Co-regulation as a way to improve the effectiveness of legal regulation in sports*

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In the article, the authors formulate a definition of co-regulation based on an overview of the approaches available in documents and regulations from the European Union. Co-regulation does not appear to be an intermediate form between state regulation and self-regulation, but rather an independent method of social regulation that can significantly improve legal regulation effectiveness. This is achieved by combining legal principles and norms and state control over their implementation with a broad discretion of professionals in a particular field. Sports is considered a classic case of co-regulation since all Russian sports federations pursue the legally defined goals (development of one or more sports in the Russian Federation, their promotion, organization, sporting events and training of athletes who are members of national sports teams), achieve these goals to realize the legally defined rights and obligations, and undergo evaluation for effectiveness and accreditation by the state. The article thoroughly analyzes the history of adopting a package of amendments to Russian legislation in order to introduce arbitral proceedings for athletes and coaches' individual labor disputes in 2020. This example demonstrates the weaknesses of exclusive state regulation of legal relations in sports and the shortcomings of self-regulation. Specific problems are identified: their solutions are quite complicated when one has to choose one of the above-mentioned models or their combination, the status of "legionnaires", duration of labor contracts, conditions for paying salaries and others. The arguments in favor of introducing a national arbitration for athletes and coaches' labour disputes are considered. The status of Russian and international sports federations is studied in terms of their classification as self-regulatory organizations and the inconsistency of the independent status of sports organizations is demonstrated. In conclusion, the authors propose an amendment to the Federal Law on Physical Culture and Sports in the Russian Federation to legalize co-regulation in this area.

Keywords: self-regulation, co-regulation, legal relations in sports, labor disputes of athletes and coaches, arbitration, effectiveness of legal regulation.

1. Introduction

On July 31, 2020, the President of the Russian Federation signed Federal Law No. 245-FZ amending the Federal Law on Physical Culture and Sports in the Russian

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Federation and Articles 3 and 22.1 of the Civil Procedure Code of the Russian Federation and the Federal Law No. 246-FZ amending the Labor Code of the Russian Federation in regard to the transfer of individual labor disputes of athletes, trainers in professional sports and records for consideration by arbitration courts[1] that significantly expanded the powers of arbitration courts in sports. Thus, the issue of transferring part of state functions to non-state actors has again gained relevance in the absence of a legally defined delegation process in this area

O. V. Romanovskaya notes that legal regulation, in principle, is unable to efficiently overcome challenges that modern humanity faces, and this is the reason why a "world trend" for deregulation is developing (Romanovskaya 2017a). However, the latter should not be understood as a complete rejection of regulation but as a process of transferring rulemaking instruments from the state to other entities. In the end, the state is replaced by self-regulatory organizations, but there is also an intermediate form of co-regulation. Other experts attach greater importance to co-regulation, noting its advantages both over state regulation as such and over self-regulation (Hartstein, Rogers 2019). Moreover, if the terms of self-regulation and self-regulatory organizations are widely used in legal acts, then that of co-regulation has not received a legal definition in Russia. Although the term itself is mentioned, for example, in Directive No. 2776-r on the Concept of Improving Self-Regulation Mechanisms (hereafter referred to as Directive No. 2776-r) issued by the Government of the Russian Federation on December 30, 2015, it is used exclusively in a negative context — as a phenomenon that this document does not apply to. Simultaneously, the examples of co-regulation provided in this directive (market councils, professional associations of insurers) do not clarify the government's position and cause controversy among specialists. For example, A. S. Vishnyakova assuredly classifies "the market council" created in the electric power sector as a self-regulatory organization (Vishnyakova 2011, 163).

Perhaps the most common approach to co-regulation can be expressed by the words of M. A. Ponomarev — "a term close to self-regulation is the so-called co-regulation, i. e., a joint participation of the state and various market participants in the regulation. Co-regulation allows you to balance interests and develop rules of the game that are acceptable to all interested parties" (Ponomarev 2011, 98). T. V. Bogdanova and E. V. Reutov coin a similar definition (Bogdanova, Reutov, 2016). However, it does not specify the forms of joint participation, but one can assume that they include the advisory opinions given at the request of a public authority, appeals of market entities to public authorities and other acts that are remotely and indirectly related to the regulatory process itself. Some authors also make reasonable doubts that co-regulation can be carried out precisely by market participants as the commercial entities established to achieve private rather than public goals.

O. V. Romanovskaya identifies five approaches to defining the term co-regulation (Romanovskaya 2017b). Given the spread of the relevant practice, the opinion of E. A. Voinikanis, in our view, merits particular attention: "Co-regulation is defined as a certain mechanism of assigning the responsibility for achieving the goal set by the legislative body (i. e., at the level of the law) to the non-state organizations recognized in a certain area (economic actors, non-profit organizations, associations) on the basis of a regulatory

[1] Henceforth all references to Russian regulations and judicial practice are given according to the data from the ConsultantPlus system. Accessed December 20, 2020. http://www.consultant.ru.

act" (Voinikanis 2013, 16). It is no coincidence that this definition appears in the academic paper on intellectual property. Looking at this area in the Russian Federation one can find examples of state-accredited non-profit organizations that aim to achieve the Civil Code's goals and work under the conditions described in legal acts. Many scholars note that this kind of co-regulation contributes to the effectiveness of legal regulation, since, on the one hand, it allows the legislator to focus on basic and fundamental points and, on the other hand, transfers the process of adopting specific norms to people who are more suited to understand the practical effect of their application than parliamentarians and officials. At the same time, the activities of the authorized non-governmental organizations are both better controlled and more authoritative in the eyes of society than those of self-regulatory organizations (Marsden, Meyer, Brown 2020).

Sharing the view of the high importance of co-regulation, O. V. Romanovskaya takes a different approach to the term of co-regulation: "In its traditional understanding (as an institution of constitutional law) it consists in the non-state organizations' participation of either in the current managerial work of the regulatory state authority or in its rulemaking activities" (Romanovskaya 2017a). Thus, the author considers co-regulation not as a phenomenon close to self-regulation but as a joint adoption of normative and individual legal acts by a state body and a non-state organization. The examples taken from joint resolutions of the Council of Ministers of the USSR and the Central Committee of the All-Union Communist Party of Bolsheviks as well as from the recent decisions made by the Ministry of Justice of the Russian Federation and the Federal Notary Chamber demonstrate the researcher's opinion.

Several foreign scholars interpret self-regulation in a broad sense — an umbrella term for cooperative forms of management allowing subjects from various social spheres to strive to achieve common goals (Steurer 2013, 397). Accordingly, not only state bodies and certain representatives of economic structures but also social organizations can participate in co-regulation. Australian lawyers agree with the German specialist's approach: they devoted their study to "civil society co-regulation" (Arup, Dixon, Paul-Taylor 2020).

Another trend is the narrowing of the term. Following D. A. Petrov (Petrov 2013, 12), M. A. Egorova believes that "co-regulation (or joint regulation) involves joint participation in the rulemaking process aimed at regulating the professional activities of economic entities, not only self-regulatory organizations (as well as other associations or unions of entrepreneurs) but also the State itself represented by its bodies" (Egorova 2018, 169). Thus, these authors emphasize that the process of individual application of norms is not included in the scope of co-regulation. To realize the rights and obligations established with the participation of both political authorities and public organizations' bodies, M. A. Egorova suggests using the term "co-government".

The complexity and intrinsic heterogeneity of co-regulation and self-regulation not only generate a variety of approaches to defining these terms, but also encourage researchers to expand them. Domestic authors usually limit themselves to use the three terms (regulation, co-regulation and self-regulation) or propose a four-part system consisting of state regulation, co-regulation, delegated self-regulation and voluntary self-regulation (Tikhomirov 2005); direct state regulation, quasi-regulation, self-regulation and joint regulation (Petrov 2015). In foreign literature, specifically related to political studies, one can find further types of regulation, for example, "governance by government", "governance without government", and five variants of "governance with government" (Börzel,

Risse 2010), i. e., co-regulation. R. Steurer points to the existence of public co-regulation (cooperation of government and business), private co-regulation (cooperation of business and civil society), tripartite co-regulation (cooperation of government, business and civil society) and public co-management (cooperation of government and civil society). In addition to these types of co-regulation, the scholar identifies three more types of regulation (two state ones and a civil one) and two types of self-regulation (in the industry and at the company level) (Steurer 2013). The desire for an increasingly fractional division of the term of "regulation" (and/or "management") can be contrasted with an opinion indicating different levels and grounds for classification that actually serve as a reason for an increase in the number of terms (Zhurina 2009).

Paying tribute to the desire of many researchers for subtle and, of course, heuristically significant differences, this article tends to follow the approach contained in the documents of the European Commission:

Within the framework of a legislative act, co-regulation makes it possible to ensure that the objectives defined by the legislator can be implemented in the context of measures carried out by parties recognized as being active in the field concerned… Within this regulatory framework, the legislator establishes the essential aspects of the legislation: the objectives to achieve; the deadlines and mechanisms relating to its implementation; methods of monitoring the application of the legislation and any sanctions which are necessary to guarantee the legal certainty of the legislation. The legislator determines to what extent defining and implementing the measures can be left to the parties concerned because of the experience they are acknowledged to have gained in the field[2].

2. Basic research

According to Federal Law No. 329-FZ on Physical Culture and Sports in the Russian Federation (henceforth the Law on Sports) dated 7 December 2007, the legislation on physical culture and sports is based on a combination of state regulation of the relations in the field of physical culture and sports with self-regulation of such relations by entities of physical culture and sports (par. 3 of Art. 3 of the Law on Sports). However, Directive No. 2776-r neither mentions sports entities nor contains references to the Law on Sports. Given the careful description of the regulatory framework for self-regulation and the industries that self-regulation is applied to, which is typical for this document, this situation cannot be accidental. It also cannot be explained by the small significance of sports and physical culture for the Russian economy. Apparently, the government deliberately ignored the principle formulated in the Law on Sports.

As it is known, under Russian legislation, self-regulation is not recognized as any independent and proactive activity to establish standards and rules and monitor their observance, but only carried out on the basis of the integration of business or professional entities into self-regulatory organizations (par. 2 of Art. 2 of the Federal Law No. 315-FZ on Self-Regulatory Organizations dated 1 December 2007, from now on — the Law on SRO). At the same time, entities of professional activity are only natural persons, and a number of requirements are imposed on the self-regulatory organization (henceforth

[2] "Action plan "Simplifying and improving the regulatory environment". 2002. *Commission of the European Communities*. Accessed December 20, 2020. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52002DC0278&from=EN.

the SRO), including one in regard to ensuring additional material responsibility of each member of SRO to consumers of the produced goods (the performed works, the provided services) and other persons (subpar. 3 of par. 3 of Art. 3 of the Law on SRO). Researchers note that it is the latter requirement that define the specifics of the self-regulation institute (Kvanina 2019, 92).

As an example, one can analyze football, "No. 1 sport in Russia". The establishment of standards and rules in this area as well as control over their observance are carried out by the All-Russian Public Organization "Russian Football Union" (henceforth the RFU)[3]. Thus, the RFU performs the functions of self-regulation. It is a non-profit organization created for the purposes stipulated by federal law: development and popularization (promotion) of football in the Russian Federation, organization and conduct of football events, training of athletes who are members of national sports teams of the Russian Federation (Art. 3 of the Charter of the RFU, par. 6 of Art. 2 of the Law on Sports). Based on membership, the RFU unites sports entities, i. e., it has the SRO features provided for in the par. 1 of Art. 3 of the Law on SRO. However, the criterion for membership in a self-regulatory organization is not met in this case. The RFU includes regional football federations, interregional football unions, football clubs and associations totaling 159 members[4]. There are no natural persons among the members, and the number of business entities is quite small; in other words, the RFU cannot be considered as a SRO due to the legal nature of the persons it unites. The charter of the RFU does not imply any opportunities to ensure additional material responsibility of each member to third parties. It also provides neither the compensation fund nor the insurance liability of its members. Therefore, the RFU is not an SRO, and it is reasonably not included in any state register of SROs[5], nor is it mentioned in Directive No. 2776-r.

The same applies to federations in other sports. In our opinion, there is a classic case of co-regulation in sports. All-Russian sports federations (a) pursue legally defined goals (development of one or more sports in the territory of the Russian Federation, their promotion, organization, sporting events and training of athletes who are members of national sports teams of the Russian Federation) (par. 6, part 2 of the Law on Sports); (b) achieve these goals by exercising legally defined rights and obligations (Art. 16 of the same Law); (c) undergo evaluation for efficiency and accreditation by the State (Art. 6 of the same Law).

The role of co-regulation in sports is an issue not only of theoretical importance, but also for the development of co-regulation (although the concept of self-regulation improvement exists, there is no concept of co-regulation improvement) and transparent distribution of powers between the state and non-state actors. The lack of clarification on the issue, i. e., the presence of a significant regulatory challenge, is evidenced by the discussion over the status of athletes who are nationals of countries in the Eurasian Economic Union. S. V. Kosilov, then the Deputy Minister of Sports of the Russian Federation, stated, "To date, the legislation, the Labor Code of the Russian Federation, defines equal rights.

[3] Par. 4 of Art. 4, par. 8 of Art. 5 of the Charter of the All-Russian Public Organization "Russian Football Union". Accessed December 20, 2020. https://rfs.ru/subject/1/documents?cat_id=1. (In Russian)

[4] Register of members of the All-Russian Public Organization "Russian Football Union". Accessed December 20, 2020. https://static.rfs.ru/documents/1/5d1f472eae74d.pdf. (In Russian)

[5] Registers of self-regulatory organizations. Rosreestr. Accessed December 20, 2020. https://rosreestr.gov.ru/wps/portal/p/present_new/cc_sro_reestr. (In Russian)

However, here the issue concerns the activities of public organizations… state interference in their affairs is strictly prohibited"[6]. V. L. Mutko, another representative of the government and Deputy Prime Minister of the Russian Federation for Sports, Tourism and Youth Policy, voiced just the opposite, "The topic of legionnaires should be coordinated with state bodies, with the Ministry of Sports"[7]. A. V. Diukov, the President of the RFU, recently agreed with the latter opinion, "I am an opponent of the limit, but we must be realistic — the limit is approved not only by the RFU but also by the Ministry of Sports… The State will never allow legionnaires to play exclusively for budget money"[8].

In addition, it seems that today co-regulation shows greater effectiveness compared to self-regulation. This is due to stricter observance of the norms and principles of law in co-regulation. In particular, speaking at the round table entitled "Local Acts of Sports Organizations: Theory and Legal Practice", O. I. Pavlova, Honored Coach of Russia, stated that the subjective rights of athletes are often violated both by the corporate acts adopted by sports federations and leagues as well as by the local acts adopted by clubs (Vas'kevich 2010, 207). All lawyers who took part in the round table agreed with the coach. The participants noted that the main reason for this situation was the state's withdrawal from protecting athletes and coaches' rights and the self-regulation model's primacy. However, most sports law experts agree that "conflicts in sports, especially professional, are quite inconvenient to resolve in traditional ways (in courts of general jurisdiction, in arbitration courts) because the relevant specifics are too complicated. Therefore, it seems appropriate to develop alternative ways of resolving disputes: arbitration, possibly mediation" (Mikhailov 2010, 89).

The laws signed by the President of the Russian Federation on July 31, 2020 were actually devoted to this issue and completed one of the stages of vesting non-state organizations with the functions that previously pertained to the state. Close consideration of the nature of the labor disputes' regulation in sports at the state level began much earlier. On June 2015, at a meeting of the Presidential Council for the Development of Physical Culture and Sports, issues of legal regulation of sport and sport of records were explicitly discussed, in particular, the President noted the need to "launch a domestic system for the resolution of sports disputes"[9]. S. S. Sobianin pointed to the reason for this need — a reduction in appeals to the International Sports Arbitration. However, A. D. Zhukov, the President of the Russian Olympic Committee, arguably explained that the issue had not yet been ready for a substantive discussion despite the importance of creating national sports arbitration. Following the meeting, the President instructed that the provisions governing the establishment and activities of permanent arbitration institutions that would resolve disputes arising in the field of professional sport and sport of records be

[6] "The issue of legionnaires in sports should be decided at the level of federations and leagues, Ministry of Sports of the Russian Federation". 2017. *RIA Novosti.* Accessed May 6, 2018. https://rsport.ria.ru/official/20171127/1129250749.html. (In Russian)

[7] "The topic of legionnaires should be coordinated with state bodies, Vitalii Mutko". 2018. *Sports.ru.* Accessed May 6, 2018. https://www.sports.ru/football/1060385040.html. (In Russian)

[8] "The State will never allow legionnaires to play exclusively for budget money, A. V. Diukov, the President of the RFU, about the limit". 2020. *Sport-Ekspress.* Accessed December 20, 2020. https://www.sport-express.ru/football/rfpl/news/dyukov-o-limite-gosudarstvo-ne-dopustit-chtoby-za-byudzhetnye-dengi-igrali-isklyuchitelno-legionery-1739888. (In Russian)

[9] "The Meeting of the Council for the Development of Physical Culture and Sports". 2015. *Prezident Rossii.* Accessed December 20, 2020. http://kremlin.ru/events/president/news/49615. (In Russian)

included into the draft federal laws on arbitration (arbitral proceedings) in the Russian Federation and in amendments to certain legislative acts of the Russian Federation in connection with the adoption of the federal law on arbitration (arbitral proceedings) in the Russian Federation[10].

The Supreme Court of the Russian Federation reacted to the relevant topic in its own way. On August 8, 2015, the Supreme Court's Presidium approved the Review of the practice of court consideration of cases arising from labor relations between athletes and coaches (henceforth the Review). The Review recognized that most disputes stemmed from violations of employees' rights by employers, which participants of the 2010 round table drew attention to. At the same time, the review's analysis makes it possible to identify several groups of challenges in the practice of resolving conflicts.

First of all, this is a contradiction between legal acts, on the one hand, and normative and individual acts of sports entities, on the other hand. Actual peculiarities of athletes and trainers' work and remuneration for it are established mainly by non-state actors' acts (collective contracts, agreements and local regulations); contracts between athletes and physical culture and sports organizations refer to the possibility of resolving conflicts in arbitration court. However, Chapter 54.1 of the Labor Code of the Russian Federation (henceforth the LC of the RF) entitled "Special procedures for athletes and coaches" did not contain provisions that allowed the possibility of transferring an individual labor dispute with an athlete as one of the parties to the arbitration court.

Additional difficulties were created by the frequent inclusion of civil obligations in labor contracts with athletes and coaches. Disputes over these obligations could be resolved by arbitration courts according to part 3 of Art. 3 of the Civil Procedure Code of the Russian Federation (henceforth the CPC of the RF). Under these conditions, both state and arbitration courts found themselves in difficult situations and often made incorrect jurisdiction decisions.

It turned out that one more challenge was the practice of concluding labor contracts that came into force after a certain period of time, sometimes a very long one. Having faced such facts, the courts of general jurisdiction could not correctly determine the time when the employment relations arose.

Opposite situations are quite common, for example, when an athlete begins to train in a sports club before signing an employment contract. In this case, under the legislation and the Supreme Court's position, he must receive a salary for performing his labor function — preparation for sports competitions (part 1 of Art. 348.1 of the Labor Code of the Russian Federation). Nevertheless, such a decision seems extremely controversial for the employer, since in the end the employment contract may not be signed, and the athlete will not take part in the competitions that this sports club participates in. This is, for example, the typical situation of assessing prospective newcomers. In fact, it is not uncommon for an athlete to bear all the costs of flying and living while undergoing tryouts, i. e., one can observe the consent of both interested parties to the established practice, there is no question of salary payment in principle.

Finally, the whole range of challenges mentioned in the Review is related to the fact that the legislation does not define some sports concepts, such as sports injury, viable

[10] Pr-1261, item 2a of the List of Instructions following the meeting of the Presidential Council for the Development of Physical Culture and Sports, June 25, 2015. Accessed December 20, 2020. http://www.kremlin.ru/acts/assignments/orders/49777. (In Russian)

reasons for termination of an employment contract and others. From our point of view, the optimization of regulation, on this occasion, should be carried out not by describing particular cases in legislation with increasingly more details, but by raising the importance of sports specialists in resolving specific disputes.

In other words, although the Supreme Court reached quite an encouraging conclusion that "basically, the courts applied the general rules correctly and consistently while considering the cases in question", the issues it had identified clearly showed that it was very difficult for the courts to understand the specifics of the relations that are established in sports, and due to such a state of affairs the effectiveness of legal regulation was decreasing. To change the situation, on November 24, 2015, the Plenary Session of the Supreme Court adopted Ruling No. 52 on the Application of Legislation Governing the Work of Athletes and Coaches by the Courts (henceforth Ruling No. 52). In this act, the Plenary Session repeated the fundamental theses presented in the Review, elaborated on the significant conditions of labor contracts, qualification requirements for coaches and minors' working conditions, but, apparently, it did not manage to overcome most challenges identified earlier. A positive exception was, perhaps, only the definition of a sports injury (subpar. 2 of par. 21 of Ruling No. 52).

Despite the efforts of the Supreme Court, the President's instructions and the activities of the Council on Physical Culture, by the time of the adoption of the Federal Law No. 382-FZ on Arbitration (arbitral proceedings) in the Russian Federation (henceforth the Law on Arbitration) dated 29 December 2015, the issue of labor disputes involving athletes and coaches had not been resolved. The Law on Arbitration was limited only to a reference to the regulatory act entitled "The procedure for considering disputes in the field of professional sport and sport of records is established by the federal law" (part 6 of Art. 1 of the Law on Arbitration) that did not exist at that time. Such an act was adopted almost a year later: chapter 5.1 entitled "Consideration of disputes in professional sport and sport of records" was introduced into the Law on Sports (by the Federal Law No. 396-FZ amending the Federal Law on Physical Culture and Sports in the Russian Federation with regard to the regulation of sport of records and professional sport dated 22 November 2016). As the members of the Presidential Council for the Development of Physical Culture and Sports expected, individual labor disputes arising in professional sport and sport of records are now transferred to the jurisdiction of a permanent arbitration institution (par. 1 of Art. 36.2). However, this rule was in direct contradiction with the LC of the RF in force. As a result, work on the issue's legal settlement could not be completed.

The situation fundamentally changed by the spring of 2019. On March 27, during the next meeting of the Presidential Council for the Development of Physical Culture and Sports, V. S. Lisin, the President of the independent non-profit organization "Sports Arbitration Chamber", asked President Putin to provide instructions to amend the Labor and Civil Procedure Codes in order to resolve labor disputes in Russia, and not in the Sports Arbitration in Brussels. Lisin stressed that, in fact, the amendments have already been developed. P. A. Kolobkov, then Minister of Sports, also spoke about the final stage of the launch of national sports arbitration while protecting the labor rights of athletes and coaches[11]. Less than a month later, on April 25, 2019, the Ministry of Justice of Russia is-

[11] "The Meeting of the Council for the Development of Physical Culture and Sports". 2019. *Prezident Rossii.* Accessed December 20, 2020. http://kremlin.ru/events/president/news/60152. (In Russian)

sued an ordinance granting the Sports Arbitration Chamber (INPO) the right to exercise the functions of a permanent arbitration institution[12].

On April 30, 2019, the President signed the instruction for the Government of the Russian Federation "to develop and submit to the State Duma of the Federal Assembly of the Russian Federation draft federal laws for the improvement of legislation on arbitration (arbitral proceedings) in professional sport and sport of records, including foreseeing, in civil procedure and labor legislation, the possibilities of transferring individual labor disputes of athletes and coaches to the arbitration court formed with due account for legislative requirements in the field of physical culture and sports"[13]. On March 11, 2020 the draft laws were registered and sent to the Chairman of the State Duma.

With such a long backstory, the question of adopting a package of amendments was virtually clear. Nevertheless, in addition to referring to the President's instructions, four arguments in favor of amendments can be found in the documents of the State Duma. The first argument can be found in the findings of the Committee on Physical Culture, Sports, Tourism and Youth Affairs, which highlighted the need to eliminate conflicts between the Russian Federation's regulatory acts, namely between the Labor Code of the Russian Federation and the Law on Sports. Three other arguments were voiced in the address of V. G. Gazzaev, the Chairman of the State Duma Committee on Issues of Nationalities, international master of sports, Merited Coach of Russia — "The unconditional advantages of such changes are the following: the first one is the speed of consideration of issues; the second is the consideration of the dispute by arbitrators with knowledge of sports specifics, unlike courts of general jurisdiction; the third is a reduction in the costs of the parties to the dispute"[14]. Obviously, the first argument of increasing the speed of consideration of issues is associated with the second and third ones. The second argument has already been discussed in this article. The third argument refers to the practice of dispute resolution at the Court of Arbitration for Sport (henceforth CAS) in Lausanne. According to Gazzaev, the costs of considering the case in the CAS range from 10 000 to 15 000 CHF, according to other sources from 20 000 to 40 000 CHF (Dzichkovskii 2020). Under the Regulation on Arbitration Fees and Expenses of the INPO "Sports Arbitration Chamber", the arbitration fee varies from 20 000 RUB for the claims of an intangible nature and from 30 000 RUB for others. Moreover, before filing a claim, it is necessary to pay a registration fee of 3000 RUB[15], which, obviously, increases access to justice compared to the CAS.

Whether it will be possible to achieve the goal of improving regulation effectiveness practically, only time will tell. At the time of preparing this article for publication, the new arbitral tribunal has not yet commenced its work.

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[12] Ordinance No. 520-r of the Ministry of Justice of Russia dated 25 April 2019 granting a non-profit organization that serves as a platform for establishing a permanent arbitration institution the right to perform the functions of a permanent arbitration institution. Accessed December 20, 2020. http://sportarbitrage.ru/sport-arb/sportivnaya-arbitrazhnaya. (In Russian)

[13] Pr-759, par.1a-1. List of instructions following the meeting of the Council for the Development of Physical Culture and Sports. Accessed December 20, 2020. http://www.kremlin.ru/acts/assignments/orders/60467. (In Russian)

[14] Legislative support system. 2020. "Draft law No. 918105-7". Accessed December 20, 2020. https://sozd.duma.gov.ru/bill/918105-7. (In Russian)

[15] Regulation on Arbitration Fees and Expenses. Accessed December 20, 2020. http://sportarbitrage.ru/arbitrazh/rules. (In Russian)

3. Conclusions

The possibility of improving the effectiveness of legal regulation in sports through the institution of co-regulation remains debatable. In international practice, the complete independence of sports from state regulation is continuously asserted. The International Olympic Committee and international sports federations proclaim self-regulation as a fundamental principle. Thus, the Olympic Charter states that the International Olympic Committee has the supreme authority and leadership over the Olympic Movement[16]. The FIFA Charter stresses that the state should be deprived of any influence on national football associations[17], etc.

International sports organizations not only declare self-governance, but also monitor compliance with this principle. The incident with the Indian Olympic Association (henceforth IOA) was a textbook example, but by no means the only one. The association was sanctioned for state interference in his affairs: athletes from India took part in the Winter Olympic Games opening ceremony in Sochi under the Olympic flag without using any state symbols. The conflict between India and the IOC has matured for a long time, but it escalated after Suresh Kalmadi, the President of the IOA, was arrested on charges of conspiracy, forgery and corruption. The investigation found that Kalmadi's actions in organizing the Commonwealth Games in 2010 resulted in a loss of 900 million INR from the state budget (almost 20 million USD) (Kumar 2011). The controversy reached its climax when the Indian government tried to prevent the liberated Kalmadi from running for the President of the IOA for a second time. "The Executive Board decided to suspend the IOA due to its failure to comply with the Olympic charter and its statute, failure to inform the IOC in a timely manner, and as a protective measure to government interference in the election process", said the IOC (Duerdon 2012). However, the international organization itself quickly proposed a solution to the problem: it suggested introducing in the Charter of the IOA a ban on the persons convicted or accused of criminal offences to run for office in the IOA (Ians 2013). This solution fully addressed India's position, but formally the IOC had final say. As a result, Indian athletes received the right to compete under the state flag already at the Sochi Olympics closing ceremony[18].

However, even the degree of self-regulation that the Olympic movement has demonstrated in this conflict is not always achieved practically. The International Olympic Committee itself, like the CAS, is created to operate under Swiss law, and decisions of sports arbitration can be appealed in a Swiss court. The case of Jean-Marc Bosman, a football player who lost his job as a result of the functioning of self-regulation mechanisms in the football industry, has become the leading precedent of the Court of Justice of the European Union (Derlen, Lindholm 2014), although the standpoint on the application of the rules governing economic activities in sports by international and national courts was formulated back in 1974 in the case entitled "Walrave & L. J. N. Koch v. Association Union Cycliste Internationale, Koninklijke Nederlandsche Wielren Unie & Federación Española Ciclismo" (Vostrikova 2011, 75). In 2020 alone, the Court of Justice of the European Un-

[16] Art. 1 of the Olympic Charter. Accessed December 20, 2020. https://www.olympic.org/search?q=charter.

[17] Art. 20 of the FIFA Statutes. Accessed December 20, 2020. https://www.fifa.com/who-we-are/official-documents/ fifa-organisation.

[18] "IOC Executive Board lifts suspension of NOC of India". 2014. *IOC.* Accessed December 20, 2020. https://www.olympic.org/news/ioc-executive-board-lifts-suspension-of-noc-of-india.

ion considered 67 cases that were, in one way or another, related to sports[19]. Moreover, there are cases where national courts have provided an opportunity for a person not to execute international sports arbitration decisions (Dzichkovskii 2020). Quite rightly German researchers not the following: "Against the notion that the state has no role in purely private initiatives, we hold the view that there is always some kind of public 'shadowing' because the state or intergovernmental authorities can — at least theoretically — intervene and regulate. In that sense, we understand public authority exercised by private actors as *regulated* self-regulation because it takes place under the shadow of hierarchy" (Coni-Zimmer, Wolf, Collin 2017, 2).

Where sports organizations "come out of this shadow" one can observe not only the pros associated with independence, but also the cons caused by the dominant position and irresponsibility (Iurlov 2018) as well as the weakness of the mechanisms of coercion of individuals (such as fans, sports agents and others) (Wolf 2017). There are probably no fewer merits of self-government than flaws, if not more, but it is also wrong to turn a blind eye to the weaknesses of state non-intervention. S. A. Iurlov rightly notes that some mainstream phenomena in modern sports (such as the application of the principle of collective responsibility, the arbitrary "abolition" of the principle of presumption of innocence in cases of anti-doping violations and others) are contrary not only to the law but also to common sense (Iurlov 2018, 94). Iurlov's list can be extended with the disregard of the presumption of innocence in cases of anti-doping violations and in some others, the use of evidence unacceptable as a matter of law (Jun et al. 2019), the known inequality of the parties to the dispute due to the already indicated costs of the proceedings in the CAS (Polukhina 2018, 150), the practice of double prosecution and violations of the principle of proportionality of the sanction to the committed offence (Vasilyev, Sheveleva, Vetrova 2020), etc.

Finally, the principle of combining state regulation and self-regulation of relations in the field of physical culture and sports has a high degree of uncertainty (Melnik 2012; Iurlov 2018). "The principle of formal certainty of law implying lucidity and clarity of legislative imperatives is an essential element of the rule of law and serves as a necessary guarantee of effective protection against arbitrary prosecution, conviction and punishment both in legislation and its enforcement"[20]. Thus, the reference to a combination of state regulation and self-regulation in the Law on Sports leads to a decrease in legal regulation effectiveness.

We believe that it is high time to include the term of co-regulation in Russian legislation. Paragraph 3 of Article 3 of Federal Law No. 329-FZ on Physical Culture and Sports in the Russian Federation dated 4 December 2007 should be formulated as follows: "co-regulation of relations in the field of physical culture and sports consisting of the regulatory activities of entities of physical culture and sports for the purposes established by this Federal Law and within the limits defined by international agreements of the Russian Federation, this Federal Law and other regulatory legal acts adopted thereunder". Further,

[19] "Jurisprudence. Liste des résultats par affaire". *InfoCuria.* Accessed December 20, 2020. http://curia.europa.eu/juris.

[20] Ruling of the Constitutional Court of the Russian Federation of 27 May 2008 No. 8-П in the case concerning the review of constitutionality of the provisions of Section 1, Article 188 of the Criminal Code of the Russian Federation, in connection with a complaint of M. A. Aslamazyan. Accessed December 20, 2020. http://www.ksrf.ru/en/Decision/Judgments/Documents/2008%20May%2027%208-P.pdf. (In Russian)

it will be necessary to specify this principle when establishing the powers of sports entities. The Indian Olympic Association's case demonstrates that reasonable diplomatic efforts can help avoid conflict with international sports organizations.

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