Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 22:41:19

Articles Studia Iuridica Lublinensia vol. XXVII, 3, 2018
DOI: 10.17951/sil.2018.27.3.215-227

Jakub Kosowski
Maria Curie-Skłodowska University in Lublin
ORCiD: 0000-0001-6888-5771
jakub.kosowski@poczta.umcs.lublin.pl

Mediation in Sports-Related Disputes

Mediacja w sporach sportowych

SUMMARY

The article analyzes the possibilities of conducting mediation in sports disputes. The author cites solutions relating to various types of disputes, including financial, disciplinary, strictly sports-related, administrative and inter-institutional. As part of the conclusions, the author lists practical and theoretical aspects of conducting mediation in disputes, in which the use of mediation is required or promoted by the procedural law, and in disputes, where the use of mediation results or may result from internal regulations of sports associations.

Keywords: mediation; sports disputes; sports law; sports associations; disciplinary proceedings

INTRODUCTION

The very term 'mediation' is derived from the Latin verb *mediare* that may be translated as "to be in the middle", and *mediatio* means "agency, middlemanship". On the other hand, some scholars derive the term from Greek *medos*, meaning "intermediary, neutral and not attributable to any of the parties"[1]. A. Korybski defines mediation as a special decision-making process to resolve a dispute that

[1] More on the topic in M. Pazdan, *O mediacji i projekcie jej unormowania w Polsce*, „Rejent" 2004, nr 2, p. 13; J. Staroń, *Funkcjonowanie mediacji cywilnej w Polsce*, [in:] *Arbitraż i mediacja. Aktualne problemy teorii i praktyki funkcjonowania sądów polubownych i ośrodków mediacyjnych*, red. J. Olszewski, Rzeszów 2009, p. 364.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 22:41:19

undermines the aspirations and interests of the parties and expectations of the social environment[2].

The literature on the subject lists types of mediation classified according to the form of mediation procedure, mediator's organizational status, and according to the mediation-initiating entity. The first type of mediation includes direct mediation (face-to-face mediation, joint session) where all parties to the dispute may participate, and indirect mediation (caucus, private/separate meetings) for individual sessions. Due to the degree of organization of the third party (mediator), the following types may be distinguished: institutional mediation (where the mediator is a permanent, organized, specialized entity providing mediation services on a regular basis) and so-called *ad hoc* mediation (the mediator plays his or her role incidentally). The type of mediation-initiating entity determines the distinction between: mediation on the court's initiative (mediation proceedings are initiated by the court relevant for the case which takes the decision on instructing the parties to apply this form of dispute resolution), contractual mediation (based on a prior mediation contract concluded by the parties to the dispute) and mediation requested by a party (initiation of mediation proceedings results from submission of a request for mediation by one of the parties to the dispute)[3].

For the sake of further analysis, it should be noted that three basic mediation strategies have been defined in the literature due to the role of the third-party entity (mediator) and the purpose of his or her intervention: facilitative mediation, in which the mediator's role is only to moderate the course of mediation, in particular by assisting the parties in reaching a mutually satisfactory resolution of the dispute; evaluative mediation, in which the mediator has the opportunity to actively intervene in the dispute, participates in the preparation of the resolution on the merits of the dispute, advises, presents his or her opinion on arguments of the parties; transformative mediation, where activities taken by the mediator are to help the parties understand the opponent's arguments, and this strategy is intended to implement the principle of self-determination of the parties. It is also worth mentioning so-called narrative mediation, wherein the mediator supports the parties in creating their own vision of the controversy, which in turn leads to better communication and resolution of future conflicts; and humanistic mediation, wherein the mediator acts as a therapist – the parties share their emotions and observations related to the object of dispute. This brief presentation of types/strategies presented here are of

[2] A. Korybski, *Alternatywne rozwiązywanie sporów w USA*, Lublin 1993, p. 115.

[3] More on the topic in R. Cebula, *Mediator w polskim prawie cywilnym*, „Mediator" 2005, nr 34, p. 28; R. Morek, *Mediacja i arbitraż. Komentarz*, Warszawa 2006, p. 42; A. Zienkiewicz, *Mediator w sprawach cywilnych*, „Rejent" 2005, nr 5, p. 138–139; *idem*, *Studium mediacji. Od teorii ku praktyce*, Warszawa 2007, p. 50; A. Korybski, M. Myślińska, *Słuszność postępowania mediacyjnego (w świetle teorii dyskursu)*, „Studia Iuridica Lublinensia" 2011, t. 15, p. 63.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 22:41:19

a model nature, as each actual mediation can also be based on elements of either of these types combined[4].

At this point, it is also worth detailing the key principles of mediation proceedings, as defined by A. Korybski and M. Myślińska[5]. These authors have assumed that procedural principles of mediation proceedings typical for this form of dispute resolution include the following: the principles of voluntary access, acceptability, conflict autonomy, procedural flexibility, confidentiality, and also those referring directly to the role/position of an external entity – the mediator, i.e. the principles of mediator's impartiality, neutrality, independence and professionalism.

The principle of voluntary access is manifested in the lack of compulsory nature of mediation activities, thus giving the parties the possibility to withdraw from mediation at every stage thereof[6]. The principle of acceptability entails the need that a particular mediator must be appointed by consent of both parties[7]. It should be noted that the mediator may be selected from among mediators registered on a specific list (limited selection) or freely from among any candidates (unlimited selection). The literature notes that the principle of conflict autonomy is manifested in the parties' choice of the procedural and substantive framework of mediation[8]. This is of crucial importance in the field of sports disputes, wherein internal rules of Polish sports associations play a crucial role. On the other hand, the above-mentioned flexibility (deformalizing) of the procedure is manifested, i.a., in making the mediation process dependent on both the parties to the dispute and the mediator, with minimal interference by the legislature[9]. The principle of confidentiality of mediation is to provide the mediating parties with comfort and opportunity of free speech, for example by obligating the mediator not to disclose the content of statements made during mediation to third-parties[10].

The mediator's status during the entire mediation process is directly related to the principles of impartiality, neutrality and independence. The essence of the principle of impartiality, which reflects the mediator's attitude towards participants of the discourse, boils down to the need of keeping an objective attitude towards

---

[4] E. Gmurzyńska, *Rodzaje mediacji*, [in:] *Mediacje. Teoria i praktyka*, red. E. Gmurzyńska, R. Morek, Warszawa 2009, pp. 109–122; A. Korybski, M. Myślińska, *op. cit.*, p. 63.

[5] A. Korybski, M. Myślińska, *op. cit.*, pp. 63–65.

[6] See e.g. R. Cebula, *op. cit.*, p. 26; R. Morek, *op. cit.*, p. 40; A. Korybski, M. Myślińska, *op. cit.*, p. 64.

[7] P. Waszkiewicz, *Zasady mediacji*, [in:] *Mediacje. Teoria…*, p. 96; A. Korybski, M. Myślińska, *op. cit.*, p. 64.

[8] A. Kalisz, A. Zienkiewicz, *Mediacja sądowa i pozasądowa*, Warszawa 2009, p. 61; A. Korybski, M. Myślińska, *op. cit.*, p. 64.

[9] A. Kalisz, A. Zienkiewicz, *Mediacja sądowa i pozasądowa*, p. 61; A. Korybski, M. Myślińska, *op. cit.*, p. 64.

[10] P. Waszkiewicz, *op. cit.*, p. 96; A. Korybski, M. Myślińska, *op. cit.*, p. 64.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 22:41:19

the parties and the object of mediation[11]. Neutrality is manifested, i.a., in the absence of mediator's interest in the very content of the consensus[12] and in the fact that the mediator refrains from influencing this consensus[13]. The independence of the mediator is essentially based on the requirement to avoid situations that lead to a conflict of interest[14].

Mediator's professionalism is considered in relation to the competence and skills of a third-party entity in relation to the participants of mediation discourse[15]. Beside the competence acquired through specialized courses and trainings, the skills necessary to conduct mediation include i.a. the ability to build one's own authority, the ability of interactive listening, self-restraint in the formulation of opinions and assessments, ability to properly moderate the dialogue[16]. Furthermore, the personal qualities which facilitate the role of mediator can include, among other things: communication skills, creativity, discipline, perseverance, respect for the parties, honesty, and optimism[17].

The above general remarks serve as an introduction to further analysis. As the scope of this study is quite narrow, any other in-depth analysis regarding the nature of mediation, its principles and divisions are to be found in the abundant literature on the subject[18]. Further, in the article, will be indicated the possibilities and reasons for conducting particular types and strategies of mediation in particular types of sports-related disputes.

TYPES OF SPORTS-RELATED DISPUTES

The exhaustive, in my opinion, classification of sports-related disputes is proposed by A. Wach in monograph referring to alternative forms of resolving sports-related disputes. This division distinguishes the territorial criterion (international and domestic disputes), the substantive criterion of the case ('political'

[11] R. Morek, *op. cit.*, pp. 56–58; A. Korybski, M. Myślińska, *op. cit.*, p. 64.

[12] P. Waszkiewicz, *op. cit.*, p. 96; A. Korybski, M. Myślińska, *op. cit.*, p. 64.

[13] P. Waszkiewicz, *op. cit.*, p. 96; G. Skrzypczak, *Prawnik a sposoby rozwiązywania sporów*, „Monitor Prawniczy" 2004, nr 4, p. 198; A. Korybski, M. Myślińska, *op. cit.*, p. 64.

[14] R. Morek, *op. cit.*, pp. 56–58; A. Korybski, M. Myślińska, *op. cit.*, p. 64.

[15] More on the topic in: A. Zienkiewicz, *Mediator…*, p. 142.

[16] See e.g. E. Bieńkowska, *Nowy zawód – mediator sądowy*, „Jurysta" 1998, nr 3–4, p. 10; E. Gmurzyńska, *Kierunki rozwoju mediacji sądowej w sprawach cywilnych w USA i w Europie*, „Europejski Przegląd Sądowy" 2006, nr 11, p. 22; A. Korybski, M. Myślińska, *op. cit.*, p. 65.

[17] A. Zienkiewicz, *Studium mediacji…*, p. 168.

[18] See e.g. A. Korybski, M. Myślińska, *op. cit.*, pp. 57–69; *Mediacje. Teoria…*; A. Kalisz, A. Zienkiewicz, *Mediacja sądowa i pozasądowa. Zarys wykładu*, Warszawa 2015; A. Jakubiak-Mirończuk, *Alternatywne a sądowe rozstrzyganie sporów sądowych*, Warszawa 2008; *Mediacja*, red. L. Mazowiecka, Warszawa 2009.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 22:41:19

and legal disputes), the criterion of character of the subject of dispute (property and non-property disputes), the criterion of autonomy of sports organizations (internal and external disputes), the criterion of the nature of legal relationship to be protected (civil-law disputes, disciplinary disputes, strictly sports-related disputes, administrative and financial disputes, inter-institutional disputes)[19].

The division according to the territorial criterion into international and domestic disputes is significant from the perspective of national jurisdiction and court jurisdiction over sports matters involving a foreign element. A. Wach points out that a given sports-related dispute is of international nature when the parties thereto are individuals (athletes, coaches, managers/activists) or legal persons that are subject to legal systems of different countries, and also where a case of domestic entities (residing or having the registered office in the territory of one country) is being examined by a foreign court of law or court of arbitration which applies foreign substantive law[20]. In this respect, it is worth noting the fact that international federations (e.g. football federations) take advantage of their privileged position by making the signing of contracts for holding a sports event conditional on the inclusion of a clause on submitting a dispute to the jurisdiction of Swiss courts, even though the event is to be held in another country. On the other hand, a national dispute relates to entities which are subject (due to nationality) to the legal system of their commonplace of residence or registered office, while the subject of dispute remains within the territory of a given country. As an example, A. Wach cites the case of a Polish sports club which terminated a contract with a foreign player who provided work within the territory of Poland and did not have a derogation clause in his contract[21].

The 'political' and legal disputes were distinguished by A. Wach in the context of merits of a given case. The cited author indicates that the danger of depriving the sports-related dispute of its legal nature arises when one of the parties starts challenging the legal effect of an applicable sport rule or an underlying legal norm and only invokes general principles of law, especially the principles of social coexistence and the social role of sport, what can entail, though not necessarily, the risk of politicizing the dispute[22]. In practice, one can also point to the challenging of decisions taken by the statutory bodies of sports organizations, e.g. from the perspective of course of a general meeting where there is a room for free interpretation (legal gaps in internal regulations).

The criterion of property and non-property disputes seems to be absolutely clear and relates to the subject of the dispute. Property disputes are usually contracted

[19] A. Wach, *Alternatywne formy rozwiązywania sporów sportowych*, Warszawa 2005, pp. 44–60.
[20] *Ibidem*, pp. 44–45.
[21] *Ibidem*, p. 45.
[22] *Ibidem*, p. 47.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 22:41:19

disputes, or disputes concerning late payment of amounts due. Non-property disputes relate to regulatory and disciplinary disputes. Although a financial penalty may be adjudicated also in disciplinary cases, such a penalty is of a completely different nature than that in property-related disputes.

A. Wach also introduces a division into internal and external disputes. The author himself draws attention to the conventional character of this division, which entails a need to formulate many hybrid solutions[23]. This is so because he proposed the criterion based on whether the opponents are located within the sports movement or outside, also taking into account the location of a neutral third-party appointed to solve the dispute[24].

The key division proposed by A. Wach, constituting the starting point for further analysis herein, is the division of sports disputes due to the nature of legal relationships to be protected. In this regard, the author distinguished the following: civil-law disputes, disciplinary disputes, strictly sports-related disputes, administrative and financial disputes, inter-institutional disputes[25].

Civil-law disputes, usually of a property nature, are of key significance in the era of commercialization of sports activities and considerable sponsorship funds. These may include the issues of the performance of athlete's contracts or sponsorship agreements. As rightly put by A. Wach[26], also litigation in non-property matters is growing, such as actions being brought for the protection of personal rights and those resulting from the exercise of non-property personal rights related to the athlete's membership in a sports club.

The second large group of disputes are disciplinary disputes. According to Article 13 Item 1 Point 2 of the Act of 25 June 2010 on sports[27], a Polish sports association has the exclusive right to establish and implement sporting, organizational and disciplinary rules in sport competitions organized by the association, with the exception of disciplinary rules on doping in sport. The restriction in the above-mentioned regulation is related to the adoption of a separate legal act on combating doping in sport, thus depriving Polish sports associations of the responsibility to adjudicate in this respect. It should also be noted that decisions taken in disciplinary disputes are not subject to supervision by the Minister of Sport and Tourism, and consequently, statutory supervision measures may not be applied to them. Disciplinary liability within a Polish sports association is to be pursued as set out in their disciplinary rules. Disciplinary liability is based on the principles of the right of defense and of two-instance procedure. The disciplinary rules must

[23] *Ibidem*, pp. 47–48.
[24] *Ibidem*.
[25] *Ibidem*, p. 52.
[26] *Ibidem*.
[27] Journal of Laws of 2017, Item 1463, consolidated text.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 22:41:19

specify in particular: entities covered by disciplinary liability, prohibited conduct covered by disciplinary liability, types of disciplinary penalties, disciplinary bodies and their responsibilities, and the procedure for disciplinary proceedings. The Act also sets out a list of examples of disciplinary penalties, applicable to association internal regulations. Disciplinary penalties may include, in particular: admonition, reprimand, suspension, temporary or lifetime disqualification, financial penalty, transfer of the team to a lower league class, deprivation of membership, expulsion from the association. This catalogue lists examples of penalties, which means that Polish sports associations may impose additional penalties according to their specificity of operation. Examples of penalties the statutory catalogue does not mention are penalties related to disciplinary offences committed by members of the public (e.g. an order to play a match without the audience). According to the current wording of the Act, a party to the proceedings may, after completing the association's internal procedure, file a petition with the Court of Arbitration at the Polish Olympic Committee, while the Arbitration Court's disciplinary ruling may be subject to a cassation appeal to the Supreme Court in case of gross breach of law or manifestly wrong ruling. This created a very complex, actually a four-instance, system for the settlement of disciplinary disputes.

Strictly sports-related disputes are covered by association regulations that are not disciplinary. Therefore, they are disputes regarding the rules of competition in a given sport. A. Wach pointed out that these matters resulted from the essence of a given field, discipline and competition, and are definitely rare[28]. Presumably, the author referred here to filling of so-called protests, which occurs more often in individual sports than in team sports. In individual sports as the example we can indicate athletics, in which a protest may be filed e.g. in a situation of failure to comply with the handoff zone in relay race, or pushing the athlete in an unlawful way in medium and long-distance runs. In team games, due to their character, a protest very rarely turns out to be effective, while particular referee's mistakes do not often provide a reason for positive consideration of the protest. For the purpose of this study, this group of sports-related disputes would also comprise other internal decisions of Polish sports associations, which are not included in other dispute groups. I am referring here to internal decisions of administrative nature, such as in the process of licensing a club or athlete, or administrative penalties for the breach of obligations related to the organization of a sporting event (such as failure to make video recording of the game, failure to send reports). This group is very diverse and only certain decisions of this type can be appealed against (e.g. to the appeal committee of a given Polish sports association or the *jury d'appel*). This diversity and lack of unequivocal regulations on appealing such decisions (in contrast to disciplinary decisions, or civil-law relationships) raise a lot of doubts

[28] A. Wach, *op. cit.*, p. 53.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 22:41:19

among athletes who deem themselves 'aggrieved' by decisions of a Polish sports association. As an example, the management board of a Polish sports association can take decisions on the composition of the national team. The Supreme Court rejected the cassation appeal in the case in question, pointing that pursuant to currently applicable Article 45d Item 2 of the Act on sports, a cassation appeal to the Supreme Court may only be filed against a disciplinary ruling of the Court of Arbitration in the case of gross breach of law or manifestly wrong ruling[29]. The Supreme Court rightly refrained from qualifying the decision of the management board of a Polish sports association to appoint the national team as a disciplinary ruling.

Administrative and financial disputes can be included in the group of disputes with external entities. This applies to the relationship between a sports entity and the public administration body issuing the administrative decision. Public administration bodies which issue administrative decisions include, for example, local government bodies which decide about the award of sports scholarships to be granted under Article 31 of the Act on sports, or governors of districts who issue decisions on the registration of a school student sports club or a sports club, the statutes of which do not provide for conducting business activity (Article 4 of the Act on sports). These disputes look in a similar manner in the context of financial bodies of public administrations (e.g. with regard to tax liabilities). The Local Government Courts of Appeal and administrative courts shall be entitled to settle the aforementioned disputes.

Inter-institutional disputes, as pointed out by A. Wach[30], arise primarily in various relations between sports organizations that have their own legal systems and do not recognize, often mutually, decisions taken outside their jurisdiction, such as professional leagues in the US or Canada which remain completely outside the powers of world federations. This may be well illustrated by the example of the NBA and NFL professional leagues remaining outside the system of the World Anti-Doping Code.

POSSIBILITY OF CONDUCTING MEDIATION IN PARTICULAR TYPES OF SPORTS-RELATED DISPUTES

Taking into consideration the types of sports disputes mentioned-above, and especially their division due to the nature of legal relationships subject to protection, it is necessary to indicate the potential possibilities of using mediation in resolving disputes. It is reasonable to introduce two groups of disputes: those in which the use of mediation results from the provisions of legislation regulating the procedure, and those in which the use of mediation results or may result from internal regulations.

[29] Decision of the Supreme Court, Chamber of Labour, Social Security and Public Affairs, of 22 November 2016, III PO 5/16, Legalis No. 1537696.

[30] A. Wach, *op. cit.*, p. 58.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 22:41:19

As part of the first group, the following may be identified: disputes that are resolved in accordance with the provisions of the Administrative Procedure Code, the Act – Law on proceeding before administrative courts, the Code of Civil Procedure, and the Code of Criminal Procedure.

Since 1 June 2017, the Administrative Procedure Code contains Chapter 5a, which specifically addresses the matter of mediation. This is the first such comprehensive regulation governing mediation matters in the administrative procedure. However, it should be pointed out that according to Article 96a § 1 of the Administrative Procedure Code, mediation may be conducted in the course of the proceedings if the nature of the case so permits. This provision means that the use of mediation will not be possible in some cases of sports-related disputes. This category of cases may comprise, for example, registration of a school student sports club in the records kept by the local district governor (*starosta powiatowy*). In relation to this kind of cases, a regulation has been introduced into the Administrative Procedure Code which certainly cannot be considered a form of mediation but will be very helpful for a party. According to Article 79a § 1 of the Administrative Procedure Code, a public administration body, in the proceedings initiated at the request of a party, when informing about the right of commenting on the evidence and materials collected and submitted claims, is obliged to specify the conditions dependent on the party that were not met or demonstrated as of the date of sending the notice, which may result in the decision contrary to the party's request. As regards proceedings before administrative courts, similar regulations are included in Article 115 ff. of the Act of 20 August 2002 – Law on proceeding before administrative courts[31]. According to these provisions, a mediation procedure may be carried out at the request of the appellant or the administrative body filed before the hearing is set, with the purpose to clarify and consider the factual and legal circumstances of the case and to agree by the parties upon the manner of settling it under applicable law.

Civil law disputes heard by civil courts may be referred to mediation under the Code of Civil Procedure. According to Article 183[1] of the Civil Procedure Code, mediation in civil proceedings is voluntary and may be based on an agreement between the parties or be a court-ordered mediation. Irrespective of the form in which the case is referred to the mediator, the very essence of mediation is that the parties must express their will to conduct it. Otherwise, mediation will not bring the results as intended. Detailed issues related to mediation in civil procedure are set out in Part II, Chapter II, Section 1 of the Code of Civil Procedure. However, it should be noted in this respect that Polish sports associations are increasingly recommending that arbitration clauses be incorporated in athlete's contracts, with international or national courts of arbitration specified. This method allows avoiding lengthy and costly trial, and thus makes it possible to resolve the dispute earlier.

[31] Journal of Laws of 2017, Item 1369, consolidated text.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 22:41:19

T. Szurski[32] lists such benefits of arbitration as less formal character, lower costs of arbitration procedure as compared to state judicial procedures, less time consumed, the parties' influence on the choice of arbitrators who are specialists in a given case, and the use of a procedure allowing them to settle the case in a confidential and discreet manner. Therefore, a question arises about the possibility of using mediation in arbitration proceedings. In my opinion, the choice of arbitration as a means of dispute resolution excludes the option of applying mediation. From the theoretical viewpoint, such a possibility should be allowed for the procedure applied, for example, by an arbitration court appointed by a Polish sports association. Establishing a regulation in this area would result in the inclusion of mediation as a way of resolving the dispute before being decided by the arbitration court. This solution could lead to the conclusion of an out-of-court settlement, and thus the proceedings before the arbitration court would be groundless. However, the issue of fixed fees arises, which should be paid in along with the claim being filed with the court of arbitration. Thus, the above solution seems impractical, so the attention should be paid to the need of incorporating mediation clauses in contracts instead of or beside arbitration clauses. In my opinion, the concept of using mediation clauses beside arbitration clauses is possible when appropriate gradation is applied. Mediation clause should be defined as a first-choice solution, while arbitration clause should be indicated as the second one in the event of disagreement over the former. A shortcoming of this solution is the risk of prolongation of the proceedings and increase in costs when the settlement is not signed during the mediation. In such situation the parties will have to bear both the costs of mediation and of the successive arbitration. The use of mediation clauses instead of arbitration clauses does not seem to be a good solution since in the absence of agreement reached during mediation (failure to sign a settlement) the case would be brought before court. In this respect, arbitration provides a more functional solution, as it is concluded with a ruling – regardless of the will of the parties and statements made by them during the arbitration procedure.

Disputes between entities operating in the area of sport may also take the form of criminal cases. This applies to penalization of doping in sport, where the injured person would be a juvenile athlete, while the suspect would be a member of the training staff[33]. Regardless of the disciplinary case under examination, the judge or court clerk, and in the preparatory proceedings the prosecutor or other body conducting the proceedings as part of the criminal case, may refer the case, on the initiative or with the consent of the defendant and the injured person, to the authorised institution

[32] T. Szurski, *Arbitraż – skuteczny sposób likwidowania sporu*, „Monitor Prawniczy" 1998, nr 12, pp. 469–470. Likewise: A. Wach, *op. cit.*, pp. 150–151.

[33] Penal provisions on doping are currently contained in the Act of 21 April 2017 on combating doping in sports (Journal of Laws of 2017, Item 1051).

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 22:41:19

or person in order to conduct mediation proceedings between the injured person and the defendant, of which they are instructed when being informed of the purposes and rules of mediation (Article 23a of the Code of Criminal Procedure).

The second group involves disputes wherein the use of mediation does or can result from internal regulations of an association or a club. Therefore, this applies to disputes that are neither subject to examination by judicial authorities nor covered by arbitration clauses incorporated in athlete's contracts or other civil law agreements. This issue can be considered both in the context of disciplinary matters and strictly sports-related disputes.

Regarding disciplinary matters, one should consider the reasonableness of introducing mediation especially due to the need to quickly resolve the case, before the next match of a player risking disqualification (e.g. as a result of insulting another player during a match). Mediation would then be possible, but due to logistical issues it would have to be carried out, for example, in the form of a video-conference. In my opinion, mediation would not be applicable to disciplinary cases where no injured person is involved, such as cases for throwing an object onto the pitch. It is so, because it would be difficult to deem the organizer of the competition an injured person. In this situation, as it usually happens in penal proceedings, it is the sports club who would be deemed injured party, since it suffers a disciplinary penalty for the conduct of members of the public. The adoption of the above position, and thus the recognition of mediation as acceptable, would entail the necessity of introducing appropriate provisions in association regulations. It would also be crucial to specify a list of mediators who could conduct such cases characterized by specific features.

The possibility of using mediation should also be pointed out in the settlement of strictly sports-related disputes, i.e. those which cover decisions taken by association governing bodies. In a considerable number of these cases, internal regulations introduce a two-instance procedure, and thus the right of appeal to the appeal committee, audit committee, general meeting or another governing body of a Polish sports association. Then there is a room for mediation. As mentioned above, for disciplinary cases it will be necessary to indicate this possibility in the association internal regulations, including specification of the list of mediators who will be entitled to conduct the mediation. The analysis of operations of sports organizations in recent years leads to the conclusion that the awareness of sports competition participants is growing. Sports clubs are also becoming more and more professional and use legal services on a permanent basis. Apart from this, there are important provisions of the generally applicable law, which grant these clubs many rights in a dispute with a Polish sports association. Therefore, the current situation is incomparable even with the 1990s, when relations between a club and a sports association looked like the proverbial duel between David and Goliath. This legal awareness, combined with the expertise of legal professionals, increasingly leads to challenging the decisions of Polish sports associations, especially in the context of failure to observe the procedure defined by

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 22:41:19

association internal regulations, where often members of the Polish sports association, including its governing bodies, sit in the appeal bodies. This results either in appeals to the Ministry of Sport and Tourism or in bringing actions before civil courts in which the damage is claimed to have been caused as a result of the decision of the Polish sports association. We also deal more and more with increasing media coverage of disputes involving the most popular players or clubs. Neither does this positively affect the image of a given Polish sports association nor helps quickly resolve the dispute. Mediation is an attempt to resolve the dispute quickly and by an impartial mediator, not by parties directly involved in the dispute (e.g. members of governing bodies of a given Polish sports association).

CONCLUSIONS

Various alternative forms of dispute resolution are very often employed in sports-related disputes. The above analysis leads to the conclusion that arbitration is a very frequently used form of dispute resolution. It should also be mentioned that there are also consensual ways to conclude disciplinary proceedings (e.g. voluntary submission to punishment). Mediation plays an important role among these forms. Undoubtedly, the benefits of mediation include the adjustment of the mediation procedure to the nature of the controversy, promptness of proceedings, or seeking mutual concessions regarding the dispute at issue[34]. At this point, attention should also be paid to Recommendation Rec(2002)10 of the Committee of Ministers of the Council of Europe for of the Member States on mediation in civil matters of 18 September 2002, which provides for the promotion and facilitation of access to mediation in accordance with national laws. As noted above, all judicial procedures contain provisions related to mediation. We can distinguish a certain group of situations in which the results of mediation proceedings can be used in association internal proceedings (e.g. an analysis of a settlement between the injured person and the suspect concluded in disciplinary proceedings).

I also pointed herein to the possibility of conducting mediation also for disputes being heard by the governing bodies of Polish sports associations, but it is important in this respect that mediation procedures be incorporated in the association's internal regulations. It is, however, crucial to correctly define wording of these provisions, in order to avoid errors in the regulation of the structure of mediation procedures, as noted in the literature[35].

[34] More on the topic in: A. Wach, *op. cit.*, pp. 250–251 along with the foreign literature cited therein.

[35] More on the sports mediation activities performed by TAS in Lausanne see, e.g., *ibidem*, pp. 258–266.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 22:41:19

REFERENCES

Bieńkowska E., *Nowy zawód – mediator sądowy*, „Jurysta" 1998, nr 3–4.
Cebula R., *Mediator w polskim prawie cywilnym*, „Mediator" 2005, nr 34.
Gmurzyńska E., *Kierunki rozwoju mediacji sądowej w sprawach cywilnych w USA i w Europie*, „Europejski Przegląd Sądowy" 2006, nr 11.
Gmurzyńska E., *Rodzaje mediacji*, [in:] *Mediacje. Teoria i praktyka*, red. E. Gmurzyńska, R. Morek, Warszawa 2009.
Jakubiak-Mirończuk A., *Alternatywne a sądowe rozstrzyganie sporów sądowych*, Warszawa 2008.
Kalisz A., Zienkiewicz A., *Mediacja sądowa i pozasądowa*, Warszawa 2009.
Kalisz A., Zienkiewicz A., *Mediacja sądowa i pozasądowa. Zarys wykładu*, Warszawa 2015.
Korybski A., *Alternatywne rozwiązywanie sporów w USA*, Lublin 1993.
Korybski A., Myślińska M., *Słuszność postępowania mediacyjnego (w świetle teorii dyskursu)*, „Studia Iuridica Lublinensia" 2011, t. 15.
Mediacja, red. L. Mazowiecka, Warszawa 2009.
Mediacje. Teoria i praktyka, red. E. Gmurzyńska, R. Morek, Warszawa 2009.
Morek R., *Mediacja i arbitraż. Komentarz*, Warszawa 2006.
Pazdan M., *O mediacji i projekcie jej unormowania w Polsce*, „Rejent" 2004, nr 2.
Skrzypczak G., *Prawnik a sposoby rozwiązywania sporów*, „Monitor Prawniczy" 2004, nr 4.
Staroń J., *Funkcjonowanie mediacji cywilnej w Polsce*, [in:] *Arbitraż i mediacja. Aktualne problemy teorii i praktyki funkcjonowania sądów polubownych i ośrodków mediacyjnych*, red. J. Olszewski, Rzeszów 2009.
Szurski T., *Arbitraż – skuteczny sposób likwidowania sporu*, „Monitor Prawniczy" 1998, nr 12.
The Act of 20 August 2002 on the Law on proceeding before administrative courts (Journal of Laws of 2017, Item 1369, consolidated text).
The Act of 25 June 2010 on sports (Journal of Laws of 2017, Item 1463, consolidated text).
The Act of 21 April 2017 on combating doping in sports (Journal of Laws of 2017, Item 1051).
The Decision of the Supreme Court, Chamber of Labour, Social Security and Public Affairs, of 22 November 2016, III PO 5/16, Legalis No. 1537696.
Wach A., *Alternatywne formy rozwiązywania sporów sportowych*, Warszawa 2005.
Waszkiewicz P., *Zasady mediacji*, [in:] *Mediacje. Teoria i praktyka*, red. E. Gmurzyńska, R. Morek, Warszawa 2009.
Zienkiewicz A., *Mediator w sprawach cywilnych*, „Rejent" 2005, nr 5.
Zienkiewicz A., *Studium mediacji. Od teorii ku praktyce*, Warszawa 2007.

STRESZCZENIE

W artykule dokonano analizy możliwości prowadzenia mediacji w sporach sportowych. Autor przytoczył rozwiązania odnoszące się do różnych rodzajów sporów, w tym majątkowych, dyscyplinarnych, *stricte* sportowych, administracyjnych i międzyinstytucjonalnych. W ramach wniosków wskazano na praktyczne i teoretyczne aspekty prowadzenia mediacji w sporach, w których stosowanie mediacji wynika z przepisów ustaw regulujących tryb postępowania oraz w sporach, gdzie stosowanie mediacji wynika lub może wynikać z regulacji wewnątrzzwiązkowych.

Słowa kluczowe: mediacja; spory sportowe; prawo sportowe; związki sportowe; postępowanie dyscyplinarne