

THE ACKNOWLEDGEMENT OF THE SPORTS JUSTICE BY THE STATE

Liliana Budevici-Puiu¹

*¹State University of Physical Education and Sport, Chisinau,
Republic of Moldova*

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Abstract. Sport is a social reality, but also an economical reality, while from this point of view the sports activity is performed under the legislation incidence specific to every state. At the international level the sports right develops. Thus, the right of sports institutions is recognized by the state, if not totally, at least practical (in the case of Swiss, Spanish, Belgium, Austrian right etc.) To assure the CEDO respect and the European Union right, the sports jurisdiction should be organized through the creation of parts possibility of appealing either on the national arbitration and sports specific organized by the federations and national professional leagues, but also existence of the access at the national instance to use the control of such decisions, either on the international sports arbitration within which the pronounced decisions to be referred to the control of some European instance.

Introduction. The sports right regulates rights, onerous and patrimonial interests, but also personal-not patrimonial. Sport is a social activity that has the rules of performing and also a minimum of institutional frame.

In The Republic of Moldova, the sport for all is regulated by the law regarding the sport and physical education nr.330 - XIV from 25.03.99. According to the law, the widespread of the sport and physical culture is in the responsible of all the specialty authorities, economic agents and associations. This kind of normative document structures the sports organizations in the national federations, leagues, clubs, associations but on the basis of these ones we retrieve, the main actors-the professional and amateur athletes. Thus according to the law regarding the sport and physical education, the national sports federations are organized by the associations adjunction and sports clubs, but their basic goal is the organization and development of a specific sports branch.

The basic acknowledgement of the sports justice by the state is often very difficult. Thereby, the state generally has an important role on the conformity verification with its own juridical order established on the national level, but also the procedures themselves are not often at the stakes level. In the specialty literature, it is made a distinction between “the private juridical right” and “juridical right or sovereign system” recognizing to the sport the first quality, but not the second one. The inclusion of the right in the sports world can not be made, if only by an adaptation of the right and the judge (an example on this line is the formation by the International Olympic Committee of the Sports Arbitral Tribunal). Thusly, we assist to a concrete acknowledgement by the state judge, of the sports movement able to conceive methods of conflicts regulation (jurisdictional) in conformity with the state ones.

The aim of our research is to identify and to accumulate the necessary information for a better knowledge of the national/international legal situations diversity in the way of the conflicts solution in the sports domain.

Our research is focused essentially on the national rank, of the autochthonous sports litigations, but are not neglected at all the ones regarding to the legal department and have a transnational character, because they may have as opponents in the solution process also the people from other countries. Thus, the respective reasons become objects of some decisions taken by the international federations whose office is in another country. Other appropriate examples regarding these aspects we can notice also in the reasons where the opponent parts are from a certain country, but the state judge of the cause comes from another country. In these causes the state judge may appear as a factor of instability, unpredictable and even inaccessible.

The methodology of research which we applied it was chosen, such as to answer to the main requirements specific to an ascertaining study. The methodology system consisted of: the enquiry method; self-observation method; systematic observation method and the method of the activity products analysis.

To achieve the necessary information we used the questionnaire, but the overall synthesis of the questions does not claim to be exhaustive. **It provides generally a significant view over the remarked situation regarding the analysis of the regulation framework of the sports law, institutions, instruments and procedures for the sports litigations solving.**

For the research efficient achievement, we organized within The State University of Physical Education and Sport, The Scientific-Practical Congress “The Law in Sport” for students, teachers and specialists from the domain. At the Seminar participated the representatives of: The Ministry of Education; The Ministry of Sports and Youth; Moldovan Football Federation; the Badminton Federation from the Republic of Moldova; Gymnastics Union Federation; Moldovan Boxing Federation; The National Taekwondo Federation I.T.F. The number of participants can be counted about 100 people (students, graduates, teachers and specialists from physical culture domain).

In this context, the seminar itself or better said the actions of its realization, have raised many issues that expect their clarification in the future.

Further are presented the **results of the questioners’ analysis**.

At the question “Do you know who is the national authority able to solve the litigations emerging from the sports activity specific to the sports branch which you represent ?” the respondents categories answered positively in a percentage about 52 %, negatively 27 %, but 21% answered hardly at this question (Figure 1).

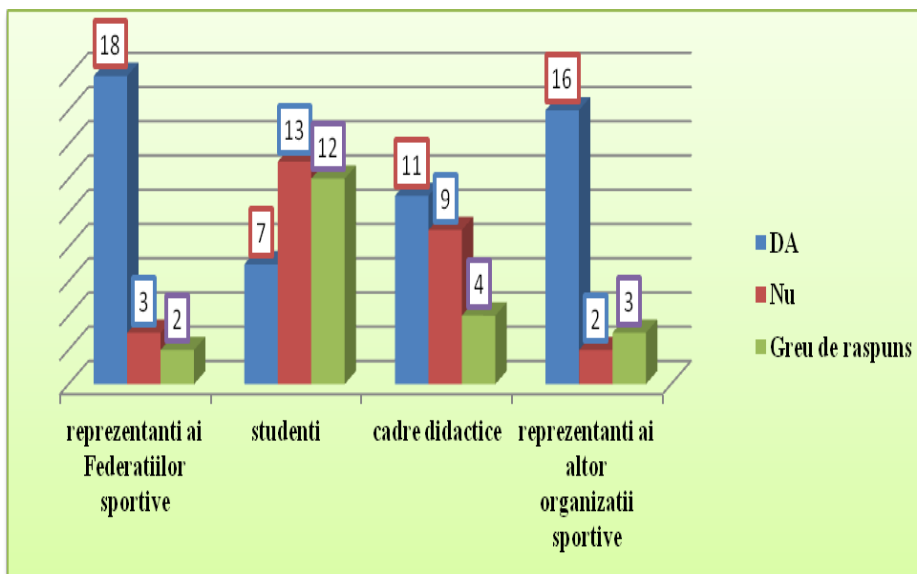


Fig. 1. The answers regarding the national authority able to solve the litigations emerging from the sports activity

Also, regarding this question, the respondents have noticed that in order to be able to talk about sport and not only about a physical activity, there must be a competition. On order to the competition existence, there must be a regulation, just to make possible the competitors presentation. In this way, there are required two basic things:

sports institution should approve the sports regulation and the contests one;

to be imposed the respect of these regulations.

Furthermore, we could use information regarding the circumstance that “The International Federations such as, The International Olympic Committee or WADA (The world Anti-doping Agency) impose to all the entities from sport like any argument towards them to be solved only through the organized arbitration in its framework, but the attack way against such kind of decisions to be, solved by The Court of the Sports Arbitration from Lausanne” (TAS) (according to the Bazil Oglinda estimation, founding partner at the Oglinda Nemes Voicu ONV LAW. At the same time it states that “to achieve this aim, the international federations oblige its members, through their own statutes, respectively the national federations, to include the indispensability of the arbitrage at the TAS“.

Regarding the answers at the question “Do you think that it is claimed the inclusion of judicial instance in the solving of some litigations that result from the sport activity (civil and working causes)?” we can notice from the gained data that the ideas were shared as it follows: generally the agents of sports federations do not support the idea of judicial instances inclusion in sports litigations, noticing that the judicial organs concluded according to its regulations that can solve this kind of causes (53%), but the teachers and the other specialists from domain assert positively this point of view through a percentage about 42 % (Figure 2).

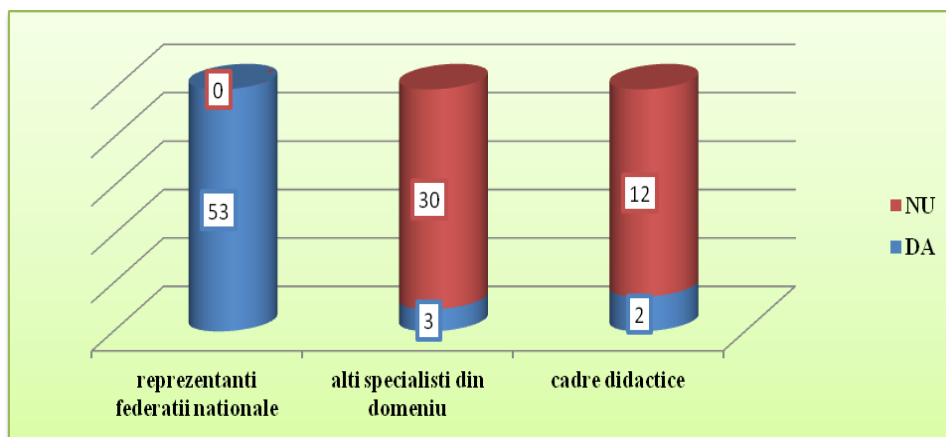


Fig. 2. The graphic representation of the questions regarding the judicial instances inclusion in the solving of some litigations that result from sports activity

In the Republic of Moldova the ontological foundation of the existence of some sports jurisdictions is included in the Statute of MOLDOVAN FOOTBALL FEDERATION (MFF) that in the Art. 57 establishes its judicial Organs:

- a) Discipline committee
- b) Competitions committee
- c) Ethical committee
- d) Call committee

The judicial organs have the right to establish disciplinary measures, that are described in legal outlooks and of the disciplinary code of the MFF.

The disciplinary code of the MFF adopted by the executive committee of the MFF and inured on the 25 of July 2003 regulates and describes the contraventions of regulations included in the MFF regulations, determines the sanctions, regulates the organization and functioning of responsible organs for the decisions and the procedure that must be followed within these organs.

The call committee – examines the calls over the decisions assumed by the Discipline committee. Every assumed decision by the Call committee is definitive, but over this one it can be referred appeals only to an independent instance and impartial of arbitration - the court of sports arbitration and mediation in football (till 2015). Previously 2015, the calls will be examined by the CNAS MFF.

The disciplinary code of MFF is applied to the physical and legal persons for:

- a) territorial associations;
- b) members of these associations, especially clubs;
- c) officials;
- d) players;
- e) officials of the match;
- f) any person that has MFF authorization, especially for a match, a competition or for an another event organized by MFF;
- g) spectators.

Central Commission of Competitions and Discipline (CCCD) is authorized to sanction any infringement of M.F.F. regulation that is not related with the competence of another organ *being responsible* for:

- a) penalization of serious infringements that officials of the match have not noticed;
- b) correction of obvious mistakes of the referee's disciplinary decisions;
- c) extension of the match suspension determined automatically by elimination (see art. 18, par. 4 and art. 19, par. 4);
- d) establishment of additional sanctions to those imposed by the referee, as it can be the fine.

The authorities responsible for the enforcement of sanctions are as follows:

- The referee who during matches takes final disciplinary decisions.
- The judicial bodies of MFF: CCDC (Central Competitions and Discipline Committee) and Appeals Commission.
- Executive Board of MFF (certain decisions taken by the Appeals Commission may be submitted to its examination that adopts a final decision).
- Central Medical Commission of MFF or other organs from its oversight (carries out doping tests, analysis of samples and examination of medical certificates).

We can also mention that in 1974 the European Court of Justice has stated very clearly that *sport is not the object of the regulation at the level of the EU treaties*.

After a period of 30 years, governed by this principle solution, thinking was changed. European Court of Justice issued a decision in which recitals was pointed out that if the sport has a problem in content, or refers to an economic problem which falls under the Treaty, then the

Court will be required to rule. Thus, in this moment, it is impossible to do not talk about a legal sports reality for a significant part of the activities covered by European Union rules, according to the decision of the European Court

As for the answers to the question "*Can you indicate whether in the regulation framework of the federation is stated their obligation to solve sports disputes?*" we can reflect that representatives of national federations other than Moldovan Football Federation, gave negative responses (25%), other specialists in the field (28%), representatives of the MFF gave a 100% positive feedback stating that according to the art.58.3 of MFF status "litigations of national character will be resolved by the judicial bodies of FIFA or appropriate institution of arbitration (CASMF) or national courts in accordance with the statute and legislation in force of RM" At the same time they have mentioned that there is and the Court of Arbitration for Sport and Mediation in Football RM beside the Moldovan Football Federation, which is a standing arbitration, independent, non-governmental body with legal personality, which is organized and operated under the laws of the Republic of Moldova regarding arbitration and according to the Bylaw, codes and regulations MFF.

Jurisdiction of the Sports Arbitration Court and Football Mediation from R.M:

❖ *will examine and judge any case given in its competence as first and last instance in case the parties have voluntarily decided to submit the case to resolution.*

In this case the parties are not required to address in advance to the judicial bodies of MFF: Competitions and Discipline Committee; Referee Committee; Appeals Committee.

Jurisdiction of the Sports Arbitration Court and Football Mediation from R.M:

❖ *will examine and judge any case given in its competence as first and last instance recurs (according to the Regulations and MFF Bylaw) in case the solution of the litigations between parts was through judicial bodies of MFF mentioned above;*

❖ *the Court has the right and possibility to solve litigations in sports that occurred within another sport organizations, between sport organizations and / or among its members.*

The members affiliated to MFF have the right according to the Art. 16.1, letter "k" / MFF bylaw "to - and solve independently (without MFF

interference) the sports, legal, economic, administrative and other issues assigned to them", and according to art .17.1., letter "e" they are obliged "to adopt a provision, statutory one, which stipulates that any dispute that arises or that relate to the application of bylaws, regulations, directives and decisions of FIFA, UEFA and MFF, may be subject, ultimately, only to an independent and impartial arbitration instance by excluding a ordinary court (civil), namely NCAS / CASMF recognized under this bylaw if the divergence is national, or CAS, in case if the divergence is at the international level.

The members affiliated to MFF and its members, players, coaches, agents, players and agents of matches will execute strictly the decisions taken by MFF, FIFA and UEFA bodies, also are obliged to respect the decisions taken by the National Court of Arbitration Sports (NCAS) and ulterior by the Court of Arbitration for Sport and Mediation in Football from RM, specialized and the Court of Arbitration for Sport (CAS) in Lausanne (Switzerland). The affiliated members must include in their bylaws special clauses that will ensure obligation' compliance and enforcement in the present article.

Any appeal against FIFA or UEFA final decision is attended only by the Court of Sports Arbitration (CSA) in Lausanne, Switzerland, in accordance with the relevant provisions in their statutes.

At the question "Are you aware that EU law has supremacy over any rules issued or enforced by sports institutions?" Most respondents formulated affirmative responses (67%).

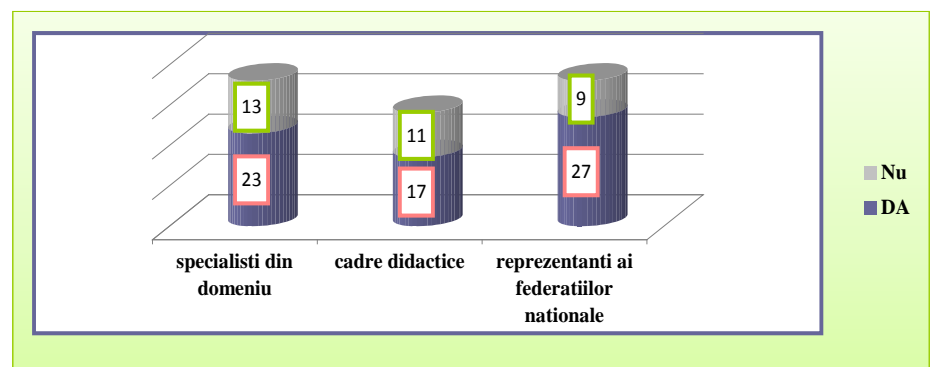


Fig.3. The graphical representation of the responses regarding the supremacy of EU law

The European Court of Justice has established the supremacy of EU law over any adopted or enforced rules by sports institutions: *"Every sport regulation that has an economic effect, falls under EU rules regarding the free movement and competition."*

According to some opinions of European lawyers (from ONV LAW) it says that "although sports arbitration as alternative form of justice toward state justice is acceptable and justified in principle, anyway it must be given to the parties the right to access at an European instance that controls the legality of rendered arbitral decisions and not as is currently happening, namely that it is regulated an appeal also of arbitration nature to TAS, whose decision may in turn be appealed to the Swiss Federal Court.

The European Parliament in its report - European Dimension in Sport (2011/2087 (INI)), in paragraph 22 provides that *"recognizes the legitimacy of sports courts for resolving disputes related to sport as long as they respect people's right to a fair trial"* and recommends for the Article 22 the creation of a European Chamber of Sports Arbitration Court, that will have the office in Brussels or Luxembourg for the resolution of the sports disputes in the European Union.

The opinion of the lawyers from ONV LAW is that nowadays the judicial system of Arbitration for Sport which provides an interim attack way of the arbitration award to the Court of Arbitration for Sport in Lausanne is quite questionable in the sense that there are circumstances which, in the context of an consistent argument it could lead to the abuse of the idea of free access to a court in the meaning of art. 6 CEDO. On the other hand, there are prerequisites that the current specialized arbitration system with access only to the supreme court does not guarantee neither Swiss nor the application of the principles of EU law.

In conclusion, we can state that it is required a recognition of sporting justice by the state, and in this new context, we can say that the right of the Sport in Republic of Moldova is a reality impossible to contest. Other arguments in this respect are represented by the different test cases already existing in the national jurisprudence with reference to:

✓ the professional sport that is practiced in various forms and is based not only on the employment contract, but also on civil contracts, the rental of professional athletes, and these contracts have a complex feature, regulating and ensuring the athlete of various business-related to advertising, publicity, promotion etc. In this regard, the employment contract does not represent real guarantees, it may be canceled, revoked

in situations where professional athlete has no guarantees. Thus, art. 325 of the Labor Code of the Republic of Moldova stipulates that professional sportsmen labor relations are governed by the stipulations of the code, with the peculiarities set of by the current legislation;

✓ particularities of labor relations between professional athletes and clubs that they represent- according to Chapter V of the Law on Physical Culture and Sports that regulates "sports performance", claims to be that protecting system that takes into account the matters which concern this type of relationship. But, in reality, the professional athletes in their activity face the uncertainty related to the legal status of a professional athlete, being at the discretion of the owners of the teams, the sports clubs;

✓ the need to regulate the relations that arise between sportsmen and sports clubs, regulation that is institutional imposed by the adoption of legal rules with general application in sports and, considering the specificity of these activities, it is imposed and the enact of special specific rules for the types of sport practiced.

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[6] Regulament de organizare și funcționare a Curții de Arbitraj Sportiv de pe lângă F.M.F.

[7] Codul disciplinar al Federației Moldovenești de Fotbal.

RECUNOAȘTEREA JUSTIȚIEI SPORTIVE DE CĂTRE STAT

Cuvinte-cheie: dreptul sportului, justiție sportivă, stat, litigii sportive.

Rezumat. Sportul este o realitate socială, dar și o realitate economică, iar activitatea de sport din acest punct de vedere se desfășoară sub incidența legislației specifice fiecărui stat. La nivel internațional dreptul sportiv se dezvoltă. Astfel, dreptul instituțiilor sportive este recunoscut de către stat, dacă nu integral, cel puțin practic (cazul dreptului elvețian, dreptul spaniol, dreptul belgian, dreptul austriac etc.). Pentru a se asigura respectarea CEDO și a dreptului Uniunii Europene jurisdicția sportivă ar trebui organizată prin crearea posibilității părților de a apela fie la un arbitraj național și specific sportiv organizat de federațiile sau ligile profesioniste naționale dar să existe accesul la o instanță națională care să exercite controlul unor asemenea decizii, fie la un arbitraj internațional sportiv în cadrul căruia deciziile pronunțate să fie supuse controlului unei instanțe europene.