, which was solved in extrajudicial order, are not deprived of the right to appeal to a court to address this dispute. The parties of a sports dispute may be deprived of such a law exclusively if it is directly provided for in a contract between them, for example, if there is an arbitration warning about the dispute to a sports arbitration court (CAS).

The extrajudicial ways to resolve sports disputes can be attributed:

- negotiations of the parties – subjects of the dispute independently decide by mutual negotiations;

- mediation – a dispute resolution with the help of a third (neutral side) that helps the parties to establish communication and choose a decision that satisfies both sides of the dispute;

- independent expert opinion – granted to an expert institution regarding the definition of specific actual data, which is the subject of a sports dispute, for example, the cost of work related to the reconstruction of the football stadium, determining the compliance of the football lawn regulations of the Football Federation of Ukraine (FFU) and the Regulation of the Ukrainian Premier League (UPL), etc;

- arbitration – a resolution of a dispute with the help of a permanent or temporary domestic or international sports arbitration, in which the dispute is solved by the elected parties by the authorized person – an arbitrator;

- ombudsman – settlement of sports disputes by filing a complaint officially authorized by the person - ombudsman [10].

It should be noted that the legislation of Ukraine contains a direct indication of the settlement of

sports disputes in extraction. In particular, Part 9 of Art. 45 of the Law of Ukraine “On Physical Culture and Sports” provides that the resolution of disputes arising between subjects in the field of physical culture and sports is carried out following the law by a permanent sports arbitration court [11].

In general, the norm fully reflects the practice of considering sports disputes in foreign countries. Thus, in the United States and England courts in almost all cases transmit sports disputes to solve in extrajudicial order. For example, in the case of Tony Harding against the American Association of Figure Riding, the Court noted that courts to intervene in solving sports disputes by sports associations only in the presence of extraordinary circumstances, namely the violation of the Association of his own rules that can lead to a task of serious and inevitable damage to the plaintiff, which, in turn, exhausted all extraordinary ways to settle the dispute. But even in this case, the court is not entitled to solve the dispute in essence, but only eliminates the violations admitted by the Association [10].

In the countries of Romano-Germanic law, a similar situation. Courts usually refuse to consider a sports dispute, since all sports contracts have an

arbitration reservation. But still, after considering the dispute in the arbitration order, the parties have the right to apply to the court.

In Ukraine, there is no clear structure of extrajudicial institutions of consideration of sports disputes. Most sports federations in Ukraine have no organs for resolving sports disputes created in the structure of the Federation, no specialists in considering sports disputes. The only exclusion is the Football Federation of Ukraine. Its structure includes the consideration of disciplinary disputes (two instances – the Control and Disciplinary Committee and the Appeal Committee) and a separate chamber of dispute resolution between clubs and football players [12].

Conclusions. The analysis of ways to resolve judicial disputes allows concluding that it is mainly considered in an extrajudicial manner, which speaks of a special specificity of this dispute group. Sports disputes can be considered in court, but they will be more likely to exclude from a general rule than a stable practice. Taking into account the rapid development of the mediation institute today, one can confidently assert about the further prospect of development of the extrajudicial way of resolving sports disputes.

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