MEDIATION IN SPORTS LITIGATIONS WITH CRIMINAL NATURE IN THE NEW REGULATIONS OF THE LAW OF MEDIATION AND THE ROMANIAN CRIMINAL PROCEDURE CODE

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Abstract: *In Romania, the settlement of conflicts related to sport –namely the conflicts that violate the norms of common law, the regulations of "the sports field" as well as those elaborated by the sports national and international institutions and organizations– is becoming more and more a specialized object of particular interest for the jurists, be they magistrates, lawyers or mediators. A challenge in this respect is the recognition of Sports Law as a distinct branch of Law as well as a field of study that lies where the sciences of Law and Sport meet – a fact reinforced by the EU policy on sport. Thus, the law courts and the disciplinary committees of the sports federations are compelled to coordinate their regulations with the White Paper on Sport which entered into force on December 1, 2009. The Ethics Commission and the Juridical Commission of the Romanian Olympic and Sports Committee, as well as the Romanian National Commission of Sports, in turn, must change their statute and procedures in accordance with the current provisions of the International Council of Arbitration in Sport (ICAS) and those of the Court of Arbitration for Sport (CAS) in Lausanne.*

This paper aims to present instances of mediation in criminal matters and the civil aspects of these proceedings – mediation being a means of amiable conflict resolution with the help of a third person who is specialized as a mediator, in neutral, impartial, confidential circumstances and having the free consent of the parties involved[1].

Key words: criminal offence, sport activities, sports litigations with criminal nature, mediation in criminal matters; civil mediation in criminal proceedings, mediation agreement; civil claims.

Introduction

In Romania, sports activities constitute the main business activities of certain organizations of the public administration, of the Romanian Olympic and Sports Committee and of some sport structures governed by public law or under private law (with or without lucrative purpose).

[1]Article 1 of Law no 192 from May 16, 2006 regarding mediation and the organization of the occupation of mediator, updated, in force since February 1, 2014.

The complex sports activities must comply with the provisions of the internal regulations of the various sport federations, as well as those of the international structures of sport and the Romanian legal system, including the provisions of international agreements to which Romania is a party or has acceded. The specificity of the norms governing Sport envisages them as the formal sources of law, coexisting with the whole Romanian legal system. The validity of the juridical norms and their specificity is not exclusively determined by the formal criterion of their being the expression of an accepted law source, but the result of three elements combined: form, effectiveness and legitimacy. Thus, the formal validity of the legal norm in the relationships generated by sport activities and other related issues leads to a presumption of legitimacy and effectiveness that plays an essential part in the norm achieving the proposed effects.

It is indisputable that respecting the legal norms of a juridical system is an obligation of all the nationals of that administrative-territoral unit (which is a generator of the legal system) – it is accepted that the juridical relations generated by sports activities and other related activities are a "combination" of sport regulations and state norms. Thus, the "legality of sport" can be identified within 3 areas: 1. the legal order; 2. the sport field; 3. international sport structures (extended to the countries that acceded to them) whose establishment, organization and operation are legally subordinated to the judicial system in which they exist.

It is well known that in sport activities it is possible to commit criminal acts which can create a framework for state coercion through the enforcement of legal sanctions with the purpose of ensuring stable social relationships and guiding the members of society towards the respect for the rule of law.

In this way legal liability can be engaged[2] in its various forms (criminal law, civil law, administrative law, labour law etc.) which are well regulated in a community that is politically determined. It must be mentioned that "sport litigations" can be resolved by common law courts, Romanian sport judicial bodies as well as internationalized structures that are specified by the Statutes of the judicial bodies established in order to resolve sports-related disputes[3]:

"S1 In order to resolve sports-related disputes through arbitration and mediation, two bodies are hereby created:

- the International Council of Arbitration for Sport (ICAS)
- the Court of Arbitration for Sport (CAS).

[2]Costin, M. N., *O încercare de definire a noţiunii răspunderii juridice*, [An Attempt to Define the Concept of Legal Liability] in "Revista Română de Drept" [The Romanian Law Journal], no 5/1970, page 83: „Juridical liability is the complex of connected rights and obligations that – according to the law – is the consequence of committing a crime and which constitutes the framework of achieving state coercion by applying juridical sanctions with the purpose of ensuring stable social relationships and guidelines for the members of society in the spirit of respect for the precedence of law".

[3]CThe Court of Arbitration for Sports Mediation Rules
http://www.tas-cas.org/d2wfiles/document/3923/5048/0/Code%202010%20(en).pdf

The disputes to which a federation, association or other sports-related body is a party are a matter for arbitration pursuant to this Code, only insofar as the statutes or regulations of the bodies or a specific agreement so provide.

The seat of both ICAS and CAS is Lausanne, Switzerland.

S2 The purpose of ICAS is to facilitate the resolution of sports-related disputes through arbitration or mediation and to safeguard the independence of CAS and the rights of the parties. It is also responsible for the administration and financing of CAS.

S3 CAS maintains a list of arbitrators and provides for the arbitral resolution of sports-related disputes through arbitration conducted by Panels composed of one or three arbitrators.

CAS comprises of an Ordinary Arbitration Division and an Appeals Arbitration Division.

CAS maintains a list of mediators and provides for the resolution of sports-related disputes through mediation. The mediation procedure is governed by the CAS Mediation Rules."

Here, Article 1 states that CAS mediation is a non-binding and informal procedure, based on an agreement to mediate in which each party undertakes to attempt in good faith to negotiate with the other party with a view to settling a sports-related dispute. The parties are assisted in their negotiations by a CAS mediator. In principle, CAS mediation is provided for the resolution of disputes submitted to the CAS ordinary arbitration procedure. Disputes related to disciplinary matters, such as doping issues, match-fixing and corruption are excluded from CAS mediation. However, in certain cases, where the circumstances so require and the parties expressly agree, disputes related to other disciplinary matters may be submitted to CAS mediation, and about which Article 2 states: A mediation agreement is one whereby the parties agree to submit to mediation a sports related dispute which has arisen or which may arise between them.

A mediation agreement may take the form of a mediation clause in a contract or separate agreement.

In this context it is necessary to mention the following: "The case law of the European courts and decisions of the European Commission show that the specificity of sport has been recognized and taken into account. They also provide guidance on how EU law applies to sport. In line with established case law, the specificity of sport will continue to be recognized, but it cannot be construed so as to justify a general exemption from the application of EU law."[4]

Today, crime represents the phenomenon that displays the most adaptability to the new social-economic conditions. In this way criminal activities manage to expand to every field of activity, to take the most diverse shapes and to encompass all

[4]European Union's White Paper on Sport, p. 13.

the countries in the world, regardless of their economic development status. One of the fields in which criminal activities succeeded in settling is sport, with all its related activities, which, according to some estimations represent approximately 0,5-3,7% of the European Union's GDP[5]. Generally, sports activities require, besides the display of physical, psychological, artistic activities etc., investments in buildings or locations suitable for sport activities, advertising, awards and rewards, the transfer of athletes, management, governing bodies etc., without even mentioning sport bets and bookmaking, all of which need money to operate. It is assumed that given the level that sport has reached at present, all sports are liable to attract criminal activities, starting from the elegant chess games all the way to K1 fighting matches.

Thus, in this paper we will only address mediation issues regarding hypothetical sport litigations of a criminal nature (it is widely known that in sport and other related activities there are many illicit acts that cause prejudice) following a criminal act. "The civil action exercised within a criminal law suit has the purpose of establishing and engaging civil tort liability[6] of the person responsible for the prejudice brought about by the criminal act that is being prosecuted according to civil law" (Article 19, Paragraph (1) of Law no 135/2010 regarding the Criminal Procedure Code, updated).

1. Mediation in criminal cases - general overview

The purpose of criminal legislation is mainly a punitive one. However this coercive nature of criminal legislation has been diminished in time, due to the emergence of the concept of restorative justice, whose main purpose is not the sanction of the criminal – as retributive justice aims (the criminal "*gets what he deserves*") - but repairing the harm caused to the victim, the community and even the criminal himself (who thus "*gets what he needs*")[7].

[5]FATF – GAFI, *Money Laundering & Terrorist Financing Through the Real Estate Sector*, http://www.fatf-gafi.org/documents/ documents.jsp?lang=en, p. 7.

[6]For an in depth analysis of civil tort liability in sports activities see Voicu, A.V., *Răspunderea civilă delictuală cu privire specială la activitatea sportivă* ["Civil Tort Liability with Special Regard to Sport Activities], Publishing House "Lumina Lex", Bucharest, 1999.

[7]Danilet, C., *Consideratii în legătură cu medierea penală,* [Considerations on mediation in criminal matters] in the Journal „Dreptul" [Law], no 2, 2014, Bucharest, pages 156-182, footnote no 1: "The general rules of restorative justice are included in the document named *Basic principles on the use of restorative justice programmes in criminal matters,* adopted by the Economic and Social Council of the United Nations, through Resolution no 12 of 2002 and available at www.un.org/en/ecosoc/docs/2002/resolution%202002-12.pdf. The United Nations Office on Drugs and Crime drafted the *Handbook on Restorative justice programmes* available at www.unodc.org/pdf/criminal_justice/06-56290_Ebook.pdf. At European level there are the *Recommendation no 19/1999 of the Council of Europe on mediation in criminal matters* and its Implementation Guide drafted by the European Commission for the Efficiency of Justice, available at www.coe.int/t/dghl/cooperation/cepej/mediation/.

Among classic restorative practices we mention: victim-offender mediation (also called victim-offender reconciliation or victim-offender dialogue, which is the most common restorative practice), group conferencing, conflict appeasement. The following are also considered restorative practices: payments to the victim for losses, damages or expenses; compensations; community councils and community work[8].

In Romania, the legal framework is provided by Law no 192/2006 regarding mediation and the organisation of the profession of mediator[9]. *"Mediation* shall be an optional, amicable way of conflict settlement, with the support of a third party, specialised as a mediator, and it shall take place in neutral, impartial and confidential conditions. Mediation shall depend on each party's confidence in the mediator's ability to facilitate negotiations between them and to help them achieve a resolution of the conflict that satisfies both parties" (Article 1 of Law no 192/2006). It should be emphasised that mediation is more concerned with the interests of the parties, not the juridical aspects of the conflict and thus it must not be mistaken for the activities that are specific to legal practice. Mediation in criminal matters can be described as a means to achieve conflict resolution by avoiding a trial[10].

The mediation procedure is *optional* – Article 67, Paragraph (3) of Law no 192/2006 expressly states that the injured person and the perpetrator (these terms correspond to the old Criminal Procedure Code, adopted in 1968), and, respectively, the parties and the subjects of the trial (the terms established by the new Criminal Procedure Code – Law no 135/2010, updated) cannot be coerced to accept mediation. It is mentioned that mediation can take place between two or more parties (Article 5, Paragraph (1) of Law no 192/2006) and that the whole process of mediation is confidential (Article 53 of Law no 192/2006).

2. Mediation in criminal cases

2.1. Regulations

Law no 192/2006 includes a separate section with special provisions for mediation in criminal cases.

[8]Idem, page 157, with reference to A. Szabo, *De la justiţia restaurativă la practici restaurative,* [From Restorative Justice to Restorative Practices] in „Revista de asistenţă socială", [The Social Care Journal] no 1/2010, Publishing House Polirom, Iaşi, page 134 and the literature quoted in that paper.

[9]Published in the Official Journal of Romania, Part I, no 441, on May 22, 2006, with subsequent amendments. The last amendments were brought by Law no 255/2013 (the Law for enforcement of Law no 135/2010 regarding the Criminal Procedure Code and amending certain legal norms that concern dispositions of criminal procedure, published in the Official Journal of Romania, Part I, no 515 of August 14, 2013).

[10]Danilet, C., op. cit., 2014, page 157, with reference to Gh. Mateuţ, Tratat de procedură penală. Partea generala*,* vol. I, Published by C.H. Beck, Bucharest, 2007, page 9.

Thus, Article 67 of Law no 192/2006 states that the provisions of the law shall be applied in criminal proceedings as well as civil matters, taking into account the distinctions described in Section 2, "Special Dispositions on the Mediation of Criminal Cases". According to Article 67: (1) "the disposition in this Law shall be as well applied accordingly to the criminal cases which concern offences for which, in accordance with the laws, the withdrawal of the prior pressed charges or reconciliation of the parties eliminates the criminal liability"; (2) "in criminal cases, the provisions regarding mediation only apply to offences for which, by law, the withdrawal of the prior pressed charges or reconciliation of the parties eliminates the criminal liability"; (3) "Neither the injured, nor the guilty party shall be constrained to accept the mediation procedure".

In those referred to in Article 67 of Law no 192/2006, updated, the aim of the legislator is clear: just as the parties may determine not to initiate or to discontinue the criminal proceedings through their own will expressed by not pressing charges, withdrawing charges or reconciliation; in the same way the conclusion of a mediation agreement will allow the parties to avoid a trial.

The wording, however, is faulty[11]: we agree that the prior complaint is necessary for certain offences; we accept that reconciliation is only possible for certain offences; but we feel that it should be possible to sign a mediation agreement in any criminal case. Thus, the withdrawal of complaint and the reconciliation of the parties remove criminal liability (Articles 131 and 132 of the Criminal Code 1968, respectively Articles 157-159 of the new Criminal Code), but in the matter of a trial the effect of these actions will only affect criminal proceedings; as express provisions have been made for such situations occurring in civil matters.

The situation changes when a mediation agreement has already been concluded: *on the one hand,* among the clauses that remove criminal liability of the Criminal Code the mediation agreement is not mentioned; *on the other hand*, the content of the mediation agreement is determined by the distinction, in legal proceedings, between the criminal matter (that which regards the criminal action that has been committed and for which the perpetrator is liable) and for the civil matter respectively (that which regards the civil action exerted in order to cover the prejudice that has been caused by the criminal activity, including compensation). Moreover, a mediation agreement in a "criminal matter", unaccompanied by any other agreement, is not possible: if the parties agree to reconcile, then they are subject to the *institution of "parties reconciliation"*; if following the completion of the agreement, the injured person declares or promises to withdraw the prior complaint, then the parties are subject to the *institution of "withdrawal of complaint"*. These institutions have separate and special regulations in Criminal Law, each having its own validity rules and generating different effects

[11]Danilet, C., op. cit., 2014, page 158.

than those produced by a mediation agreement[12].

It follows that we must accept that the mediation agreement is an impediment to criminal trial, but it is also separate from the absence of prior complaint, the withdrawal of prior complaint and the reconciliation of the parties. As for its content, the mediation agreement cannot cover any aspect involving "criminal matters" – and this is because between victim and criminal there cannot be any negotiations or understandings regarding the legal classification of the offence, or regarding the punitive measures and their scope[13].

This is precisely why we believe that it is possible to complete a mediation agreement for any kind of offence. Still, according to Law no 192/2006, there are differences between the types of offences and the effects a mediation agreement can generate on them:

-in the case of crimes which require prior complaint to initiate prosecution or where reconciliation is possible: the mediation agreement prevents the parties from going to trial or the continuation of a trial through the will of the legislator (and not the parties), thus generating effects on both sides of the criminal trial;

-in the case of all other offences, the criminal proceedings for the criminal matter develop according to the normal regulations, but for all other aspects the mediation in criminal matters agreement will be applied.

According to Article 23, Paragraph (1) of the new Criminal Procedure Code, the mediation agreement regarding civil compensation, which is different from the mediation agreement for criminal cases, can be concluded between the parties, and it targets the civil matters in a criminal trial. However, such an agreement obviously cannot influence in any way the criminal proceedings.

2.2. The offences that require prior complaint according to the new Criminal Code

Listed in the Special Part of the new Criminal Code, these are the offences that include the mention "the criminal procedure is initiated upon complaint from the injured person". In this paper we will refer to: wounding and other kinds of violent behaviour (Article 193); causing grievous bodily harm with intent (Article 196); threatening (Article 206); harassment (Article 208); breach of the duty of professional secrecy (Article 227); breach of trust (Article 238); breach of trust intended to defraud creditors (Article 239); bankruptcy (Article 240);

[12]For example, according to the new Criminal Procedure Code, reconciliation is possible only up to a certain moment of the trial. Likewise, in the case of the withdrawal of prior complaint, the civil action is left unresolved.

[13]At most, in the case of offences where prosecution requires prior complaint or those where reconciliation is possible, the mediation agreement can include *the declaration of the injured person stating that they will not file a prior complaint or that they will withdraw it.*

fraudulent bankruptcy (Article 241); fraudulent management (Article 242); unfair consulting and representation (Article 284); failure to comply with court decisions (Article 287, Paragraph (1), Letter D-G); preventing the exercise of religious freedom (Article 381).

2.3. Offences where reconciliation is possible according to the new Criminal Code

The Special Part of the new Criminal Code also contains provisions for the cases where reconciliation of the parties is possible[26] and where this eliminates criminal liability. The following such offences are relevant to our study: fraud (Article 244); fraud in insurances (Article 245).

3. Mediation procedure in criminal cases

In criminal cases mediation can take place before or during the trial (Article 2, Paragraph (1) of Law no 192/2006) and this is why we will discuss separately *mediation in criminal matters before trial* and *mediation in criminal matters during trial – „we use the phrase «mediation during trial» to designate mediation that takes place during an ongoing court trial instead of the phrase «justice mediation», which could be confused with mediation that takes place via judicial bodies"*[14]. In the latter case, we also distinguish between mediation in criminal matters and civil mediation during a criminal trial.

3.1. Mediation in criminal matters before trials

3.1.1. Suspension of the deadline to present a prior complaint

If the mediation procedure takes place before the beginning of the criminal trial, the deadline set by the law for filing a prior complaint is suspended for the duration of mediation procedures (Article 69, Paragraph (2), Sentence 1 of Law no 192/2006[15]). According to the new Criminal Procedure Code this deadline is *three months from the day the offence was committed.*

The beginning of the suspension period is the same as the date of the completion of the mediation contract. It is notable that the lawmaker mentions the filing of the prior complaint" and the „beginning of the criminal trial" as if these two moments coincide. In reality, however, between the moment of referral to the judicial body by filing a prior complaint and that of the initiation of the criminal

[14]Idem, footnote no 37.

[15]This text regulated the only express cause for suspending the deadline for filing the prior complaint.

action optional *preliminary procedures*[16] can take place. Even though this hypothesis is not regulated in Law no 192/2006, nothing stops the parties from undergoing mediation in this period, however this will not suspend the completion of preliminary procedures[17].

3.1.2. The completion of mediation

If, after mediation, the parties *do not conclude an agreement*[18], the injured person has until the previously suspended deadline (the suspension period ends on the same date the protocol of conclusion of the mediation procedure is signed) to file the prior complaint, and the time passed before the suspension of the deadline is also taken into account (Article 69, Paragraph (2), Sentence 2 of Law no 192/2006).

If the parties *sign a mediation agreement*, we believe this must contain, besides the specific terms of the agreement between the parties of the contract, the injured person's lack of intention to file a prior complaint.

We also note that when mediation is completed through *the consent of the parties,* the law *(*Article 69, Paragraph (1) of Law no 192/2006 – at least in the form this Law took before the entry into force of Law no 255/2013 for the enforcement of Law no135/2010 regarding the Criminal Procedure Code and amending of certain normative acts that regulate criminal trials, entered into force on February 1st, 2014) expressly stated that the injured person can no longer file a complaint to the judicial bodies for that same offence[19].

Law no 255/2013 does not include any provisions for this situation. However, the text was not necessary, because in case the injured person files a complaint after a successful mediation, we believe the *authority of res* hinders the beginning of the criminal action and the Prosecutor decides against *further criminal*

[16]Named "prior verifications" in Article 294 of the new Criminal Procedure Code.

[17]Similarly, L. Dragne, A. Trancă, *Medierea în materie penală*, [Mediation in Criminal Matters], Published by Universul Juridic, Bucharest, 2011, pages 114-115.

[18]Initially, Law no 192/2006 used the term "reconciliation" here, but with a different meaning than the institution of reconciliation to which Article 132 of the Criminal Code of 1968 refers. Moreover, Law no 255/2013 amended this: the word "reconciliation" is replaced by the phrase "achieving consensus", which corresponds to the terms used by Article 56, Paragraph (1), Letter A and Article 58, Paragraph (1) of the initial form of Law no 192/2006.

[19]Danilet, C., op. cit., 2014, page 169, Se also footnote no 42: Article 69, Paragraph (1) states the following: *"If the mediation procedure takes place before the beginning of the criminal trial and it concludes with the parties reconciliation, the injured person cannot notice, for the same deed, the criminal investigation body, or, as applicable, the court."* We notice that, after the amendments brought by Law no 356/2006 to the Criminal Procedure Code, when the institution of the direct prior complaint was eliminated, it is no longer possible to notify the *court* by prior complaint, only by indictment, but the text of Law no 192/2006 was not modified accordingly.

prosecution according to Article 10, Paragraph 1, Letter H of the Criminal Procedure Code 1968, or *closing the case,* according to Article 16, Paragraph (1), Letter G of the new Criminal Procedure Code, based on the existence of a mediation agreement.

3.2. Mediation in criminal matters during trial

The parties can sign a mediation agreement at any time during the criminal trial, including the ordinary and extraordinary appeal procedures.

3.2.1. General information

If the mediation procedure is initiated during the criminal trial, the initiative can only come from the parties or at the invitation of the judicial bodies, based on Article 6 of Law no 192/2006[20]. Under this Article, the judiciary body must inform the parties of the advantages of using mediation. However, there is no sanction for the failure to comply with this provision, which makes it lack efficiency.

3.2.2. Suspension of the criminal trial

The Criminal Procedure Code of 1968 did not provide for the suspension of the criminal trial if the mediation procedure was initiated after the beginning of the criminal trial. Article 312, Paragraph (3) of the new Criminal Procedure Code, states that the criminal action in court „shall be suspended on the duration of the mediation procedure, according to Law"; with regard to the suspension of the judgement, Article 367, Paragraph (3) of the same Code makes a similar provision.

The Special Law contains specific regulations. Thus, according to Article 70 of Law no 192/2006, if mediation takes place after the beginning of the criminal trial in court, the criminal action, or, as the case may be, the judgement is suspended, pursuant to the parties submission to the court of the mediation contract. The suspension lasts until the mediation procedure is concluded by any means established by Law[21]. The duration of the suspension used to be limited to a maximum of three months, beginning on the date when the *mediation contract*

[20]*Article 6 of Law no 192/2006, amended by Law no 370/2009, has the following content:* "the judicial bodies, as well as other authorities with jurisdictional attributions inform the parties of the possibility and advantages of the use of the mediation procedure and recommend this means of conflict resolution."

[21]According to Article 56, Paragraph (1) of Law no 192/2006, the mediation procedure closes, as applicable: a) through the conclusion of an agreement between the parties, following the conflict's resolution; b) through the mediator's ascertainment of the failure of mediation; c) by the submission of the mediation agreement to the court.

was signed (until the entry into force of Law no 255/2013), or the date when the *suspension was ruled* (since the entry into force of Law no 255/2013). The criminal trial is automatically restored when the court receives the protocol stating that the parties have not signed a mediation agreement, or, if it is not received, at the end of the three months interval.

From the text mentioned above it follows that suspension of the trial is *compulsory*. According to the amendments brought to Article 70, Paragraph (1) of Law no 192/2006, by Law no 255/2013, suspension has become *optional*. The duration of suspension during criminal prosecution is determined by "a resolution motivated by the prosecution" (Article 203, Paragraph 1 of the Criminal Procedure Code of 1968, respectively Article 286, Paragraph (1) of the new Criminal Procedure Code); during judgement, suspension is ruled by the court (Article 311, Paragraph 3 Criminal Procedure Code of 1968, respectively Article 367, Paragraph (4) of the new Criminal Procedure Code). It is remarkable that the two Paragraphs of Article 70 of Law no 192/2006 refer to two distinct moments: *the first* is the moment of the submission of the contract to the judicial bodies, *the second*, at the moment of the completion of the contract. The three months deadline is a procedural term and it is calculated according to Article 186 of the Criminal Procedure Code of 1968, respectively Article 269 of the new Criminal Procedure Code.

With regard to our two assertions, that mediation in criminal matters could be made possible for any offence and that we must distinguish between mediation in criminal matters and civil mediation in the criminal trial, we affirm that according to the legislation currently in force, the suspension of the criminal trial during mediation will take place only for criminal cases regarding offences that require prior complaint or those where reconciliation is possible, provided the mediation regards not just the civil matter that is the object of the civil action in the criminal trial[22].

Regarding the suspension, the literature mentions certain difficulties[23] that we would also like to report here. Firstly, it is difficult to imagine how suspension can work if the criminal prosecution is acting against more than one perpetrator, without it affecting the normal course of the trial. We believe that suspension can

[22]This is clearly shown in the provisions of Article 70, Paragraph (1) of Law no 192/2006 amended by Law no 255/2013*: "If mediation in criminal matters takes place after the beginning of the criminal trial, the criminal investigation or, as applicable, the judgement can be suspended based on the submission of the mediation agreement by the parties*" and in the provisions of Article 67, Paragraph (2) of the same law amended by the above mentioned legal act: *"In the criminal matter of the trial, the provisions regarding mediation are applicable only in the cases concerning offences that, according to law, require the withdrawal of the prior complaint of the parties reconciliation for the removal of criminal liability".*

[23]Danilet, C., op. Cit., footnote no 49, quoting L. Dragne, A. Trancă, op. cit, pages 117 and 119.

work properly only when the mediation contract is signed by all co-defendants. Secondly, if the accused or the defendant is arrested in connection with that case, the suspension of the trial would impede the expeditious conduct of the trial and the problem of extending the remand of the defendant for the duration of the mediation procedure would arise, but we believe this can be done. Lastly, if the criminal trial is called to sanction multiple offences and the mediation procedure involves only one of them, we believe the suspension of the criminal trial cannot take place.

3.2.3. Closure of the mediation

The mediator cannot impose upon the parties a solution to the conflict subjected to mediation (Article 50, Paragraph (3) of Law no 192/2006).

If *mediation proves unsuccessful*, (that is, if the mediation procedure fails or one of the parties renounces the contract), the mediator must send to the judicial body a closure of mediation protocol and one copy must be in electronic form (Article 70, Paragraph (5) of Law no 192/2006); obviously, this protocol can also be submitted by any of the parties. The criminal trial resumes when the court receives this protocol (Article 70, Paragraph (4) of Law no 192/2006). If the deadline set by law expires and this protocol is not received, the criminal trial resumes after the period of three months from the signing of the mediation contract expires. If the mediation procedure lasted for longer than three months (it should be noted that there is no time limit for the completion of the mediation procedure), nothing prevents the parties from subsequently submitting the mediation agreement to the court. Also, if mediation failed, the parties can sign a new mediation contract and start the mediation procedure again, at any time during criminal trial, including appeals. In this case, if the parties have benefited from suspension of trial once, we believe they shouldn't have another suspension, or, if granted, the total period of suspension from trial should not exceed three months.

When *mediation is successful,* that is, when the parties have reached an agreement, Article 58, Paragraph (1) of Law no 192/2006 states that an agreement shall be written, usually by the mediator, including all clauses the parties agreed upon[24], agreement which has the same value as an *act under private signature.* This agreement can be *notarized* by a notary public (Article 59, Paragraph (1) of Law no 192/2006) or submitted to the civil court to *enshrine the*

[24]*The provisions of Article 2, Paragraph (4) of Law no 192/2006 must be taken into account:* "Mediation cannot dictate on personal rights, such as status of the person, or any other rights that the parties are not entitled to change legally" and *those of Article 58, Paragraph (2) of the same law:* "the agreement of the parties must not include clauses that in any way prejudice the law and order, the dispositions of Article 2 being applicable".

understanding that is described in the agreement (Article 59, Paragraph (2) of Law no 192/2006)[25]. In either case, the mediator must make the mediation agreement available to the criminal judicial body in its original and electronic form (according to Article 61, Paragraph (2) of Law no 192/2006, modified by Law no 115/2012). Nothing prevents the parties themselves from submitting the electronic form of these documents.

It is unimportant whether the mediation procedure began before the trial and was completed during it; nor if it started during criminal investigations and the mediation agreement was signed during the trial; not even if the agreement was signed during the criminal investigation, but was submitted to the court during trial[26]. We believe that if the mediation agreement was signed during the criminal trial and not submitted to the court in due time, it will become a reasonable motive for the revision of the court's ruling, based on Article 394, Paragraph (1), Letter A of the Criminal Procedure Code of 1968, respectively Article 453, Paragraph (1), Letter A of the new Criminal Procedure Code.

Mediation cannot be successful unless the perpetrator admits he committed the offence. The terms of the mediation agreement can vary and they are not limited to damage reparation, the only mandatory condition being that they concern rights that can be changed by the parties (Article 61, Paragraph (1) of Law no 192/2006). An example of this is the perpetrator agreeing to apologise publicly to the injured person for his public display of violence. The parties are free to establish deadlines and conditions of fulfilment of obligations (Article 58, Paragraph (3) of Law no 192/2006), which means they can also set possible sanctions, like the payment of money in case the set requirements are not met.

3.3. Mediation in civil matters

According to the law, the parties involved in a criminal trial may choose to sign a mediation agreement, with regard only to the civil claims (Article 161, Paragraph (1) Criminal Procedure Code of 1968, respectively Article 23, Paragraph (1) of the new Criminal Procedure Code). This is a mediation on the civil part of the criminal trial, which is strictly limited to the means of repairing the

[25]According to Article 592 of Law no 192/2006 in relation with Article 29, Paragraph (1), Letter I of the Emergency Government Ordinance no 80/2013 regarding judicial stamp duties (published in the Official Journal of Romania, Part I, no 392 on June 29, 2013) the following are exempt from judicial stamp duties: the actions and claims, including those for ordinary and extraordinary appeal, concerning criminal cases, including civil compensations for material and moral damages resulting therefrom.

[26]Danilet, C., op. cit., 2014, page 172, footnote no 52: Also, similarly, D. Diaconu, *Medierea în cauze penale*, [Mediation in criminal cases], Published by C.H. Beck Bucharest, 2012, page 22.

damage produced by the criminal offence[27]. It is unimportant whether the offence is pursuable at prior complaint or ex officio; or whether reconciliation is possible. With regard to civil compensation, between the injured person and the perpetrator an agreement can be reached at any time: before the beginning of the trial, during criminal investigation or prosecution, or even after the criminal trial. The agreement can take the form of waiver of claims by the civil part, of the perpetrator's recognition of the injured person's claims, of a transaction, or a mediation agreement.

The transaction and the mediation agreement occur between the prejudiced person and the perpetrator. When necessary, the transaction and the mediation agreement must involve the will of the civilly liable person (for instance, the teacher/coach responsible for the under age athlete, the parents responsible for their under age child) or the will of the insurance company (in the case of sport accidents, traffic accidents etc.) – Article 161, Paragraph (1) of the Criminal Procedure Code of 1968, respectively Article 23, Paragraph (1) of the new Civil Procedure Code.

When a mediation agreement concerning only the civil matters of the criminal trial is completed the legal norms established by Law no 192/2006 are applicable.

4. The mediation agreement - impediment of criminal proceedings

Until the modification of the Criminal Procedure Code by Law no 202/2010, the mediation agreement generated effects with regard to the criminal matter only if in its contents the intention of the injured person to not file or to withdraw the prior complaint was evident, or the will of both parties to reconcile. The reason for not initiating criminal proceedings or the termination of the proceedings could not be the existence of the mediation agreement, but only the "lack of prior complaint" (Article 10, Paragraph (1), Letter F of the Criminal Procedure Code of 1968), "the withdrawal of the prior complaint" (Article 10, Paragraph (1), Letter H sentence 1 of the Criminal Procedure Code of 1968), respectively "the reconciliation of the parties" (Article 10, Paragraph (1), Letter H, sentence 2 of the Criminal Procedure Code of 1968), thus the mediation agreement was seen merely as a means of achieving one of these three impediments.

Law no 202/2010 adds to the contents of Article 10, Paragraph (1), Letter H of the Criminal Procedure Code of 1968 (which corresponds to Article, 16 Paragraph (1), Letter G of the new Criminal Procedure Code) with a new case which prevents the initiation and the exercise of the criminal proceedings: the media-

[27]The new Criminal Procedure Code uses the phrase *"mediation regarding the civil action"* (Article 486 amended by Law no 255/2013, referring to the solution of the civil action if the court accepts the admission of guilt).

tion agreement. The requirements that must be met for this new case to have the desired effect are the following:

a. ***a mediation agreement has been signed***. It is worth noting that the updated form of Law no 192/2006 allows the mediation agreement to intervene either before the filing of the prior complaint, or afterwards. A distinction must be made between the mediation agreement through which the parts reach a consensus with regard to their conflict, a conflict which is the object of the criminal case (mediation in criminal matters) and the mediation agreement which is limited to the civil demands (civil mediation in the criminal trial). Only the first type of agreement, which can contain the second, *can constitute an impediment to the criminal proceedings*.

Due to lack of an express provision of the law, it is possible to make a total mediation agreement (with regard to all the offences and civil demands) or a partial mediation agreement (with regard to some of them, but not all). Obviously, the criminal trial will be prevented only with regard to those offences for which the conflict between the parties is completely resolved.

b. ***the mediation agreement has been completed according to the provisions of the law.*** The Law that the Criminal Procedure Code refers to is, of course, Law no 192/2006. The law guarantees each party's right to legal counsel and, if necessary, to the services of an interpreter (Article 68, Paragraph (1)[28] of Law no 192/2006). Since mediation is an extra-judicial procedure, we believe that in its case, compulsory assistance incident in the course of a criminal trial is not applicable (Article 171 and 173 of the Criminal Procedure Code of 1968, respectively Article 90 and 93 of the new Criminal Procedure Code). Either way, it is worth noting that mediators do not have the power to impose the presence of a publicly appointed lawyer in cases where one party has not hired a lawyer. The mediation agreement can be signed through a representative, who must be a person able to draft acts of disposing in accordance with the provisions of the law (Article 52, Paragraph (1) of Law no 192/2006). Furthermore, the law provides procedural safeguards for minors involved in mediation (Article 68, Paragraph (2) of Law no 192/2006), however given the extra-judiciar nature of mediation, we believe only the safeguards concerning the parents, the legal guardian and the Social Care Services (or any other person responsible for the child) are applicable (Article 505 and Article 508 of the new Criminal Procedure Code). In order for it to generate effects on the criminal trial, the mediation agreement must have a written form.

[28](1) In criminal cases, mediation must take place in such a way that each party's right to legal council is guaranteed, and, if the circumstances require it, an interpreter's services. The protocol drafted according to this law, through which the mediation procedure is closed, must show whether the parties benefited from legal council and an interpreter's services, or, where appropriate, mention the parties' renunciation expressly.

c. targeting *certain offences*. Law no 202/2010 updated the provisions of Article 10, Paragraph (1), Letter H of the Criminal Procedure Code 1968 (corresponding to Article 16, Paragraph (1), Letter G of the new Criminal Procedure Code) with a new means of preventing the initiation and the exercise of the criminal proceedings: *"a mediation agreement that is compliant with the law has been signed, in a case concerning offences for which the withdrawal of the prior complaint or the reconciliation of the parties remove criminal liability",* thus, the cases are limited to the ones described by the Criminal Procedure Code. These offences, which we have listed at the beginning of our study, are the only ones where a mediation agreement has the effect of preventing the initiation and the exercise of the criminal proceedings. The corresponding law of the new Criminal Procedure Code, contained by Article 16, Paragraph (1), Letter G, is nuanced: *"a mediation agreement that is compliant with the law has been signed"*. This time the lawmaker chose not to list the offences in the Code, but to refer to the Special Law, Law no 192/2006. In this way the possibility that in the future a mediation agreement will be valid for other offences than at present, including the ones prosecuted ex officio. It is worth mentioning that it is not the mediator's prerogative to make legal classifications[29]: when the parties involved in a criminal case hire the mediator, he must be interested only in the course of the mediation procedure and the drafting and signing of the mediation agreement. With regard to the effects of mediation agreement, that which depends on the judicial classification of the deed can only be decided by the judicial bodies.

5. Proceedings following mediation in criminal matters that take place before the judicial bodies

Once signed, the mediation agreement must be delivered to the judicial body, together with the mediation conclusion protocol (Article 70, Paragraph (5) of Law no 192/2006). According to Article 483, Paragraph (3) of the new Criminal Procedure Code, if mediation concerns the civil matters, the prosecutor must submit to the court the admission of guilt and the mediation agreement.

The law does not establish limits for the verification of the mediation agreement by the judiciary body. Of course, verifications as to whether the parties have expressed their free consent (Article 67, Paragraph (2) of Law no 192/2006) and uncorrupted consent (Article 1206 of the new Civil Code)[30]; if the offence for which the mediation agreement was signed is among those expressly mentioned

[29]The mediator cannot be interested in the legal nature of the criminal case, except the procedural matters involving the presence of the lawyer, the interpreter, the parties or the probation service. If he encounters difficulties related to these, the mediator can, with the agreement of the parties, consult a specialist (Article 55 of Law no 192/2006).

[30]Law no 287 of July 17, 2009 on the Civil Code, republished and updated.

by the law (Article 67, Paragraph (1) of Law no 192/2006) – which is important only with regards to the effects of the mediation agreement and not its validity; if the legal or conventional representative present at mediation instead of the party had this power (Article 52, Paragraph (2) of Law no 192/2006); if the lawyer's presence was ensured, or, quite the opposite, a lawyer's services were dismissed (Article 52, Paragraph (1) and Article 68, Paragraph (1) of Law no 192/2006); if the presence of an interpreter was ensured or his services were dismissed (Article 68, Paragraph (1) of Law no 192/2006). Furthermore, we believe the judicial body must ensure that between the mediator and the parties or their legal representatives there is no relationship that could make the mediator biased; and that must also be verified in the cases of the prosecutor and judge – such verifications are necessary to ensure that the mediator and judge are impartial[31].

Moreover, for reasons of symmetry, we believe that the provisions of Decision no XXVII/2006 pronounced by the Supreme Court in resolving an appeal on points of law[32], specifically the need to directly ascertain the consensus of the parties should be applied. Thus:

-if the mediation agreement has already been notarized by the notary public[33] the parties presence is not compulsory; and the criminal prosecution body or the court will only acknowledge the mediation agreement and then adopt the legal solution most suitable to the trial's phase, as we will later show;

-if the parties did not notarize the mediation agreement, the document will have the value of an act under private signature and thus, in order to have any effect on the criminal trial, it must be confirmed by the parties. In this respect Article 70 of Law no 192/2006 was introduced by Law no 370/2009[63] Paragraph (5), which compelled the parties either to submit a notarized version of the agreement, or to be present when they submitted it, in order to confirm their written agreement. However, by reasons unknown to us, Law no 115/2012[34] removes the latter part of this text. We believe the judicial body can overcome this inconvenient by ordering the parties to appear before it. If the judicial body rejects

[31]Breach of impartiality can bring about sanctions to the mediator (Article 38, Letter A of Law no 192/2006), or to the judge (Article 99, Letter I of Law no 303/2004 on the status of judges and prosecutors, republished in the Official Journal of Romania, Part I, no 826 on September 13, 2005, with later amendments)

[32]Published in the Official Journal of Romania, Part I, no 190 on March 20, 2007. This Decision refers expressly to reconciliation, not the withdrawal of prior complaint nor the mediation agreement.

[33]We do not exclude, as we have shown above, the possibility that the parties submit the mediation agreement to the legalisation procedure by a civil court.

[34]Law no 115/2012 for amending and updating Law no 192/2006 on mediation and the organisation of the profession of mediator published in the Official Journal of Romania, Part I, no 462 on July 9, 2012.

the mediation agreement through justified resolution37, respectively closure, the trial will continue. The law does not establish a special procedure of objection – such a procedure exists in civil matters, where appeal is possible. In our opinion, it follows that the decision of the judicial body can only be contested by means of *complaint* during criminal prosecution, and *appeal* in the case of trial (after the entry into force of the new Criminal Procedure Code, for the offences that require prior complaint for prosecution only the appeal is possible).

6. The judicial body's solution

The Special Law of Mediation does not show what solution must be given to the criminal case. Article 70, Paragraph (5) of Law no 192/2006 mentions the *"resolution of the criminal case based on the agreement resulting from mediation"*. Law no 255/2013 brings modifications to the text, and the expression is changed to *"resolution of the criminal or civil action based on the agreement resulting from mediation"*.

6.1. The solution for the offences that require prior complaint for prosecution or those offences for which reconciliation is possible

When the mediation agreement concerns all the demands of the parties and leads to the complete resolution of the conflict, the following situations can be distinguished:

a. *if the trial is in the criminal prosecution stage:* the prosecutor will adopt a solution to the criminal action based on Article 16, Paragraph (1) Letter G of the new Criminal Procedure Code (which closes the case, according to Article 314, Paragraph (1) Letter A. The prosecutor will not be able to provide a solution for the civil action, since that is beyond a prosecutor's prerogatives. Therefore, if the parties wish their agreement to take the form of a writ of execution, they can notarize it (Article 59, Paragraph (1) of Law no 192/2006) or address the Civil Court (Article 59, Paragraph (2) of Law no 192/2006), following the regular procedures. In case the parties agree to transfer the ownership of a building, or real right, or in the case of separation and inheritance cases, the authentication or legalisation of the agreement are compulsory, and the notary public or the court must perform not only formal verifications, but also background verifications, and they can request changes or additions to the mediation agreement (Article 58, Paragraph (4) of Law no 192/2006);

b. *if the lawsuit has begun:* the court shall pronounce a Decision on both matters, civil and criminal. Therefore, regarding the criminal matter the court shall pronounce the closure of the criminal trial based on Article 16, Paragraph (1), Letter G of the new Criminal Procedure Code and in the case of the civil matter the court shall take into account the consensus of the parties that is expressed

by the mediation agreement, making it legally enforceable. When the mediation agreement is submitted during appeal, the previous decision of the court shall be cancelled and the mediation agreement shall be enforced.

If the mediation procedure is started before the beginning of the criminal trial and the trial is closed by conflict resolution via the mediation agreement, the perpetrator shall not be liable for the offence that generated the settled conflict (Article 69, Paragraph (1) of Law no 255/2013)[35].

When the mediation agreement concerns only the civil demands and the conflict between the parties is settled and the parties await the judicial body's solution for the criminal matter, the effects of this agreement shall be strictly limited to the civil matter and the court shall acknowledge the consensus expressed in the mediation agreement when pronouncing the decision in the criminal matter, with the exception of the situations when the court is compelled to reject the civil action or to leave it unresolved (Article 25, Paragraphs (5) and (6) of the new Criminal Procedure Code).

6.2. Observations concerning the solution of conflict

We must note that mediation is characterised by confidentiality, and so is the mediation agreement. Therefore, the court's decision that quotes clauses from the mediation agreement cannot be published in its entirety on the dedicated websites (such as www.jurisprudenta.org of the Jurindex Project) or even on the website of the courts (http://portal.just.ro). In this respect the Decision no 884/2013[36] of the Superior Council of Magistracy.

During the time passed from the date of the closure of the mediation agreement (when the parties have reached a consensus) and the date of appearance before the judicial body, one of the parties may reconsider and disagree with the initial contents of the mediation agreement. We believe that this reconsideration should not generate any effects with regard to the proceedings before the judicial body – the mediation agreements generate effects between the parties from the date when they are signed, not notarized or legalised; unless they concern real rights on buildings, separation or inheritance cases, mediation agreements generate effects from the date they take the form *ad validitatem*, before the notary public or the court.

[35]Article 157, Paragraph (3) of the new Criminal Code regulates the indivisibility of criminal liability. Therefore, after the amendments made to this law, if the mediation agreement is signed only by the injured person and one of the perpetrators, the trial will continue only for the others. We believe this solution is correct and in accordance with the similar regulations on reconciliation in force before and after the new Criminal Code and the new Criminal Proceedings Code, but also with the institution of the withdrawal of prior complaint established by Article 158, Paragraph (2) of the new Criminal Code: *"The withdrawal of prior complaint removes the perpetrator's criminal liability with regard to the offence described by that complaint."*

[36]Published on the website of the Superior Council of Magistracy www.csml909.ro.

The judicial body is called to verify the mediation agreement in its formal aspects and to ensure the parties signed it knowingly, in the sense that their consent was not corrupted. These aspects are verified by analysing the moment of the conclusion of the agreement and not the moment of the parties appearance before the judicial body that performs the verification. If one of the parties has changed their mind, this constitutes a case of unilateral cancellation of the contract (the mediation agreement is a contract and has the force of a law between the parties, which binds them since its completion according to Article 1270 Paragraph (1) of the Civil Code) and can generate civil liability for breach of contract. Therefore, in the criminal matter, the judicial body has no other solution but to take into account the will of the parties at the moment of the completion of the mediation agreement.

Another difficulty arises if one of the parties does not appear before the judicial body. There is legal basis even for the bench warrant in this case.

Lastly, we note that even though the mediation agreement leads to the settlement of the criminal proceedings, this impediment to the trial is not mentioned in Article 192 of the Criminal Procedure Code of 1968 with regards to the regulation of judicial expenses. The Code contains rules of establishing the judicial expenses in the case of late filling of the prior complaint, the withdrawal of the prior complaint of the reconciliation of the parties, but it makes no reference to the mediation agreement. This situation is avoided in the new Criminal Procedure Code, where it is established that these expenses are to be paid by the party that the mediation agreement names, if mediation in criminal matters was used (Article 275, Paragraph (1), point 2, Letter C of the new Criminal Procedure Code).

Conclusions[37]

In compliance with international standards, the institution of mediation is properly regulated in the Romanian criminal trials.

It is clearly noticeable from the evolution of the laws on mediation, that the Romanian lawmaker initially conceived mediation in the criminal trial as a means to achieve other impediments to the course of the criminal trial: "classis" impediments, such as the lack or withdrawal of the prior complaint and the reconciliation of the parties. Law no 202/2010 regarding certain measures for the acceleration of the conclusion of the trial, has made the agreement obtained through mediation into a distinct case which prevents the beginning and exercise of the criminal proceedings, however the lawmaker chose as a field of jurisdiction of mediation only those crimes that require prior complaint or allow reconciliation of the parties, which created confusion regarding the distinct nature of

[37]Danilet, C., op. cit., 2014, page 181.

the mediation agreement. The entry into force of the new Criminal Procedure Code has created the premises for the mediation agreement to be applied to other offences as well in the future.

The Romanian lawmaker does not have a clear conception of the means of functioning of mediation in criminal matters during trials: apparently, mediation during a criminal trial is possible *in the criminal matter* for a limited number of offences, namely those which require prior complain for prosecution or where reconciliation is possible and *in the civil matter* it is possible for any kind of offence, but only with regard to the civil demands[38]. Leaving aside the matter of mediation with regard to civil demands, which is a civil type of mediation in the criminal trial, we cannot agree with the reglementation of the existence of the institution of mediation „in the criminal nature of the case": the victim cannot decide together with the perpetrator on his criminal liability in any other way but the withdrawal of the prior complaint or the reconciliation of the parties, but these are different institutions than the one we wish to analyse.

In reality, the mediation in criminal matters agreement represents a consensus between the parts with regard to their reciprocal demands and obligations, which does not in any way concern criminal liability (which is the exclusive prerogative of the judicial bodies) and which cannot be reduced to an agreement with regard to the demands which represent the object of civil action in the criminal trial. The clauses of a mediation agreement can dictate on any rights that the parties themselves can regulate, including rights that have no connection to the criminal trial, the only requirement being that these clauses generate the complete and definitive settlement of the conflict between the parties, an aspect which must unequivocally result from the mediation agreement. This is the reason why we support the idea that mediation in criminal matters can be used for any kind of offence where there are identified victims and perpetrators, its effect being the closure of the criminal trial only for certain offences (for now, only those that require prior complaint or where the reconciliation of the parties is possible).

[38]Idem, page 182, footnote no 77: "Moreover, the new Criminal Procedure Code makes use of different phrases when describing regulations for mediation in criminal matters: "mediation", "mediation in criminal matters", "mediation in civil matters", "mediation with regards to the civil action"; likewise, Law no 192/2006 uses the phrases "mediation", "mediation in criminal matters", "mediation in criminal cases", "mediation in civil cases".

GLOBAL SPORTS TOURISM AND THE NECESSITY OF AN INSTITUTIONAL FRAMEWORK IN GREECE

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Abstract: *In our days, sports tourism has been an activity that numerous people are involved with. The main question arising from this activity is, if there is a specific institutional framework concerning sport tourism. In several European countries, as well as in the American continent, there is a specific regulatory framework that governs the activity of sports tourism, concerning both the nature of the activity and the framework that it evolves and develops within the country. Such thing does not happen in the case of Greece for several reasons, from which, we may highlight the absence of a national institutional framework concerning sports tourism as well as the extreme difficulty in organizing sports tourism activities due to bureaucracy reasons. These issues, may had been resolved with a complete institutional framework for sports tourism that does not conflict with any of national of international laws. In this paper, it is being presented the legal state in Greece concerning sport tourism. In addition, there is an effort to compare the procedures and actions that took place in other European countries such as Great Britain, that have a different legal system, to those of Greece and present the benefits that arise in an international level, so that we understand how important is to have a well-established institutional framework and we find ways to promote sports tourism in Greece effectively.*

Key Words: Sports tourism, Greek regulatory framework, conflicts, international law, development, sport tourism charter.

Sports Tourism

Sports and tourism are two different meanings concerning human behavior yet they seem to be interfering each other under the form of sports tourism. Nowadays, sports tourism (Standeven and De Knop, 1999), is a specific form of alternative tourism or sustainable tourism (Berry and Ladkin, 1997), that involves sporting activities within the process of tourism. Several definitions have been given in order to describe sport tourism. Sport tourism is defined by Hinch and Higham (2001) as sport-based travel away from the home environment for a limited time, where sport is characterized by unique rule sets, competition related to physical prowess, and a playful nature. According to Standeven and De Knop (1999), sports tourism is being defined through the motives of the tourist, whether he begins the tourist activity from the need of participating (passively or not) in a sporting event or during the touristic activity he gets involved in a sporting one but not as a purpose. According to some researchers (Gammon and Robinson, 1997, 2003), this separation forms the hard and soft aspect of sports tourism.