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Marcel Voitalla

To what extent do institutional mediation rules in the sports sector contain the principles of mediation?

A comparative analysis of selected mediation regulations from the sports sector



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und Konfliktmanagement
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Preface

This thesis was submitted as master thesis at the Faculty of Law of the European University Viadrina Frankfurt/Oder in spring semester 2018. The date of the oral examination was 10th October 2018.

In addition to my interest in mediation and ADR, I am also interested in sports and its legal issues. Therefore, it was a special concern of mine to write the master thesis on a topic that combines mediation, sports, and law.

During the literature research I noticed that mediation rules in sports are largely unexplored. In this regard, the idea came up to examining to what extent the mediation principles are contained in the mediation rules in the field of sports and working out the underlying understanding of mediation, including the similarities and differences between the individual mediation codes.

Since most mediation codes in the field of sports are written in English, the present thesis was written in English.

At this point I would like to thank all the people who supported me during the preparation of the master thesis, both professionally and personally:

I thank my advisor, Mr. Christof Berlin, for his professional impulses and suggestions in connection with this work. I am also grateful to Mr. Arno Gotting for preparing the second opinion.

Furthermore, I would like to thank my fellow students of the Master's Program in Mediation and Conflict Management at the European University Viadrina Frankfurt/Oder for their numerous suggestions and ideas during the implementation of the master thesis.

Finally, my greatest thanks go to my family and friends, who supported me unconditionally not only during the preparation of the master thesis, but throughout the entire time of my studies.

Marcel Voitalla, March 2019

1. Introduction

In order to introduce the topic, the research question and the research objective is discussed below. Subsequently, a survey refers to the existing literature. Finally, the procedure of investigation is shown.

1.1. Research Question and Research Objective

The field of sports is a complex matter involving a large number of participants, including athletes¹, managers, clubs, sponsors, and sports organizations. In this respect, it is not surprising that conflicts often arise between these participants. In the field of sports, a multitude of emerging conflicts is often resolved through arbitration procedures.²

However, the Woodhall/Warren case has also shown that mediation is suitable for resolving sports-related disputes.³ In this case, Woodhall, the current World Boxing Council (WBC) Super Middleweight Champion, and Warren, the Boxing Promoter, opted to resolve their contractual dispute by mediation rather than pursue it through litigation. The mediation process enabled Woodhall and Warren to resume their working relationship after settling the dispute. Following the procedure, Warren said: “It was important to all concerned to have brought this matter to a speedy conclusion. We have shaken hands and look forward to resuming our successful partnership.”⁴

The purpose of the mediation procedure – the activation of the self-responsibility of the parties – is based on the assumption that no one can evaluate

¹ For simplicity's sake and to support ease of reading, the use of the male gender in this thesis applies to both males and females.

² Many sports-related arbitration procedures are carried out at the Court of Arbitration for Sport (CAS). For more information about the CAS, see McLaren, *The Court of Arbitration for Sport: An Independent Arena for the World's Sports Disputes*, Valparaíso University Law Review, Vol. 35, No. 2, 2001, 379 ff, retrieved from <http://scholar.valpo.edu/vulr/vol35/iss2/3> (last visited Aug. 08, 2018).

³ Blackshaw, *Mediating sports disputes*, in Nafziger/Ross (eds.), *Handbook on International Sports Law* (2011) 81f; Shair Mohamad/Kamarudin, *Mediation as an effective tool for resolving sports disputes*, *International Journal of Business, Economics and Law*, Vol. 7, Issue 4, August 2015, 81 (84), retrieved from http://ijbel.com/wp-content/uploads/2015/09/KLIBEL7_Law-31.pdf (last visited Aug. 08, 2018).

⁴ Centre for Effective Dispute Resolution (CEDR), *Mediation – Boxing Clever!*, <https://www.cedr.com/press/?item=Mediation-Boxing-Clever> (last visited Aug. 08, 2018).

the elements that should be part of a conflict resolution even approximately as well as the parties themselves.⁵ Because of this, it is not unexpected that different bodies and institutions in the field of sports (e.g. the CAS), have created their own mediation rules and codes in order to help participants solve their sports-related disputes within the family of sports.

However, mediation contains certain principles that are characteristic of this type of conflict resolution, especially in order to enable the delimitation to other Alternative Dispute Resolution (ADR) procedures. Therefore, this thesis shall examine the following question: “To what extent do institutional mediation regulations in the sports sector contain the principles of mediation?” In order to answer the raised research question, it is necessary to examine the regulatory treatment of the principles of mediation in selected mediation regulations from the sports sector. Furthermore, the similarities and differences between the regulatory treatment of the individual bodies and institutions are identified as well. From the researcher's point of view, it is also of interest to investigate to what extent sports-specific peculiarities are represented in the mediation regulations to be investigated. For example, sports often require “quick” decisions, which could affect the rules governing the time frame of mediation. It is also exciting to examine whether the institutions and bodies make special demands on the expertise of the “sports” mediator in their rules and codes.

The research objective is to strengthen mediation as an ADR process in the field of sports and to raise awareness of the importance of the principles of mediation. A further objective is to highlight the similarities and differences between the regulations of the enacting institutes and associations in the field of sports in order to help them to reflect upon their own rules. Therefore, this thesis should help to stimulate a discussion between the bodies and institutions in the field of sports on the handling of the principles and regulatory treatment in their codes.

⁵ Wendenburg, *Mediation – flexible Gestaltung innerhalb fester Strukturen*, ZKM 2014, 36; cf. Hesse, *Is mediation suitable to resolve sports related disputes?*, <https://www.lawinsport.com/topics/articles/item/is-mediation-a-suitable-to-resolve-sports-related-disputes> (last visited Aug. 08, 2018).

1.2. State of Research

A great deal has been written and said about mediation and sports. While *Marschner*⁶ has compared the different procedural leaders at soccer games, *Ribler*⁷ has described the management of conflicts in sports and the practical application of mediation in amateur and youth soccer. *Pulter/Ribler*⁸ have explained how mediation can be anchored in the sports system by presenting the project “Inter-cultural Conflict Mediation/Mediation in Soccer.” *Grabowski*⁹ has discussed why mediation may offer a remedy for solving of sports-related conflicts by establishing a forum for open communication, which is from his point of view currently missing in many sports negotiations. *Shair Mohamad/Kamarudin*¹⁰ have highlighted some advantages of mediation in order to show that mediation is the most effective and resolution-friendly procedure to settle sports disputes. *Sandu*¹¹ has researched why mediation has the potential to succeed where arbitration has failed by describing the arbitration procedures of national and international institutions and their arbitral responsibilities. Furthermore, based on 40 interviews with athletes and staff, and from his own professional and academic experience as mediator, he has presented the main benefits of mediation that can be used in sports disputes.¹²

Within the field of “mediation and sports”, some authors have already dealt with the institutionalization of mediation in sports. *Mironi*¹³ has mapped the state of mediation in sports, especially the degree of institutionalization of mediation on the international level, such as in the CAS, European Club Association (ECA),

⁶ Marschner, Fußball ohne Schiedsrichter – ein Beitrag zu einer besseren Welt? Ein Vergleich unterschiedlicher Verfahrensleiter im Fußballspiel (2011).

⁷ Ribler, Mediation im (Fußball-) Sport, in Trenczek/Berning/Lenz/Will (eds.), Mediation und Konfliktmanagement² (2017) 5.18 m.n. 1 ff.

⁸ Pulter/Ribler, Mediation im Sportsystem, ZKM 2003, 15 ff.

⁹ Grabowski, Both Sides Win: Why Using Mediation Would Improve Pro Sports, Journal of Sports and Entertainment Law, Vol.5, No.2, 2014, 189 ff, retrieved from <http://harvardjse.com/wp-content/uploads/2014/11/Grabowski.pdf> (last visited Aug. 08, 2018).

¹⁰ Shair Mohamad/Kamarudin, International Journal of Business, Economics and Law, Vol. 7, Issue 4, August 2015, 83.

¹¹ Sandu, ADR in Sport Disputes: Should Mediation be Used over Arbitration?, Conflict Studies Quarterly, Issue 11, April 2015, 57 ff, retrieved from <http://www.csq.ro/wp-content/uploads/CSQ-11.-Sandu.pdf> (last visited Aug. 08, 2018).

¹² Sandu, Conflict Studies Quarterly, Issue 11, April 2015, 57 ff.

¹³ Mironi, The promise of mediation in sport-related disputes, The International Sports Law Journal 2017, 131 (144).

WBC, and International Ice Hockey Federation (IIHF); he has also provided recommendations for promoting the idea of mediation in sports. *Godin*¹⁴ has examined multiple case studies of mediations conducted through the Sport Dispute Resolution Centre of Canada (SDRCC) with the goal of identifying successful mediation strategies for high-performance sports disputes.¹⁵ Furthermore, *Blackshaw* has already emphasized that mediation is not only offered by commercial organizations such as CEDR, but also by sports bodies, such as the CAS, SDRCC, Sport Resolutions (UK) (SRUK), or the Fédération Internationale de Football Association (FIFA) Dispute Resolution Chamber.¹⁶ In this context, *Blackshaw* has ascertained that mediation services provided by sports bodies are a complete subject in their own right and worthy of further study.¹⁷ Therefore, this thesis shall contribute to closing this research gap.

1.3. Procedure of Investigation

The first Chapter deals with the research question and the research objective. Furthermore, the state of research is presented.

The second Chapter presents the measure of investigation. First, the understanding of mediation shall be determined in order to be able to differentiate between mediation and other ADR procedures; thus, the principles of mediation are also explained. In this context, the principle of focusing on interests is also discussed and the five-phase model as the predominant mediation model in Ger-

¹⁴ Godin, Sport Mediation: Mediating High-Performance Sports Disputes, Harvard Negotiation Journal, Vol. 33, 2017, 25 ff, retrieved from <https://naarb.org/wp-content/uploads/2018/06/Sports-Mediation-Mediating-High-Performance-Sports-Disputes.pdf> (last visited Aug. 08, 2018).

¹⁵ Godin mentions that, from his point of view, currently, most professional sports do not widely use mediation as a formal part of their dispute resolution processes, although informal forms of dispute resolution may well be used, and parties do sometimes opt to mediate in individual cases, see Godin, Harvard Negotiation Journal, Vol. 33, 2017, 26f.

¹⁶ Blackshaw in Nafziger/Ross, Handbook on International Sports Law 82; also worth reading: Blackshaw, Mediating Sports Disputes, National and International Perspectives (2002) 49 ff; Blackshaw in Nafziger/Ross, Handbook on International Sports Law 65 ff; Blackshaw, The Court of Arbitration for Sport: An International Forum for Settling Disputes Effectively, Within the Family of Sport, Entertainment Law 2003, 61 ff; Blackshaw, ADR and Sport: Settling Disputes Through the Court of Arbitration for Sport, The FIFA Dispute Resolution Chamber, and the World Intellectual Property Organization (WIPO) Arbitration & Mediation Center, Marquette Sports Law Review, Vol. 24, Issue 1, 2013, 1 ff, retrieved from <http://scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=1609&context=sportslaw> (last visited Aug. 08, 2018).

¹⁷ Blackshaw in Nafziger/Ross, Handbook on International Sports Law 82.

many is presented. Since there are different institutions and bodies in the field of sports, which have enacted their own mediation rules, these institutions and bodies, along with their manner of regulating mediation, are presented. In addition, the investigation requires choosing certain institutions and bodies that enable comparability of their rules and codes.

In the third Chapter, the research question is discussed. For this purpose, the regulatory treatment of the principles in the selected mediation codes from the sports sector is examined. It should be noted that the set of rules is composed of both principles and rules. Therefore, it is appropriate to discuss the relationship between “principles” and “rules”. Subsequently, the regulatory treatment of mediation principles in the selected mediation codes is examined. In order to provide comparability between the mediation codes of the selected bodies and institutions, therefore, some regulatory areas are to form by the author.

Finally, in fourth Chapter, the key findings are summarized and some suggestions about the regulatory treatment of the principles are offered to the bodies and institutions in the field of sports.

2. Measure of Investigation

Gläßer has already noted that comparison of the individual definitions and the diversity of the procedures (which are referred as “mediation” both in literature and in practice) shows that there is no full agreement as to the constitutive process characteristics of mediation.¹⁸ Therefore, with regard to the raised research question, it is necessary to create a measure of investigation. The understanding of mediation and the principles of mediation are discussed. Finally, the institutions and bodies that have issued mediation rules in their codes are presented. In addition, in order to discuss the raised research question, some of these institutions and bodies, along with their rules and codes, must be explored.

2.1. Understanding of Mediation

Even if definitions always have a limited range and may not claim absoluteness,¹⁹ it is nonetheless necessary to determine the understanding of mediation in this thesis in order to delimit mediation from other ADR procedures such as conciliation. Describing a distinction between mediation and other ADR procedures is made more difficult by the fact that the international mediation literature has not formed a universal terminology for mediation.²⁰ Nevertheless, in the international review, the definition of mediation has a common core: according to this core, mediation is a procedure, which is performed on the voluntary basis of the parties, in which a mediator without power of decision systematically promotes

¹⁸ Cf. Gläßer, *Mediation und Beziehungsgewalt* 61; for the different styles and goals of mediation, see Gläßer, *Mediation und Beziehungsgewalt* 67 ff; Wendenburg, *Der Schutz der schwächeren Partei in der Mediation* (2013) 17 ff; Riskin, *Understanding Mediators' Orientations, Strategies, and Techniques: A Grid for the Perplexed*, *Harvard Negotiation Law Review*, Vol. 1, No. 7, 1996, available at <http://scholarship.law.ufl.edu/facultypub/668> (last visited Aug. 08, 2018).

¹⁹ Trenzcek, *Außergerichtliches Konfliktmanagement (ADR) und Mediation – Verfahren, Prinzipien, Modelle*, in Trenzcek/Berning/Lenz/Will (eds.), *Mediation und Konfliktmanagement*² (2017) 1.1. m.n. 23.

²⁰ Hopt/Steffek, *Mediation – Rechtsvergleich, Regelungsmodelle, Grundsatzprobleme*, in Hopt/Steffek (eds.), *Mediation* (2008) 16; Gläßer, *Mediation und Beziehungsgewalt* (2008) 61; Rabe/Wode, *Mediation: Grundlagen, Methoden, rechtlicher Rahmen* (2014) 15; for more on diversity in mediation practice, see Alexander, *Global Trends in Mediation*, in Trenzcek/Berning/Lenz/Will (eds.), *Mediation und Konfliktmanagement*² (2017) 6.2. m.n. 8 ff.

communication between the parties with the objective of facilitating a self-responsible conflict solution by the parties themselves.²¹

In this respect, mediation and conciliation agree that the third party has no binding decision-making power in both cases, which makes a distinction between these procedures additionally difficult.²² In order to be able to differentiate between these procedures, *Röthemeyer* has proposed the “measure of solution activity” as a criterion of delimitation.²³ According to this criterion, a mediator, in principle, does not propose solutions and recommendations.²⁴ By contrast, a conciliator proposes concrete recommendations for a solution and for this reason simultaneously assumes (co-) responsibility for the conflict resolution.²⁵ A major criticism of the missing distinction between mediation and conciliation is that the conversational behavior of the parties varies significantly depending on whether it is their goal to persuade a third party of the plausibility and legality of their point of view, or whether they wish to develop an interest-based and amicable solution together with the other conflict party.²⁶ This criticism is comprehensible and justified. Therefore, the definition of mediation for the purposes of this thesis reads as follows: mediation is a confidential and structured procedure in which the parties voluntarily and self-determinately, with the support of a multipartial third party who is not allowed to propose solutions and has no decision-making power (“the mediator”), strive for an amicable conflict resolution based on the parties’ needs and interests.

It should also be noted that the mediation comprehension of the author is based on § 1 MediationsG²⁷ and *Gläßer*²⁸. Furthermore, the author’s definition is

²¹ Hopt/Steffek in Hopt/Steffek, Mediation 12.

²² Furthermore, demarcation problems arise from the fact that the terms in practice and science are often used identically; e.g. in Ireland, where the terms “conciliation” and “mediation” are often used synonymously, see Hopt/Steffek in Hopt/Steffek, Mediation 17.

²³ Röthemeyer, Die Schlichtung – ein Stiefkind der Gesetzgebung, ZKM 2013, 47 (49).

²⁴ Röthemeyer, ZKM 2013, 49.

²⁵ Klowait/Gläßer, Einführung, in Klowait/Gläßer (eds.), Handkommentar-MediationsG² (2018) Einl. m.n. 37.

²⁶ Wendenburg, Mediationsgesetzgebung: Regelung eines flexiblen Verfahrens im internationalen Vergleich, in Haft/Schlieffen (eds.), Handbuch Mediation³ (2016) § 58 m.n. 17.

²⁷ § 1 MediationsG, available at <https://www.gesetze-im-internet.de/mediationsg/BJNR157710012.html> (last visited Aug. 08, 2018):

“(1) Mediation ist ein vertrauliches und strukturiertes Verfahren, bei dem Parteien mit Hilfe eines oder mehrerer Mediatoren freiwillig und eigenverantwortlich eine einvernehmliche Beilegung ihres Konflikts anstreben.
(2) Ein Mediator ist eine unabhängige und neutrale Person ohne Entscheidungsbefugnis, die die Parteien durch die Mediation führt.”

significantly influenced by the Master's Program in Mediation and Conflict Management at the European University Viadrina in Frankfurt (Oder).

2.2. Principles of Mediation

It is generally accepted that the process of mediation is determined by specific principles. On one hand, these principles are important in order to differentiate mediation from other procedures²⁹; on the other hand, adhering to these principles (in addition to the procedural structure) can ensure that the mediation parties are permanently pacified after termination of the mediation.³⁰ An inobservance with the principles risks that a party feels disadvantaged or even is disadvantaged.³¹ In this regard, it is primarily the task of the mediator to ensure that the principles are observed in every phase of the process.³² From the aforementioned understanding of mediation, some of these principles can be derived. The principles of mediation are as follows: voluntariness, self-determination, confidentiality, multipartiality, and focusing on the interests. These principles are described below.

2.2.1. Principle of Voluntariness

Voluntariness is one of the central values of mediation.³³ The principle of voluntariness refers to the voluntary participation of the parties in the mediation process.³⁴ The conflict parties shall decide for themselves and without external coercion whether a mediation process should even be initiated and when it should be carried out.³⁵ Only a volitional mediation procedure of the parties can lead to success.³⁶ The voluntary participation of the parties should create an “open nego-

²⁸ See Hagel, Begriffsbestimmungen, in Klowait/Gläßer (eds.), *Handkommentar-MediationsG²* (2018) § 1 m.n. 10; Gläßer, Verfahren; Aufgaben des Mediators, in Klowait/Gläßer (eds.), *Handkommentar-MediationsG²* (2018) § 2 m.n. 82; siehe auch Rabe/Wode, *Mediation* 9 ff.

²⁹ Cf. Gläßer, *Mediation und Beziehungsgewalt* 61.

³⁰ Kracht, *Rolle und Aufgabe des Mediators – Prinzipien der Mediation*, in Haft/Schlieffen (eds.), *Handbuch Mediation³* (2016) § 13 m.n. 98.

³¹ Kracht in Haft/Schlieffen, *Handbuch Mediation³* § 13 m.n. 98.

³² Cf. Kracht in Haft/Schlieffen, *Handbuch Mediation³* § 13 m.n. 98.

³³ Keydel, *Zum Prinzip der Freiwilligkeit der Mediation*, ZKM 2011, 61.

³⁴ Cf. Marx, *Das Prinzip der Freiwilligkeit der Mediation*, ZKM 2010, 132.

³⁵ See Hagel in Klowait/Gläßer, *Handkommentar-MediationsG²* § 1 m.n. 14.

³⁶ Marx, ZKM 2010, 132.

tiation atmosphere.”³⁷ Furthermore, the principle of voluntariness also includes the ability of the parties and the mediator to terminate the mediation process at any stage.³⁸

2.2.2. Principle of Self-Determination

The principle of self-determination emphasizes the importance of the autonomy of the parties in the mediation procedure.³⁹ The purpose of the mediation procedure – the activation of the self-responsibility of the parties – is based on the assumption that no one can evaluate the elements that should be part of a conflict resolution even approximately as well as the parties themselves.⁴⁰ For this reason, comprehensive information is an indispensable prerequisite for a self-determined solution of the parties.⁴¹ The respective parties are only able to weigh and decide if they are also fully aware of all of the information that is necessary to make a decision.⁴²

Furthermore, a self-determined conflict resolution requires active participation of the parties.⁴³ A mere passive presence of one or more parties is unlikely to lead to an amicable conflict resolution, as the interests⁴⁴ of the passive party are not necessarily considered.⁴⁵ In this respect, the conflict parties retain responsibility for both the mediation’s content and its results⁴⁶ (i.e. it is ultimately the responsi-

³⁷ Marx, ZKM 2010, 132.

³⁸ Cf. Marx, ZKM 2010, 132.

³⁹ Rabe/Wode, Mediation 21.

⁴⁰ Wendenburg, ZKM 2014, 36.

⁴¹ Cf. Rabe/Wode, Mediation 21; the principle of awareness of all necessary information can be seen as an own principle as well, e.g. see 2.3.3. Richtlinien der Bundesarbeitsgemeinschaft für Familienmediation e.V. (BAFM) für die Mediation in Familienkonflikten, available at: <https://www.bafm-mediation.de/verband/richtlinien-der-bafm-fur-die-mediation-in-familienkonflikten/#Ziele> (last visited Aug. 08, 2018) or Duss-von Werdt/Mähler/Mähler (eds.), Mediation: Die andere Scheidung (1995) 120; Kracht in Haft/Schlieffen, Handbuch Mediation³ § 13 m.n. 114 ff; Rabe/Wode, Mediation 21f.

⁴² Rabe/Wode, Mediation 21; in order to receive and evaluate the necessary information, it is also conceivable to involve other parties in the proceedings, see Rabe/Wode, Mediation 21.

⁴³ Cf. Rabe/Wode, Mediation 21.

⁴⁴ Interests in the sense of mediation can be defined as “the relevant criteria in the individual case, which must be taken into consideration in a conflict resolution, so that the result is comprehensively satisfied for the parties.”, see Gläßer, Mediation und Beziehungsgewalt 81; Gläßer/Kirchhoff, Lehrmodul 2: Interessenermittlung, ZKM 2005, 131.

⁴⁵ Rabe/Wode, Mediation 21.

⁴⁶ According to Marx the content-related responsibility for the results can be seen as an expression of the principle of voluntariness, see Marx, ZKM 2010, 132.

bility of the parties to exchange all relevant information, identify the interests at hand, and develop creative solutions).⁴⁷ Nevertheless, the mediator is responsible for control of the procedure (i.e. he has the duty to determine the procedure in such a way that the parties can each voice their issues, relevant beliefs, and interests to the same extent).⁴⁸ The mediator is also responsible for the structuring, the communicative and methodological design, the visualization, and, as a rule, the documentation of the mediation process.⁴⁹ Thereby, a significant added value of mediation compared to a negotiation lies in the discharge, which results from the fact that the parties yield the responsibility of the determination of the procedure to the mediator and can therefore concentrate entirely on the discussion of the conflict themes.⁵⁰

2.2.3. Principle of Confidentiality

Blackshaw has referred to the principle of confidentiality as “all-important requirement” of ADR procedures.⁵¹ Confidentiality is also a fundamental principle of mediation.⁵² The work of the parties on an amicable solution is facilitated if the parties do not remain in mutual distrust caused by the conflict, but are able to cooperate with trust and frankness.⁵³ Furthermore, the principle of confidentiality must also be observed in the relationship between the mediator and the parties.⁵⁴ This essentially refers to the treatment of information from the parties and the mediator in relation to external parties, who are not involved in the mediation

⁴⁷ Cf. Gläßer, *Mediation und Beziehungsgewalt* 78; cf. Rabe/Wode, *Mediation* 21; therefore, through the principle of self-determination, mediation can also be distinguished from other procedures, in which a third party can settle the entire conflict, e.g. judicial and arbitral proceedings.

⁴⁸ Cf. Montada/Kals, *Mediation: Psychologische Grundlagen und Perspektiven*³ (2013) 63.

⁴⁹ Gläßer, *Mediation und Beziehungsgewalt* 78.

⁵⁰ Wendenburg, *ZKM* 2014, 37.

⁵¹ Blackshaw, *Mediating Business and Sports Disputes in Europe*, *ESLJ* 2008, 6 (2), 4, retrieved from <https://www.entsportslawjournal.com/articles/10.16997/eslj.61/> (last visited Aug. 08, 2018).

⁵² See Lilja/v. Lucius/Tietz, *Blick auf die Rechtsprechung zum Thema Mediation*, in Klowait/Gläßer (eds.), *Handkommentar-MediationsG*² (2018) Einl. m.n. 100; Wendenburg criticizes the term of confidentiality as a defining feature of mediation, see Wendenburg, *ZKM* 2014, 38; Wendenburg, *Der Schutz der schwächeren Partei in der Mediation* 14.

⁵³ Hilbert, *Die Sicherung der Vertraulichkeit des Mediationsverfahrens* (2006) 5.

⁵⁴ Cf. Rabe/Wode, *Mediation* 18.

procedure (“external confidentiality”).⁵⁵ Therefore, the principle of confidentiality and its protection is crucial to finding an amicable solution between the parties.

2.2.4. Principle of Multipartiality

Multipartiality is the ability to take sides equally for all concerned parties, to identify and respect the merits of each party, and to identify with all parties in a network of relationship.⁵⁶ The term “multipartiality” also describes the attitude of the mediator, which should consist of an active, unbiased, rotational, all-over solicitousness on the conflict narrations and interests of mediation parties.⁵⁷ The principle of multipartiality is legitimized by the fact that the occasional support of a conflict party ultimately helps all conflict parties in order to achieve the common goal: a constructive, sustainable conflict resolution to which all parties have committed themselves by engaging in mediation.⁵⁸ The attitude of multipartiality is particularly evident in the case of clear inequalities or asymmetrical distribution of resources between the mediation parties, e.g. with regard to status, positional power, rhetoric and competence to talk, independence, etc.⁵⁹ In these cases, it is the mediator’s task to draw attention to the risks of inequalities and, together with the parties, to reflect on the effects on the fairness of the procedure in order to support or empower the “weaker” conflict party in this way.⁶⁰ This principle is very important for the success of a mediation procedure because an infringement of it could shatter the parties’ confidence in the mediator and in the entire mediation procedure.

The term “multipartiality” is also associated with expectations of the mediator, such as the independence and the impartiality of the mediator towards the parties.⁶¹ But it should be said that the literature demonstrates an unclear abundance of terminological circumlocutions and delimitations as to the terms “neutrality,”

⁵⁵ See Beck, *Mediation und Vertraulichkeit* (2009) 50 ff; the treatment of information within the mediation procedure within the mediation room will also be referred to as “internal confidentiality.”

⁵⁶ Beckmann, *Neutralität und Allparteilichkeit in der Mediation – Eine Diskussion um Begrifflichkeiten?*, ZKM 2013, 51.

⁵⁷ Wendenburg, ZKM 2014, 37.

⁵⁸ Montada/Kals, *Mediation*³ 65.

⁵⁹ Montada/Kals, *Mediation*³ 65.

⁶⁰ Cf. Montada/Kals, *Mediation*³ 65.

⁶¹ Cf. Trenczek, *Allparteilichkeit – Anspruch und Wirklichkeit*, ZKM 2016, 230 f.

“independence,” “impartiality,” and “multipartiality.”⁶² A thorough investigation of these terms, however, would go beyond the scope of this thesis. Nevertheless, from *Wendenburg’s* point of view, the term “multipartiality” describes the position and attitude of the mediator in a conceptually more precise manner than the terms “neutrality” and “impartiality”.⁶³ In this investigation, therefore, the terms “neutrality,” “independence,” and “impartiality” shall all be contained within the term “multipartiality.”

2.2.5. Principle of Focusing on Interests in Connection with the Five-Phase Model

*Gläßer*⁶⁴ has already noted that the international mediation literature does often not consider the parties’ interests in their descriptions of mediation. However, according to the underlying understanding of mediation, mediation is a user-oriented service that always focuses on the interests of the parties.⁶⁵ Interests in the sense of mediation can be defined as “the relevant criteria in the individual case, which must be taken into consideration in a conflict resolution, so that the result is comprehensively satisfactored for the parties.”⁶⁶ Interests unify that they generate an emotional resonance, and are formulated in a solution-oriented, tangible, and positive way.⁶⁷ At the level of content-related treatment of the conflict, the key functions of interests are the promotion of understanding, the enhancement of solution creativity, and their use as a benchmark for the quality of a solution.⁶⁸ Parties’ interests can generally appear at every stage of the mediation

⁶² Cf. Beckmann, ZKM 2013, 52f; Montada/Kals, Mediation³ 63 ff; following Kacht, the terms “independence” and “neutrality” describe two parts of neutrality, the “neutrality of the person” and “neutrality in the procedure;” see Kracht in Haft/Schlieffen, Handbuch Mediation³ § 13 m.n. 30 ff. The term “neutrality” is used in the English language, but in the context of mediation the term is problematized as inadequate, see fn. 1 in Trenczek, ZKM 2016, 230. For more information about multipartiality, see Andreasson, Der Begriff der Allparteilichkeit, ZKM 2017, 99 ff; Hohmann, Allparteilichkeit – Die Gratwanderung des Mediators, ZKM 2007, 117f.

⁶³ Wendenburg, ZKM 2014, 37.

⁶⁴ Fn. 140 in Gläßer, Mediation und Beziehungsgewalt, 65.

⁶⁵ Cf. Trenczek in Trenczek/Berning/Lenz/Will, Mediation und Konfliktmanagement² 1.1. m.n. 25. For more information about the clarification of interests, see Gläßer/Kirchhoff, ZKM 2005, 130 ff.

⁶⁶ Gläßer, Mediation und Beziehungsgewalt 81; Gläßer/Kirchhoff, ZKM 2005, 131.

⁶⁷ Gläßer, Mediation und Beziehungsgewalt 81 f; Gläßer/Kirchhoff, ZKM 2005, 131 f.

⁶⁸ Gläßer, Mediation und Beziehungsgewalt 79 f.

process.⁶⁹ The mediators must therefore pay special attention to the parties' interests throughout the entire process.⁷⁰

In contrast to "normal" negotiations, mediation procedures in Germany follow a certain structure of phases⁷¹, which include the principle of interest orientation as well. *Gläßer* describes this so-called five-phase model.⁷² This model is taught as part of the Master's Program in Mediation and Conflict Management of the European University Viadrina in Frankfurt (Oder) and has influenced this paper's author in his attitude as mediator.⁷³ For a better understanding, the five-phase model is presented below.

2.2.5.1. Five-Phase Model

The five-phase model specifies the structure of the process and, in this regard, the mediator retains control of the procedure.⁷⁴ The model consists of the following phases: opening, survey, clarification of interests and treatment of the fields of the conflict, finding of solutions, and closing.

2.2.5.1.1. Phase 1: Opening

Phase 1 is primarily used to build trust and to establish contact between the parties and the mediator and create a secure framework for the entire mediation process. After the welcome and introduction, the mediator explains the previous process⁷⁵ in order to bring all parties to the same level of knowledge. Furthermore, the mediator informs the parties in an "opening statement" about the mediation and its principles, the goals, his role as a mediator, and his understanding of

⁶⁹ Gläßer, *Mediation und Beziehungsgewalt* 83.

⁷⁰ Gläßer, *Mediation und Beziehungsgewalt* 83.

⁷¹ Klowait/Gläßer in Klowait/Gläßer, *Handkommentar-MediationsG*² Einl. m.n. 49.

⁷² Gläßer, *Mediation und Beziehungsgewalt* 84 ff; Gläßer in Klowait/Gläßer, *Handkommentar-MediationsG*² § 2 m.n. 81 ff; Wendenburg, *Der Schutz der schwächeren Partei in der Mediation* 14 ff; Rabe/Wode, *Mediation* 9 ff; Aschenbrenner provides a comparison of different conflict resolution models, see Aschenbrenner, *Die Logik der Phasen*, ZKM 2008, 73 ff.

⁷³ Furthermore, there is a description of phase-related approaches in Knapp (ed.), *Konfliktlösungs-Tools*⁵ (2017).

⁷⁴ See 2.2.2..

⁷⁵ These are all steps that have already been initiated by the mediation parties and the mediator in relation to the proceedings.

mediation.⁷⁶ He describes the parties' role during the procedure. Afterwards, the parties can express their wishes, apprehensions, and questions. If they decide to conduct the mediation with the respective mediator, various process agreements (e.g. confidentiality agreements) are made if necessary. Organizational issues are also clarified. Phase 1 ends with the conclusion of a mediation agreement between the parties and the mediator.

2.2.5.1.2. Phase 2: Survey

Phase 2 – the survey – serves primarily as the collection of information and themes in relation to the conflict. In this phase, the parties are offered the opportunity to present their own points of view about the conflict. This should also enable them to “let off steam”. The mediation parties present the facts from their perspectives and continue to name the topics that, from their point of view, are to be clarified. The mediator structures this procedure. In addition, he must sort and structure the given information of the mediation parties and identify any contentious and non-disputable statements. The stated “positions” of the parties are rephrased in neutral “themes” by the mediator in consultation with the parties. After the collection and structuring of the parties' themes, an agenda is finally created in order to work on the individual themes.⁷⁷

2.2.5.1.3. Phase 3: Clarification of Interests and Treatment of the Fields of Conflict

The parties' interests serve as a benchmark for an amicable solution.⁷⁸ At least according to the five-phase model, the elaboration of the parties' interests represents the pivotal step in the five-phase model.⁷⁹ Since Phase 3 serves to clarify and elaborate the parties' interests, the mediator assists the parties with perceiving, elaborating, and naming their feelings, needs, and interests.⁸⁰ The mediator helps the parties in order to elaborate the parties' interests behind their positions.

⁷⁶ For the different styles and goals of mediation, see Gläßer, *Mediation und Beziehungsgewalt* 67 ff; Wendenburg, *Der Schutz der schwächeren Partei in der Mediation* 17 ff; Riskin, *Understanding Mediators' Orientations, Strategies, and Techniques: A Grid for the Perplexed*, *Harvard Negotiation Law Review*, Vol. 1, No. 7, 1996, available at <http://scholarship.law.ufl.edu/facultypub/668> (last visited Aug. 08, 2018).

⁷⁷ For more information, see Gläßer/Kirchhoff, *Lehrmodul 14: Bestandsaufnahme*, ZKM 2009, 186 ff.

⁷⁸ Wendenburg, ZKM 2014, 39.

⁷⁹ Klowait/Gläßer in Klowait/Gläßer, *Handkommentar-MediationsG² Einl.* m.n. 49.

⁸⁰ For further details, see Gläßer/Kirchhoff, ZKM 2005, 130 ff.

By elaborating on the background of the conflict, pointing out the similarities and differences, and clarifying misunderstandings, this helps the parties to allow different realities, to understand different perspectives, and to develop a deeper understanding for each other. At the same time, this creates the willingness of the parties to work together on a solution.

In this respect, it is not surprising that *Klowait/Gläßer* appreciate the strict focusing on interests as the most valuable potential and benefit of mediation in order to generate a consensual, value-added, sustainable conflict solution.⁸¹

2.2.5.1.4. Phase 4: Finding of Solutions

Phase 4 deals with the finding of solutions and can be divided into Phase 4a and 4b.⁸² Many different (and even unusual or unrealistic) ideas for resolving the conflict are also developed and collected by the parties in Phase 4a without being evaluated at the same time. During Phase 4a, the mediator's primary responsibilities are to methodically stimulate the creativity of the parties, to appreciate their creativity, and to visualize their named proposals for a solution (as aforementioned, according to the represented understanding of mediation,⁸³ the mediator is not allowed to propose solutions and recommendations).⁸⁴ In Phase 4b, the parties must evaluate the options and select a customized solution that ideally includes all of their elaborated interests and is therefore accepted as a fair solution by all of them. Furthermore, the mediator moderates the individual evaluation steps of the parties and assists them with the composing of their solution packages.

⁸¹ Klowait/Gläßer in Klowait/Gläßer, *Handkommentar-MediationsG*² Einl. m.n. 49.

⁸² According to Kessen/Troja, phases 4 a and b each represent an independent phase, see Kessen/Troja, *Ablauf und Phasen einer Mediation*, in Haft/Schlieffen (eds.), *Handbuch Mediation*³ (2016) § 14 m.n. 4 ff; about the different structure of individual phase models in Germany, see Rauschenbach, *Wenn Brainstorming versagt – Kreativitätstechniken in der Mediation* (2015) 10 f; for more information about the solution finding, see Gläßer/Kirchhoff, *Lehrmodul 7: Lösungsfindung – Teil 1*, ZKM 2007, 88 ff; Gläßer/Kirchhoff, *Lehrmodul 8: Lösungsfindung – Teil 2*, ZKM 2007, 157 ff.

⁸³ See 2.1..

⁸⁴ Montada/Kals ask in this context the following question: suppose the mediators have productive options in their heads that the parties themselves do not come up with. Should they not bring them into the mediation? If they do not mention these ideas and the parties are later asked by third parties why they have not thought of this solution, they might also be less satisfied with the agreed-upon, less-effective solution and thus with the mediation, see Montada/Kals, *Mediation*³ 69.

2.2.5.1.5. Phase 5: Closing

Phase 5, the closing of the mediation procedure, serves as the formalization and hedging of the settlement agreement. The agreement, including regulations that are intended to be implementable and viable, and that are intended to settle the conflict satisfactorily and sustainably, are determined in a written and binding final agreement.⁸⁵ The task of the mediator is primarily to verify the clarity and unambiguity of the reached and formulated settlement. Furthermore, the parties shall have the opportunity to provide feedback about the procedure and the mediator.⁸⁶

2.2.5.2. Results

The peculiarity of mediation is that it goes through certain phases and follows certain principles.⁸⁷ Mediation can shortly be described as a structured, interest-based decision-making process.⁸⁸ According to the represented understanding of mediation, the structure is prescribed by the illustrated five-phase model. In this model, the elaboration of the interests in Phase 3 represents the so-called “heart of mediation.”⁸⁹ As previously mentioned, *Klowait/Gläßer* appreciate the strict focusing on interests as the most valuable potential and benefit of mediation in order to generate a consensual, value-added, sustainable conflict solution.⁹⁰ This is because interests can serve as benchmarks for an effective solution (i.e. a solution that takes the interests of all conflict parties into account).⁹¹

2.3. Institutional Mediation Rules in Sports

The following gives an overview of the bodies and institutions in the field of sports that have implemented rules about mediation in their codes. In this context,

⁸⁵ Cf. Rauschenbach, Wenn Brainstorming versagt – Kreativitätstechniken in der Mediation 10.

⁸⁶ For more information about feedback in a mediation, see Ade/Gläßer, Lehrmodul 12: Feedback in der Mediation, ZKM 2009, 60 ff.

⁸⁷ Cf. Hattemer, Mediation bei Störungen des Arzt-Patient-Verhältnisses (2012) 8.

⁸⁸ Klowait/Gläßer in Klowait/Gläßer, Handkommentar-MediationsG² Einl. m.n. 50.

⁸⁹ Kessen/Troja in Haft/Schlieffen, Handbuch Mediation³ § 14 m.n. 25; Gläßer/Kirchhoff, ZKM 2005, 130.

⁹⁰ Klowait/Gläßer in Klowait/Gläßer, Handkommentar-MediationsG² Einl. m.n. 49.

⁹¹ Klowait/Gläßer in Klowait/Gläßer, Handkommentar-MediationsG² Einl. m.n. 49.

sports-governing bodies and institutions such as ECA⁹², Ice Hockey UK (IHUK)⁹³, Swim England⁹⁴, and WBC⁹⁵ have set some rules in their codes regarding mediation to which their members are subjected. As a rule, they have established only isolated mediation rules in their codes and statutes.⁹⁶

Furthermore, some private providers, such as Sport Dispute Solutions Ireland (SDSI), SRUK, or the Sports Tribunal of New Zealand enact mediation rules as well.⁹⁷ SDSI is an independent, specialized dispute resolution service for Irish sports offering a mediation and arbitration facility.⁹⁸ The Federation of Irish Sport, which established the SDSI, commends the rules of SDSI to all national governing bodies of sports in Ireland and their members as a fair, inexpensive, and expeditious method of resolving disputes that remain unresolved after all of the procedures within the sports have been exhausted.⁹⁹ SRUK¹⁰⁰ is an independ-

⁹² ECA Statutes, available at: <https://www.ecaeurope.com/media/4160/eca-statutes-2017.pdf> (last visited Aug. 08, 2018).

⁹³ ICE HOCKEY UK Disciplinary & Appeals Rules & Procedures, available at: <https://www.icehockeyuk.co.uk/disciplinary-appeals-procedure/> (last visited Aug. 08, 2018).

⁹⁴ Swim England Handbook, available at: http://www.swimming.org/assets/uploads/GoogleView/ASA_Swim_England_Handbook_2018.pdf (last visited Aug. 08, 2018).

⁹⁵ Rules & Regulations of the WBC, available at: http://wbcboxing.com/downloads/WBC_Rules_&_Regulations_amended_as_of_November_2015.pdf (last visited Aug. 08, 2018).

⁹⁶ An isolated mediation rule is to be found in Article 8 of the ECA Statutes: “The Members shall have the following obligations: [...] i) To conduct ECA Mediation in good faith if a dispute of financial nature would arise with another Member.” Swim England has determined an isolated rule of the Procedure to deal with a complaint by mediation, see Rule 174 of Swim England Handbook. The WBC has established a rule about Compulsory Mediation: “Any open, unresolved claim, controversy, or dispute involving the WBC must be submitted to non-binding mediation in accordance with the following procedures within thirty (30) days after exhaustion of remedies under the administrative procedures outlined in Rule 5.2.”, see 5.3. in the Rules & Regulations of the WBC.

⁹⁷ Other providers, such as CEDR, Deutsche Institution für Schiedsgerichtsbarkeit e.V. (DIS), Judicial Arbitration and Mediation Services, Inc. (JAMS), and WIPO are not specifically geared to the sports sector and therefore do not limit their codes to it. In this respect, these providers should be excluded from the investigation in advance.

⁹⁸ Sport Dispute Solutions Ireland (formerly known as “Just Sport Ireland“ (“JSI”)) was established by the Federation of Irish Sport, with support from the Irish Sports Council, to provide an independent specialized dispute resolution facility for Ireland’s sporting community; see Preamble SDSIR. For more information, see the website of SDSI retrieved from <http://sportdisputesolutions.ie> (last visited Feb. 01, 2019); about mediation in Ireland in general, see Ellger, Mediation in Ireland, in Hopt/Steffek (eds.), Mediation (2008) 635 – 670.

⁹⁹ SDSI, About SDSI, <http://sportdisputesolutions.ie/about/> (last visited Feb. 01, 2019).

¹⁰⁰ Formerly named Sports Resolution Dispute Resolution Panel (SDRP). The SDRP was created in 1997 by the nine representative umbrella bodies of sports in the UK: British Athletes Commission, British Olympic Association, British Paralympic Association, European Sponsorship Association, Northern Ireland Sports

ent, not-for-profit dispute resolution service for sports based in the United Kingdom. According to the information provided on their website, the mediation service provides a quick and cost-effective way of resolving sports disputes where it is important for the resolution to remain confidential and for the relationship between the parties to be preserved.¹⁰¹ The Sports Tribunal of New Zealand¹⁰² was also established as an independent body to hear and decide certain types of disputes for the sports sector. The aim of this Tribunal is to ensure that national sports organizations and other parties to a sports dispute, such as athletes, have access to an affordable, just, and speedy means of resolving a sports dispute.¹⁰³ Furthermore, the CAS¹⁰⁴, an independent institution based in Lausanne, Switzerland¹⁰⁵ that is involved in resolving legal disputes in the field of sports through arbitration and mediation, has also established its own mediation code.¹⁰⁶ Canada has a centralized dispute resolution system covering all fields of sports;¹⁰⁷ the SDRCC is a Canadian government-funded program for the resolution of sports-related disputes in Canada, including amateur sports disputes that

Forum, Professional Players Federation, Sport & Recreation Alliance, Scottish Sports Association, and Welsh Sports Association. In 2008 the SDRP changed its trading name to “Sport Resolutions (UK)”, see SRUK, Our History, <https://www.sportresolutions.co.uk/about-us/our-history> (last visited Aug. 08, 2018).

¹⁰¹ SRUK, Mediation, <https://www.sportresolutions.co.uk/services/mediation> (last visited Aug. 08, 2018); about mediation in UK in general, see Niedostadek, *Mediation in Großbritannien*, in Haft/Schlieffen (eds.), *Handbuch Mediation*³ (2016) § 63.

¹⁰² The Sports Tribunal was established in 2003 by the Board of Sport and Recreation New Zealand (formerly known as SPARC, now known as Sport New Zealand) under the name of the Sports Disputes Tribunal of New Zealand; see Sports Tribunal of New Zealand, History, <http://www.sporttribunal.org.nz/about-us/history/> (last visited Aug. 08, 2018).

¹⁰³ Sports Tribunal of New Zealand, About the Sports Tribunal, <http://www.sporttribunal.org.nz/about-us/about-the-sports-tribunal/> (last visited Aug. 08, 2018).

¹⁰⁴ The CAS was established in 1984 by the International Olympic Committee (IOC) and was the last decision-making body to hold the highest sports jurisdiction for sports federations and National Olympic Committees on international sports law issues. For more information about the CAS, see Reilly, *Introduction to the Court of Arbitration for Sport (CAS) & the Role of National Courts in International Sports Disputes*, An Symposium, *Journal of Dispute Resolution*, Vol. 2012, Issue 1, 2012, retrieved from <https://scholarship.law.missouri.edu/jdr/vol2012/iss1/5> (last visited Aug. 08, 2018).

¹⁰⁵ For mediation in Switzerland in general, see Kumpan/Bauer, *Mediation in der Schweiz*, in Hopt/Steffek (eds.), *Mediation* (2008) 853 – 884.

¹⁰⁶ The CAS provides statistics on its mediation procedures. According to this, 65% of all mediations at the CAS concern football cases, and 64% of these football cases deal with transfer contracts. For more information about the statistics in CAS mediation procedures see, Mavromati, *Mediation of sports-related disputes: facts, statistics and prospects for CAS mediation procedures*, *Bulletin TAS CAS Bulletin* 2015/2, 24 (30), retrieved from http://www.tas-cas.org/fileadmin/user_upload/Bulletin_2015_2_internet.pdf (last visited Aug. 08, 2018).

¹⁰⁷ Mironi, *The International Sports Law Journal* 2017, 134; the mandate for the organization is set out in the Canadian Sport Dispute Resolution Code. about mediation in Canada in general, see Ellger, *Mediation in Kanada*, in Hopt/Steffek (eds.), *Mediation* (2008) 671 – 725.

involve national sports organizations (NSOs) and national-level athletes, Canadian doping violation disputes, and other disputes by agreement of the parties.

In this respect, there are many different bodies and institutions in the field of sports that integrate and enact mediation rules in their statutes and codes in different ways. The codes of the international sports federations contain only isolated rules regarding mediation, which are individually tailored to the needs and interests of the respective federation.¹⁰⁸ The Sports Tribunal of New Zealand also has isolated rules in its code.¹⁰⁹

With regard to the research question, the following study therefore primarily examines the regulations of CAS¹¹⁰, SDSI¹¹¹, SDRCC¹¹² and SRUK¹¹³ since, as far as can be seen, only in these codes are the mediation procedures completely regulated, which enables comparability in regard to the regulatory treatment of the principles.

¹⁰⁸ Furthermore, the codes of the sports federations differ in the terms of their scope, the procedure, and the subject of the conflict.

¹⁰⁹ Rule 31 of the Rules of the Sports Tribunal, available at <http://www.sporttribunal.org.nz/assets/Uploads/Rules-sports-tribunal-2012.pdf> / (last visited Aug. 08, 2018).

¹¹⁰ See Appendix I – CAS Mediation Rules.

¹¹¹ See Appendix II – Sport Dispute Solutions Ireland Rules, the entire Code of the SDSI is available at: <http://sportdisputesolutions.ie/sdsi-arbitration-mediation-rules/> (last visited Feb. 01, 2019).

¹¹² See Appendix III – Canadian Sport Dispute Resolution Code, the entire Code of the SDRCC is available at: www.crdsc-sdrcc.ca/eng/dispute-resolution-code (last visited Aug. 08, 2018).

¹¹³ See Appendix IV – Sport Resolutions (UK) Mediation Procedure.

3. Principles and Regulatory Treatment

The third Chapter deals with the principles and the regulatory treatment of these principles. First of all, the relationship between “principles” and “rules” is examined; this is followed by a discussion of the research question, in particular the regulatory treatment of the aforementioned principles in the mediation regulations of CAS, SDSI, SDRCC and SRUK.

3.1. The Relationship between “Principles” and “Rules”

With regard to the raised research question, the relationship between “principles” and “rules” is explained. Without delving into the details of the legal theory discussion of the distinction between “principles” and “rules”¹¹⁴, *Dworkin* finds the distinction between principles and rules in the character of the direction they give.¹¹⁵ From his perspective, rules are applicable in an “all-or-nothing” fashion.¹¹⁶ If the facts stipulated by a rule are given, then either the rule is valid, in which case the answer it supplies must be accepted, or it is not, in which case it contributes nothing to the decision.¹¹⁷ Principles, however, contain a dimension that rules do not – the dimension of weight or importance.¹¹⁸ When principles intersect, the person resolving the conflict must consider the relative weight of each.¹¹⁹ In *Dworkin’s* view, this cannot be, of course, an exact measurement, and

¹¹⁴ Dworkin, *Taking Rights Seriously* (1978) 22 ff; Alexy, Formal principles: Some replies to critics, *International Journal of Constitutional Law*, Vol. 12, Issue 3, 2014, 511 ff; Alexy, *Theorie der Grundrechte* (1986) 71 ff; Esser, Grundsatz und Norm in der richterlichen Fortbildung des Privatrechts (1956) 50 f.; Reßing, Prinzipien als Normen mit zwei Geltungsebenen: Zur Unterscheidung von Regeln und Prinzipien, *ARSP*, Vol. 95, No. 1, 2009, 28 ff; Penski, Rechtsgrundsätze und Rechtsregeln — Ihre Unterscheidung und das Problem der Positivität des Rechts, *JZ* 1989, 105 ff; Poscher, *Theorie eines Phantoms – Die erfolglose Suche der Prinzipientheorie nach ihrem Gegenstand*, *RW* 2010, 349 ff; Bydliński F., *Über prinzipiell-systematische Rechtsfindung im Privatrecht* (1995) 11 ff; Heinold, *Die Prinzipientheorie bei Ronald Dworkin und Robert Alexy* (2011).

¹¹⁵ Dworkin, *Taking Rights Seriously* 24.

¹¹⁶ Dworkin, *Taking Rights Seriously* 24.

¹¹⁷ Dworkin, *Taking Rights Seriously* 24.

¹¹⁸ Dworkin, *Taking Rights Seriously* 26.

¹¹⁹ Dworkin, *Taking Rights Seriously* 26.

the judgment that a particular principle or policy is more important than another will often be a controversial one.¹²⁰

From the German point of view, *Alexy* has taken up and developed *Dworkin's* distinction between principles and rules into a comprehensive principles theory. The basis of his principles theory is the norm-theoretic distinction between rules and principles.¹²¹ Rules are norms that require something determinate; they are definitive commands and their form of application is subsumption.¹²² In this regard, rules as norms can only be either fulfilled or not fulfilled.¹²³ By contrast, principles are optimization requirements.¹²⁴ As such, they demand, “that something be realized to the greatest extent possible given the legal and factual possibilities.”¹²⁵ While rules are concretely formulated arrangements, principles are normative statements, guiding principles, and abstract valuations that underlie a concrete set of rules.¹²⁶

With regard to the raised research question, the relationship between rules and principles as they relate to a code or regulatory system is considered as well. A set of rules consists of both rules and principles. Rules are often based on one or more principles. In this sense, principles can be contained explicitly and immediately as well as implicitly and indirectly in a particular rule. Rules thus concretize one or more principles and thereby also serve in the observance and enforcement of principles. In addition, it is possible that a rule also contains several principles, from which can be derived a ranking of these principles within this particular rule. In order to answer the raised research question, it is therefore necessary to examine the regulatory treatment of the principles.

3.2. Selected Regulatory Areas

As previously mentioned, principles can be contained both explicitly and implicitly in the rules of codes from the CAS, SDSI, SDRCC, and SRUK. In order to be

¹²⁰ Dworkin, *Taking Rights Seriously* 26.

¹²¹ Alexy, *International Journal of Constitutional Law*, Vol. 12, Issue 3, 2014, 512.

¹²² Alexy, *International Journal of Constitutional Law*, Vol. 12, Issue 3, 2014, 512.

¹²³ Alexy, *Theorie der Grundrechte* 76.

¹²⁴ Alexy, *International Journal of Constitutional Law*, Vol. 12, Issue 3, 2014, 512.

¹²⁵ Alexy, *International Journal of Constitutional Law*, Vol. 12, Issue 3, 2014, 512; Alexy, *Theorie der Grundrechte* 75f.

¹²⁶ Nietner, *Internationaler Entscheidungseinklang im europäischen Kollisionsrecht* (2016) 15.

able to assess the comparability between the rules of the different providers, the author forms certain regulatory areas. In this context, the principles contained in the respective regulatory areas are examined. Furthermore, the design of the selected regulatory areas from the aforementioned providers are compared and discussed. Finally, a comment is made that can refer both to the treated principles and the design of the rules in the respective codes. In addition, the similarities and differences between the rules of the providers are elaborated upon and own findings and suggestions are communicated as well.

For reasons of comparability, the following regulatory areas are formed in order to examine the regulatory treatment of the principles: definition of mediation, participation, dealing with representatives, selection and role of the mediator, dealing with the principle of multipartiality, dealing with the principle of confidentiality, dealing with the settlement and termination.

3.2.1. Definition of Mediation

First, it is examined whether the mediation definitions of the respective mediation rules of CAS, SDSI, SDRCC, and SRUK contain the five aforementioned principles.

In this regard, it can be stated that all examined mediation regulations include a mediation definition.¹²⁷

The principle of voluntariness and the principle of self-determination are not explicitly included in the four examined mediation definitions.

The principle of confidentiality is explicitly mentioned in the mediation definition of SRUK.¹²⁸ In the codes of the CAS¹²⁹, SDSI¹³⁰ and SDRCC¹³¹ the principle of confidentiality is explicitly mentioned elsewhere, but not in the definition.¹³²

The principle of multipartiality is not explicitly included in the mediation definitions from CAS, SDSI, SDRCC and SRUK. SDSI¹³³ and SRUK¹³⁴ mention the

¹²⁷ Art. 1 CASMR; Rule 33.1 SDSIR; Art. 5.1 CSDRC; § 1.1 SRMP.

¹²⁸ § 1.1 SRMP.

¹²⁹ Art. 10 CASMR.

¹³⁰ Rule 59. SDSIR. For reasons of clarity, the SDSI is recommended to change the name “JSI” to “SDSI” in Rule 59.2 SDSIR.

¹³¹ Art. 5.7 (a) CSDRC.

¹³² About the regulatory treatment of the principle of confidentiality, see 3.2.6..

¹³³ Rule 33.1 SDSIR.

¹³⁴ § 1.1 SRMP.

independence of the third party in their definitions. However, the third party, “the mediator,” is explicitly contained in the definitions of the CAS and the SDRCC and the mediators’ impartiality and/or independence is mentioned elsewhere by CAS and SDRCC. According to the CAS¹³⁵, the mediator shall be and must remain impartial and independent of the parties, and the SDRCC¹³⁶ formulates that “upon their appointment to the relevant list, the Mediators, Arbitrators and Med/Arb Neutrals shall sign a declaration undertaking to exercise their functions personally with impartiality.” Although the principle of multipartiality is not explicitly included in the definitions for the mediation of the CAS and SDRCC, the term “mediator” at least implies indirectly the mediators’ impartiality and/or independence.

No mediation definition of the four examined codes explicitly contains the principle of focusing on interests.¹³⁷

In summary, no mediation definition of the four examined codes explicitly contains all of the five aforementioned principles. However, these principles should be understood as “normative statements, guiding principles and abstract valuations that underlie a concrete set of rules.”¹³⁸ Therefore, it would be useful to include the principles explicitly in the definitions of the individual codes. This would emphasize their significance and importance in relation to the mediation procedure. As stated above¹³⁹, a corresponding definition of mediation may be as follows: mediation is a confidential and structured procedure in which the parties voluntarily and self-determinately, with the support of a multipartial third party who is not allowed to propose solutions and has no decision-making power, strive for an amicable conflict resolution based on the parties’ needs and interests.

¹³⁵ Art. 6 CASMR.

¹³⁶ Art. 3.2 (c) CSDRC.

¹³⁷ Only in the definition of the resolution facilitation of the SDRCC it is determined that the resolution facilitator must focus on the interests of the parties, see Art. 4.1 (a) CSDRC; see 3.2.4.2.1.2..

¹³⁸ Nietner, *Internationaler Entscheidungseinklang im europäischen Kollisionsrecht* 15.

¹³⁹ See 2.1..

Table 1: Definition of Mediation			
Court of Arbitration for Sport	Sport Dispute Solutions Ireland	Sport Dispute Resolution Centre of Canada	Sport Resolutions (UK)
Art. 1 CASMR	Rule 33.1 SDSIR	Art. 5.1 CSDRC	§ 1.1 SRMP
<p>1. 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.</p> <p>In principle, CAS mediation is provided for the resolution of contractual disputes. 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 disciplinary matters may be submitted to CAS mediation.</p>	<p>33.1 SDSIR mediation is a flexible process in which each party to a dispute (the “Party”) undertakes to attempt to negotiate a settlement in good faith with the other Party, with the assistance of an independent third party (the “Mediator”).</p>	<p>5.1 (a) The term “Mediation” used in this Code includes a Mediation process and the Mediation portion of the Med/Arb, and the term “Mediator” includes a Med/Arb Neutral acting as a Mediator.</p> <p>(b) Mediation under the provisions of this Article is a non-binding and informal procedure, in which each Party undertakes in good faith to negotiate with all other Parties, with the assistance of a Mediator, with a view to settling a Sports-Related Dispute.</p>	<p>1.1 Mediation is, in general terms, a negotiation assisted by an independent third party (“the Mediator”). The process is flexible and determined by the Mediator in consultation with the Parties and normally comprises a series of confidential joint and private meetings. Except as noted in clause 11 all communications relating to, and at, the mediation are confidential and without prejudice.</p>

3.2.2. Participation

Voluntary participation in a mediation is, as already mentioned,¹⁴⁰ an expression of the principle of voluntariness. In this respect, the rules of participation in mediation are discussed below and commented upon.

3.2.2.1. Regulatory Treatment

CAS¹⁴¹, SDSI¹⁴², SDRCC¹⁴³, and SRUK¹⁴⁴ require a mediation agreement between the parties. The mediation agreement can be based on different factors.

According to the CAS,¹⁴⁵ a mediation agreement may take the form of a mediation clause in a contract or may be a separate agreement.

The rule of the SDSI¹⁴⁶ states that the agreement may take the form of a clause inserted into a contract; a mediation clause contained in the statutes or regulations of a sports-related body; or a separate mediation agreement, the entry into which can be facilitated by SDSI if required.

According to the rules of the SDRCC¹⁴⁷, its code is applied to any sports-related dispute: “(i) in relation to which a Mediation, Arbitration or Med/Arb agreement exists between the Parties to bring the dispute to the SDRCC; (ii) that the Parties are required to resolve through the SDRCC; or (iii) that the Parties and the SDRCC agree to have resolved using this Code.”

SRUK¹⁴⁸ has only determined that the parties, the mediator, and SRUK will enter into an agreement based on SRUK’s Mediation Agreement (“the Mediation Agreement”).

¹⁴⁰ See 2.2.1..

¹⁴¹ Art. 2 CASMR.

¹⁴² Rule 35.1 and Rule 39.1 SDSIR. For reasons of clarity, the SDSI is recommended to change the name “JSI” to “SDSI” in Rule 39 SDSIR.

¹⁴³ Art. 5.2 CSDRC.

¹⁴⁴ § 2.1 SRMP.

¹⁴⁵ Art. 2 CASMR.

¹⁴⁶ Rule 35.1 SDSIR.

¹⁴⁷ Art 2.1 (b) CSDRC.

¹⁴⁸ § 2.1 SRMP.

Table 2.: Participation

Court of Arbitration for Sport	Sport Dispute Solutions Ireland	Sport Dispute Resolution Centre of Canada	Sport Resolutions (UK)
Art. 2 CASMR	Rule 35.1 SDSIR ; Rule 39.1 SDSIR	Art 2.1 CSDRC ; Art. 5.2 CSDRC	§ 2.1 SRMP
<p>2. 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 a separate agreement.</p>	<p>35.1 In order to initiate mediation with SDSI mediation there must be an agreement between the Parties to submit to mediation a sports-related dispute. This agreement may take the form of:</p> <ul style="list-style-type: none"> (i) A clause inserted into a contract, (ii) A mediation clause contained in the statutes or regulations of a sports-related body, or (iii) A separate mediation agreement the entry into which can be facilitated by SDSI if required. <p>39.1 The Parties, the Mediator and JSI wishing to proceed with JSI Mediation will enter into an agreement based on the JSI Standard "Mediation Agreement", as amended from time to time, which sets out how the mediation will be conducted including but not limited to the following:</p> <ul style="list-style-type: none"> (a) the terms and timetable for each Party to submit simultaneously (through the Secretariat), to the Mediator and to the other Party; (i) A statement summarising its case in the Dispute, (collectively referred to as the "Case Summary"); and (ii) Copies of all documents to which it refers in the Summary and to which it may want to refer to in the mediation (the "Documents"). <p>Provided always that any Party may submit further documentation to the Mediator (through the Secretariat), which it wishes to disclose in confidence to the Mediator but not to any other Party, clearly stating in writing that such documentation is confidential to the Mediator and to the Secretariat;</p> <ul style="list-style-type: none"> (b) the maximum number of pages of each Summary; (c) the Parties' availability to attend at Mediation; and (d) the preferred location of the Mediation. <p>The SDSI Standard Mediation Agreement is available for download from the SDSI website or can be obtained from the SDSI Secretariat on request.</p>	<p>2.1 (a) The SDRCC administers this Code to resolve Sports-Related Disputes.</p> <p>(b) Subject to Subsection 2.1(e) hereof, this Code applies to a Sports-Related Dispute where the SDRCC has jurisdiction to resolve the dispute. This Code will therefore apply to any Sports-Related Dispute:</p> <ul style="list-style-type: none"> (i) in relation to which a Mediation, Arbitration or Med/Arb agreement exists between the Parties to bring the dispute to the SDRCC; (ii) that the Parties are required to resolve through the SDRCC; or (iii) that the Parties and the SDRCC agree to have resolved using this Code. <p>(c) This Code shall not apply to any dispute that a Panel determines, in its discretion, is not appropriate to bring before the SDRCC or to a dispute where the Panel determines that the SDRCC does not have jurisdiction to deal with the dispute.</p> <p>5.2 Where an agreement provides for Mediation under this Code, the rules set forth in this Article shall be deemed to form an integral part of such Mediation agreement. Unless the Parties agree otherwise, the version of these Mediation rules in force on the date when the Request is filed shall apply. The Parties may, however, agree to apply other rules of procedure. The Parties shall sign a Mediation agreement, the form of which will be provided by the SDRCC unless they have agreed to a different form of agreement.</p>	<p>2.1 The Parties, the Mediator and Sport Resolutions (UK) will enter into an agreement based on Sport Resolutions (UK) Mediation Agreement ("the Mediation Agreement").</p>

3.2.2.2. Comment

In order to guarantee applicability of the rules of the respective code, a mediation agreement between the conflict parties is required. In this respect, it is not surprising that all providers have also established rules about a conclusion for such a “mediation agreement.” The rules in their codes differ in details. The providers have described in their codes several ways in which the parties can submit to their rules.¹⁴⁹ However, in concluding such a mediation agreement, regardless of the form, the parties commit themselves to conducting a mediation procedure at the respective provider. In this respect, the principle of voluntariness is affected by the conclusion of a mediation agreement. This obligation immediately raises the question of whether the affirmation of a corresponding commitment to mediation and the associated submission to a particular set of rules constitutes a contradiction of the principle of voluntariness.

However, it should be borne in mind that the parties’ decision to conclude a mediation agreement is based in principle on their voluntary decision.¹⁵⁰ The obligation to participate at the mediation procedure therefore results solely from their free decision to contract.¹⁵¹ The conclusion of a mediation agreement that is based on a consciously free parties’ decision can therefore be regarded as an expression of the principle of voluntariness.

Furthermore, it is also provided in some of the codes that the applicability of the rules of the respective code may also result from the statutes or regulations of a sports-related body.¹⁵² Although the statutes or regulations of the sports-related bodies are not intended to be the measure of this investigation, it should be noted that a clause which compulsively orders a mediation (“mandatory mediation”¹⁵³)

¹⁴⁹ For the mediation clauses in general terms and conditions from the German point of view, see Tochtermann, *Mediationsklauseln* – Teil I, ZKM 2008, 57 ff; Tochtermann, *Mediationsklauseln* – Teil II, ZKM 2008, 89 ff.

¹⁵⁰ Cf. Tochtermann, ZKM 2008, 90; Hagel in Klowait/Gläßer, *Handkommentar-MediationsG²* § 1 m.n. 14.

¹⁵¹ Tochtermann, ZKM 2008, 90; Hagel in Klowait/Gläßer, *Handkommentar-MediationsG²* § 1 m.n. 14.

¹⁵² The IHUK has provided such a rule in its code: “Members, affiliates, associates, participants, Clubs, Teams, Persons and IHUK agree that any other disputes between them that are not covered by the Rules, Regulations and By-Laws shall be referred to Sports Resolutions for resolution by mediation in accordance with Sports Resolutions (UK’s) Mediation Procedure, which procedure is deemed to be incorporated by reference to this clause.”, Rule 16 (1) ICE HOCKEY UK Disciplinary & Appeals Rules & Procedures.

¹⁵³ The SDRCC requires disputing parties to participate in the resolution facilitation process for at least three hours as a mandatory step before arbitration, see Art. 4.3 (b) CSDRC. For more information about mandatory mediation, see Mironi, *The International Sports Law Journal* 2017, 148 ff; Hanks, *Perspectives on mandatory mediation*, *University of New South Wales Law Journal*, Vol. 35, No. 3, 2012, 929 ff.

limits the principle of voluntariness.¹⁵⁴ In these cases, particular attention should be paid to the fact that the respective code explicitly states, at a minimum, the right to terminate the mediation procedure at any time, which also considers an expression of the principle of voluntariness.

3.2.3. Dealing with Representatives

Mediations are not always conducted solely by the affected parties, but also by their representatives.¹⁵⁵ The parties' decision to engage a representative can be understood as an expression of their self-determination. In this respect, the regulatory treatment of representatives in the selected sets of rules is discussed and commented upon.

3.2.3.1. Regulatory Treatment

According to their regulations, all providers allow their parties to use representatives.¹⁵⁶

The appointment of a representative is explicitly included in the codes of CAS¹⁵⁷, SDSI¹⁵⁸, and SDRCC¹⁵⁹. SRUK¹⁶⁰ has established that the representatives of the parties must have the necessary authority to settle the dispute. This rule implies that appointments of representatives must be allowed as well.

Furthermore, CAS¹⁶¹, SDRCC¹⁶², and SRUK¹⁶³ have explicitly mentioned that the representative must have the "authority to settle the dispute." By contrast, the SDSI appears to have made no rule about the "authority to settle the dispute;" it has, however, enacted that the parties may be represented at a hearing by a third party, but should appear personally where requested to do so.¹⁶⁴

¹⁵⁴ The degree of voluntariness also varies with regard to participation in a mediation procedure in different legal orders, see Wendenburg in Haft/Schlieffen, *Handbuch Mediation*³ § 58 m.n. 12.

¹⁵⁵ Cf. Montada/Kals, *Mediation*³ 250.

¹⁵⁶ Art. 7 CASMR; Rule 58.1 SDSIR; § 1.2 SRMP; Art. 3.11 and Art. 5.5 CSDRC.

¹⁵⁷ Art. 7 CASMR.

¹⁵⁸ Rule 58.1 SDSIR.

¹⁵⁹ Art. 3.11 (a) CSDRC.

¹⁶⁰ § 1.2 SRMP.

¹⁶¹ Art. 7 CASMR.

¹⁶² Art. 5.5 CSDRC.

¹⁶³ § 1.2 SRMP.

¹⁶⁴ Rule 58.3 SDSIR.

CAS¹⁶⁵, SDSI¹⁶⁶, SDRCC¹⁶⁷, and SRUK¹⁶⁸ have established a rule that in the case of representation, other participants shall or must be informed by the represented party about the representation.

A special feature is contained in the code of the SDRCC¹⁶⁹ in which the handling of minors is explicitly determined.

¹⁶⁵ Art. 7 CASMR.

¹⁶⁶ Rule 58.2 SDSIR.

¹⁶⁷ Art. 3.11 (a) CSDRC.

¹⁶⁸ § 5.1 SRMP.

¹⁶⁹ 3.11 (b) CSDRC.

Table 3: Dealing with Representatives

Court of Arbitration for Sport	Sport Dispute Solutions Ireland	Sport Dispute Resolution Centre of Canada	Sport Resolutions (UK)
<p>Art. 7 CASMR</p> <p>7. The parties may be represented or assisted in their meetings with the mediator.</p> <p>If a party is being represented, the other party, the mediator and the CAS must be informed beforehand as to the identity of such representative.</p> <p>The representative must have full written authority to settle the dispute alone, without needing to consult the party she/he is representing.</p>	<p>Rule 58 SDSIR</p> <p>58.1 The Parties may be represented or assisted by persons of their choice.</p> <p>58.2 If a Party is being represented, it shall inform SDSI and the other Party of the identity of such representative at the earliest opportunity.</p> <p>58.3 Parties may be represented at a hearing by a third party, but should appear personally where requested to do so.</p>	<p>Art. 3.11 CSDRC; Art. 5.5 CSDRC</p> <p>3.11 (a) The Parties have a right to counsel at all SDRCC proceedings and may be represented or assisted by Persons of their choice at their own expense. The names, addresses, telephone and facsimile numbers, and email addresses of the representatives of the Parties shall be communicated to all other Parties and to the SDRCC.</p> <p>(b) Minors involved in SDRCC proceedings shall be represented by a parent or by a legal guardian. Subject to Subsection 3.11(a) hereof, the parent or legal guardian may authorize another adult to represent or speak on behalf of the Minor.</p> <p>5.5 The Persons present at the Mediation must have full authority to settle the Sports-Related Dispute without consulting anyone who is not present.</p>	<p>§ 1.2 SRMP ; § 5.1 SRMP</p> <p>1.2 The representatives of the Parties must have the necessary authority to settle the dispute.</p> <p>5.1 Each Party will notify the other Party or Parties, through Sport Resolutions (UK), of the names of those people that it intends will be present on its behalf at the mediation.</p>

3.2.3.2. Comment

All providers give the parties the opportunity to use a representative during the mediation procedure. These examined rules can be understood as concretization and expression of the principle of self-determination.

Nevertheless, the rules in dealing with representatives differ with regard to the details of the concrete design.

That the representative must have the “authority to settle the dispute” is of substantial importance. As previously mentioned, the SDSI¹⁷⁰ has not explicitly regulated that the representative must have the authority to settle the dispute. In this regard, a lack of authority to settle the dispute can lead to a representative being given the opportunity to consult the represented person again, which could bring new negotiating material with itself in the mediation or could also be more time consuming for all participants. Furthermore, the lack of authority to settle can also lead to an “inequality of arms” between the parties. A representative can invoke on the fact that he has no authority to settle the dispute and that he has to ask the represented person. In fact the represented person would have the power of veto in this case. In comparison, a party that does not appoint a representative would have to explicitly state that he also wants the power of veto in order to restore the “equality of arms.”¹⁷¹ A rule that determines the “authority to settle the dispute” can therefore lead to clarity and transparency of the mediation procedure. By adopting a rule determining the authority to settle the dispute, however, the problems and ambiguities that may arise in the event of a representative’s lack of authority to settle the dispute can be avoided. Therefore, the SDSI is advised to explicitly insert a rule in its code that determines that a representative must have the authority to settle the dispute.

3.2.4. Selection and Role of the Mediator

In the following, the regulatory areas of the selection and the role of the mediator are discussed in detail.

¹⁷⁰ Rule 58.3 SDSIR.

¹⁷¹ About the problems with representatives in a mediation, see Montada/Kals, *Mediation*³ 250.

3.2.4.1. Selection of the Mediator

The free selection of the mediator can be seen as an expression of the principle of self-determination of the parties. In the following, the regulatory treatment of the selection of a mediator is examined and commented upon.

3.2.4.1.1. Regulatory Treatment

In the Mediation Regulations of the CAS¹⁷², SDSI¹⁷³, SDRCC¹⁷⁴, and SRUK¹⁷⁵ it is provided that the parties are allowed to select the mediator.

If the parties cannot agree on a mediator, CAS¹⁷⁶, SDSI¹⁷⁷, and SRUK¹⁷⁸ have established the rule that a third party (of its respective institution) must appoint the mediator. In contrast to CAS and SRUK, the SDSI¹⁷⁹ has set down in its regulations that it shall seek to appoint a mediator within seven days of an agreement to mediate being established between the parties. The SDRCC¹⁸⁰ has determined that it will provide the parties with a list of three mediators selected on a rotational basis if they do not agree on a mediator. The parties shall choose a mediator from this provided list. If the parties do not agree on a mediator within the time limit set by the SDRCC, the institution shall appoint the mediator on a rotational basis.

Moreover, it is provided in the rules of SDSI¹⁸¹ and SRUK¹⁸² that an assistant mediator may accompany the mediator. According to their rules, the assistant is present in order to gain experience and to assist the mediator as appropriate. The addition of an assistant mediator is without costs to the parties. All references to mediator in the procedures of SDSI and SRUK also apply to the assistant mediator.¹⁸³

CAS and SDRCC appear not to have made any provisions regarding assistant mediators.

¹⁷² Art. 6 CASMR.

¹⁷³ Rule 36.1 SDSIR.

¹⁷⁴ Art. 5.4 CSDRC.

¹⁷⁵ § 3.1 SRMP.

¹⁷⁶ Art. 6 CASMR.

¹⁷⁷ Rule 36.1 SDSIR.

¹⁷⁸ § 3.1 SRMP.

¹⁷⁹ Rule 36.2 SDSIR.

¹⁸⁰ Art 5.4 CSDRC.

¹⁸¹ Rule 36.3 SDSIR.

¹⁸² § 3.7 SRMP.

¹⁸³ Rule 36.3 SDSIR; § 3.7 SRMP.

Table 4: Selection of the Mediator			
Court of Arbitration for Sport	Sport Dispute Solutions Ireland	Sport Dispute Resolution Centre of Canada	Sport Resolutions (UK)
Art. 6 CASMR	Rule 36 SDSIR	Art. 5.4 CSDRC	§ 3.1 SRMP ; § 3.7 SRMP
<p>6. Unless the parties have jointly selected a mediator from the list of CAS mediators, the mediator shall be appointed by the CAS President, after consultation with the parties, from among the list of CAS mediators. In accepting such appointment, the mediator undertakes to devote sufficient time to the mediation proceedings to permit them to be conducted expeditiously.</p> <p>The mediator shall be and must remain impartial, and independent of the parties, and shall disclose any facts or circumstances which might be of such nature as to call into question her/his independence in the eyes of any of the parties. Notwithstanding any such disclosure, the parties may agree in writing to authorize the mediator to continue his mandate.</p> <p>In the event of an objection by any of the parties, or at her/his own discretion if she/he deems herself/himself unable to bring the mediation to a successful conclusion, the mediator shall cease her/his mandate and inform the CAS President accordingly, whereupon the latter will make arrangements to replace her/him, after consulting the parties and offering them the possibility to appoint another CAS mediator.</p>	<p>36.1 The Parties will agree a Mediator from the List of Mediators maintained by SDSI. If they cannot agree as to who should be appointed, the Mediator shall be appointed by the Secretariat.</p> <p>36.2 SDSI shall seek to appoint a Mediator within seven (7) days of an agreement to mediate being established between the Parties.</p> <p>36.3 An assistant Mediator may accompany the Mediator. The Assistant is present to gain experience and assist the Mediator as appropriate and attends without cost to the Parties. All references to Mediator in these Rules also apply to the Assistant Mediator.</p>	<p>5.4 Unless the Parties have agreed between themselves on a Mediator, the SDRCC will provide them a list of three (3) Mediators selected on a rotational basis. The Parties shall choose a Mediator from the list provided. If the Parties do not agree on a Mediator within the time limit set by the SDRCC, the SDRCC shall appoint the Mediator on a rotational basis.</p>	<p>3.1 The Parties will agree a Mediator from the list of mediators provided by Sport Resolutions (UK). If they cannot agree as to who should be appointed, the Mediator shall be appointed by the Executive Director of Sport Resolutions (UK).</p> <p>3.7 An Assistant Mediator may accompany the Mediator. The Assistant is present to gain experience and assist the Mediator as appropriate and attends without cost to the Parties. All references to 'Mediator' in this Procedure also apply to the Assistant Mediator.</p>

3.2.4.1.2. Comment

All providers enable the parties the freedom to select a mediator based on an agreement of the parties. This can be seen as an expression of the principle of self-determination.¹⁸⁴

The design of the rules in the examined codes differs, however.

In comparison to the other three institutions, the SDRCC allows the parties to agree on a mediator for a second time by providing them a list of three selected mediators. This can be seen as a further expression of the principle of self-determination.

However, the appointment of the mediator by a third person or the institution may be seen as contradicting the principle of self-determination. If the parties do not agree on a mediator, the question arises as to which alternatives, from the institutional point of view, exist in order to express the principle of self-determination to the greatest possible extent. From the institutional point of view, the alternatives are that no mediation takes place, the selection is made by one of the parties, or a negotiation or (mini) mediation about the selection of the mediator is to be arranged by the respective institution. The choice of “no mediation” would not help to solve the conflict. The appointment of a mediator by one of the parties infringes the self-determination of the other party, and a negotiation or (mini) mediation can be time-consuming, with the added risk that the parties will be unable to agree on the selection of a mediator. Therefore, the appointment by a third person or the respective institution is the best solution in order to appoint a mediator, if the parties do not agree on a mediator.

With regard to the use of an assistant mediator¹⁸⁵, it would be advisable to explicitly supplement the codes in such a way that the parties are free to refuse an assistant mediator if they wish. Even if the assistant mediator supports the mediator, the parties, and the mediation procedure, such a rule would be advisable in order to strengthen the self-determination of the parties.

¹⁸⁴ By contrast, the resolution facilitator is appointed by the SDRCC, see Art. 4.1 (a) CSDRC. This can be seen as an infringement of the parties' self-determination. Swim England has established a rule that the mediator is appointed by “the Commissioner”, but the parties shall within seven days of receipt of this notification be entitled to lodge with the Office of Judicial Administration objections against the mediator stating the grounds for the objection, see Rule 174.2 f of Swim England Handbook.

¹⁸⁵ Rule 36.3 SDSIR; § 3.7 SRMP.

3.2.4.2. Role of the Mediator

In order to be able to compare the individual rules in the different codes, the following areas of regulation regarding the role of the mediator are examined: the conduct of the procedure and the mediator's influence on conflict solution.

3.2.4.2.1. Conduct of the Procedure

While the parties have control over the content of the mediation, the mediator, as already mentioned, exercises procedural control.¹⁸⁶ With respect to the conduct of the procedure, the principle of procedural control by the mediator has priority over the principle of the parties' self-determination. Furthermore, mediation can also be delineated from a "normal" negotiation via the principle of procedural control. The principle of interest orientation also concerns the conduct of the procedure because, according to the underlying mediation understanding, the clarification of the parties' interests is the pivotal step of the mediation procedure.¹⁸⁷

In the following, the regulatory treatment of the conduct of the procedure is examined and commented upon.

3.2.4.2.1.1. Regulatory Treatment

According to the rules of the CAS¹⁸⁸ and the SDRCC¹⁸⁹, mediation shall be conducted in the manner agreed upon by the parties. Unless the parties have agreed to conduct the mediation in a particular manner, the mediator shall determine how the mediation will proceed.¹⁹⁰ The SDSI¹⁹¹ provides that the mediator will determine the procedure. According to the rules of SRUK¹⁹², the mediator "in consultation with the Parties" determines the process.

Regarding the content-related procedure and the mediator's approach, SDSI¹⁹³, SDRCC¹⁹⁴, and SRUK¹⁹⁵ do not specify any further or special requirements in their codes.

¹⁸⁶ See 2.2.2..

¹⁸⁷ See 2.2.5.1.3..

¹⁸⁸ Art. 8 CASMR.

¹⁸⁹ Art. 5.6 CSDRC.

¹⁹⁰ Art. 8 CASMR; Art. 5.6 CSDRC.

¹⁹¹ Rule 37.1 (iii) SDSIR.

¹⁹² § 1.1 SRMP.

¹⁹³ Rule 37.1 (iii) SDSIR.

¹⁹⁴ Art. 5.6 (a) CSDRC.

The CAS¹⁹⁶ mentions, “The mediator shall promote the settlement of the issues in dispute in any manner that she/he believes to be appropriate.” In accordance with Art. 9 CASMR, the mediator will identify the issues in the dispute, facilitate discussion of the issues by the parties, and propose solutions¹⁹⁷. Furthermore, the possibility of conducting a one-on-one interview is explicitly permitted by the CAS.¹⁹⁸

¹⁹⁵ § 3.2 (c) and § 1.1 SRMP.

¹⁹⁶ Art. 9 CASMR.

¹⁹⁷ About the Mediator’s Influence on Conflict Solution, see 3.2.4.2.2..

¹⁹⁸ Art. 8 CASMR.

Table 5: Conduct of the Procedure

Court of Arbitration for Sport	Sport Dispute Solutions Ireland	Sport Dispute Resolu- tion Centre of Canada	Sport Resolutions (UK)
<p>Art. 8 CASMR : Art. 9 CASMR</p> <p>8. Unless the parties have agreed to conduct the mediation in a particular manner, the mediator shall determine how the mediation will proceed, after consultation with the parties and taking due consideration of the CAS Mediation Guidelines.</p> <p>Upon her/his appointment, the mediator shall establish the terms and timetable for submission by each party of a statement summarizing the dispute, including the following details:</p> <ul style="list-style-type: none"> - a brief description of the facts and points of law, including a list of the issues submitted to the mediator with a view to resolution; - a copy of the mediation agreement. <p>Where the parties agree to submit an ordinary / appeal arbitration case to mediation, the mediator may consider the request for arbitration / statement of appeal as one party's summary of its dispute and may invite only the other party to submit its summary of the dispute.</p> <p>Each party shall cooperate in good faith with the mediator and shall guarantee her/him the freedom to perform her/his mandate to advance the mediation as expeditiously as possible. The mediator may make any suggestions she/he deems appropriate in this regard. The mediator may at any time communicate separately with the parties if she/he deems it necessary to do so.</p> <p>9. The mediator shall promote the settlement of the issues in dispute in any manner that she/he believes to be appropriate. To achieve this, the mediator will:</p> <ul style="list-style-type: none"> a. identify the issues in dispute; b. facilitate discussion of the issues by the parties; c. propose solutions. <p>However, the mediator may not impose a solution of the dispute on either party.</p>	<p>Rule 37.1 SDSIR</p> <p>37.1 By accepting his/her appointment, the Mediator undertakes to devote sufficient time to the mediation process as will allow it to be conducted expeditiously and will:</p> <ul style="list-style-type: none"> (i) Attend any meetings with any or all of the parties preceding the mediation, if requested or if the mediator decides this is appropriate; (ii) Read before the mediation each Case Summary and all the Documents sent to him/her in accordance with these rules. (iii) Determine the procedure; (iv) Assist the Parties in drawing up any written settlement agreement if required; (v) Abide by the terms of the Mediation Procedure, the Mediation Agreement and the SDSI Code of Conduct for Arbitrator's and Mediators as may be amended from time to time. 	<p>Art. 5.6 CSDRC</p> <p>5.6 (a) The Mediation shall be conducted in the manner agreed by the Parties. Failing such agreement between the Parties, the Mediator shall determine the manner in which the Mediation will be conducted.</p> <p>(b) Each Party shall cooperate in good faith with the Mediator.</p> <p>(c) The Mediator shall devote sufficient time to the Mediation proceedings to allow it to be conducted expeditiously.</p>	<p>§ 1.1 SRMP ; § 3.2 SRMP</p> <p>1.1 Mediation is, in general terms, a negotiation assisted by an independent third party ("the Mediator"). The process is flexible and determined by the Mediator in consultation with the Parties and normally comprises a series of confidential joint and private meetings. Except as noted in clause 1.1 all communications relating to, and at, the mediation are confidential and without prejudice.</p> <p>3.2 The Mediator will:</p> <ul style="list-style-type: none"> (a) attend any meetings with any or all of the parties preceding the mediation, if requested or if the mediator decides this is appropriate; (b) read before the mediation each Summary and all the Documents sent to him/her in accordance with paragraphs 6.1 and 6.2 below; (c) determine the procedure (see paragraph 1.1 above); (d) assist the Parties in drawing up any written settlement agreement; (e) abide by the terms of the Mediation Procedure, the Mediation Agreement and any Code of Conduct adopted from time to time ("the Code of Conduct").

3.2.4.2.1.2. Comment

The investigation of the conduct of the procedure has considered two aspects – dealing with the procedural role and the mediator’s approach.

While the “procedural control” at SDSI and SRUK clearly lies with the mediator, CAS and SDRCC initially allow the parties to determine the procedure. According to the rules of CAS and SDRCC, the mediator in principle does not have control of the procedure; only if the parties cannot agree on a certain conduct of the mediation will the mediator receive procedural control.

With regard to the rules of the CAS, *Blackshaw*¹⁹⁹ has already noted that this is a slight deviation from the general principle that the mediator is the one who controls the procedural aspects of the mediation. Such a rule, on one hand, strengthens the self-determination of the parties; on the other hand, the role of the mediator as controller of the procedure is thereby diminished. As previously mentioned, a significant added value of mediation compared to negotiation lies in the discharge, which results from the fact that the parties yield the responsibility of the determination of the procedure to the mediator and can therefore concentrate entirely on the discussion of the conflict themes.²⁰⁰ The advantage of mediation can be seen as precisely the fact that the mediator is entrusted as a third party with procedural control. In this respect, such a design of the procedural control can both lead to ambiguity about the function and role of the mediator in the mediation process and weaken the status of mediation as a serious procedure within ADR procedures. Therefore, the procedural control of the mediator must supplant the self-determination of the mediation parties in regard to the determination of the procedure. CAS and SDRCC are advised to modify their rules so that the procedural control lies without limitation with the mediator.

With regard to the content-related course of action of the mediator, it should be noted that SDSI, SDRCC, and SRUK, with the exception of the CAS²⁰¹, have not made specific stipulations in their respective codes. In this regard, the determination of the procedure is completely dependent upon the mediator.²⁰²

¹⁹⁹ Blackshaw in Nafziger/Ross, *Handbook on International Sports Law* 85; Blackshaw, *Mediating Sports Disputes, National and International Perspectives* 63.

²⁰⁰ Wendenburg, *ZKM* 2014, 37.

²⁰¹ See Art. 9 CASMR.

²⁰² Furthermore, the possibility of one-on-one interviews as the CAS has explicitly mentioned in its code, can be useful in order to start up again with mediation talks after a break, cf. Duve/Zürn, *Gemeinsame Gespräche oder Einzelgespräche? – Vom Nutzen des Beichtstuhlverfahrens in der Mediation*, *ZKM* 2001, 108 (110). Moreover, in practice, from a mediator's point of view when conducting such one-on-one interviews, care must

This guarantees maximum flexibility and has the advantage that different mediation styles are possible depending on the particular mediator. The disadvantage is that there is no advance transparency about the mediation style and no consistency with regard to the course of action of the mediators from a particular institution. However, this could be crucial for the selection and appointment of a mediator and thus for a specific code. Therefore, it would be useful if the codes contain more information about the mediation style and the mediators' approach in order to show that mediation is a structured, interest-based decision-making process rather than "art." Furthermore, it would be interesting for further studies to examine providers' qualifications and requirements on a mediator because, from the parties' point of view, the qualifications of the mediator can be decisive for the selection of a specific set of rules.²⁰³

In the absence of a description of the course of action of the mediator, it is also not surprising that the principle of interest orientation is not included in any of the examined sets of rules.

Only the SDRCC has determined in its rules about "resolution facilitation" that a "resolution facilitator" works with the parties towards an agreement, focusing on effective communication and the parties' interests.²⁰⁴ This is remarkable in that the SDRCC has also set up its own regulations on mediation. This two-pronged approach between "resolution facilitation" and "mediation" suggests that both procedures differ with regards to their content. The lack of distinction also becomes clear by looking more closely at the description of the role of the third party in both procedures: the resolution facilitator acts as a neutral "process manager" to help the parties better communicate with each other, examine their underlying needs and interests, and try to find creative solutions to their disputes.²⁰⁵ From this role description, it does not appear possible to distinguish between the

be taken to ensure that the mediator held his multipartiality, cf. Leiss, Einzelgespräche – ein probates Mittel in der Mediation, ZKM 2006, 74 (75); see Fritz/Klenk, Einzelgespräche – Teil 1, ZKM 2016, 164 (165); Fritz/Klenk, Einzelgespräche – Teil 2, ZKM 2016, 210 ff.

²⁰³ Furthermore, in the field of sports mediation, an analysis of the criteria to choose a mediator is provided by Hopper/Doman, Sports Mediation: Getting the Right Mediator, Bulletin TAS CAS Bulletin 2017/2, 19 ff, available at: http://www.tas-cas.org/fileadmin/user_upload/Bulletin_2017_2.pdf (last visited Aug. 08, 2018).

²⁰⁴ Art. 4.1 (a) CSDRC; the resolution facilitator can also help parties better understand the other options available from the SDRCC to help resolve the dispute; see Art. 4.1 (b) CSDRC.

²⁰⁵ For more information, see SDRCC, Dispute Resolution Services, <http://www.crdsc-sdrcc.ca/eng/dispute-resolution-facilitation> (last visited Aug. 08, 2018).

role of a resolution facilitator and mediator.²⁰⁶ From the code itself as well as from the information of the website of the SDRCC, a clear separation or distinction between the two procedures does not arise.

This finding raises further questions. First, the question arises as to how the two procedures differ and what relevance and added value the rules of Resolution Facilitation have. From the parties' point of view, this raises the question of which criterion is decisive for the selection of one of the two procedures. Furthermore, from the point of view of the SDRCC, it is to be considered whether a merger of the rules of mediation and resolution facilitation makes sense. Of course, answering these questions would go beyond the scope of this research and be too far removed from the research question. Nevertheless, these questions show that such a difficulty of differentiation between mediation and resolution facilitation can have negative consequences in several areas. From the parties' point of view, the choice of a suitable procedure is made more difficult. Furthermore, the reputation of the SDRCC as an institution may suffer as well. Moreover, such handling of the terminology also damages ADR in general. In this respect, the SDRCC is advised to revise their resolution facilitation and mediation regulations and clearly define the profile of the resolution facilitator and the mediator in order to allow an explicit distinction between these procedural forms.

3.2.4.2.2. Mediator's Influence on Conflict Solution

Although both mediation and conciliation ultimately leave the responsibility for the result and decision-making power to the parties, conciliation and mediation, as already mentioned, differ in its extent of third-party-intervention.²⁰⁷ According to the underlying understanding of mediation, the mediator is not allowed to propose solutions.²⁰⁸ Any form of imperious, authoritative, suggestive, or urgent influence would be problematic because it would infringe upon the principle of self-determination of the parties.²⁰⁹ In conciliation, however, the third party is allowed to propose solutions.²¹⁰ The measure of solution activity therefore affects the degree of the parties' self-determination.²¹¹

²⁰⁶ Mironi also does not seem to recognize any difference between the procedures of mediation and resolution facilitation of the SDRCC, cf. Mironi, *The International Sports Law Journal* 2017, 146.

²⁰⁷ Cf. Röthemeyer, ZKM 2013, 49.

²⁰⁸ See 2.1..

²⁰⁹ Cf. Montada/Kals, *Mediation*³ 69.

²¹⁰ See 2.1..

²¹¹ Cf. Röthemeyer, ZKM 2013, 49.

In the following, the regulatory treatment of the mediator's influence on conflict solution is examined and commented upon.

3.2.4.2.2.1. Regulatory Treatment

According to the rules of the CAS²¹², it is expressly allowed for mediators to propose solutions. The SDSI²¹³ has established the rule that if requested by all parties in writing, the mediator may make oral or written recommendations concerning an appropriate resolution of the dispute. Otherwise, the mediator will not at any time advise a party or offer an opinion. A rule about dealing with proposing solutions by the mediator does not appear to be included in the regulations of the SDRCC. According to the regulations of SRUK²¹⁴, the mediator is not allowed at any time to advise a party or offer an opinion.

²¹² Art. 9 c. CASMR.

²¹³ Rule 40.1 SDSIR.

²¹⁴ § 3.3 SRMP.

Table 6: Mediator's Influence on Conflict Solution			
Court of Arbitration for Sport	Sport Dispute Solutions Ireland	Sport Dispute Resolution Centre of Canada	Sport Resolutions (UK)
Art. 9 c. CASMR	Rule 40.1 SDSIR	No Article	§ 3.3 SRMP
9. The mediator shall promote the settlement of the issues in dispute in any manner that she/he believes to be appropriate. To achieve this, the mediator will: [...] c. propose solutions. However, the mediator may not impose a solution of the dispute on either party.	40.1 If requested by all Parties in writing, the Mediator may make oral or written recommendations concerning an appropriate resolution of the dispute. Otherwise, the Mediator will not at any time advise a party or offer an opinion.		3.3 The Mediator will not at any time advise a party or offer an opinion. The Mediator's independence and impartiality is to be maintained throughout the Mediation.

3.2.4.2.2.2. Comment

As mentioned previously, the measure of the mediator's influence on conflict solution affects the principle of self-determination.

With regard to the design of the "solution activity", all four codes differ from each other.

The CAS²¹⁵ expressly allows the proposing of solutions by a mediator. If the mediator is given the opportunity to propose recommendations and solutions, according to the underlying understanding of mediation, this blurs the line between mediation and conciliation. In this respect, the view of the CAS does not correspond to the understanding of mediation according to this thesis. The advantage of such a point of view is that the third party is allowed to present a solution that takes due account of the parties' interests and that the parties do not see by themselves.

SDSI²¹⁶ has established the rule that if requested by all parties in writing, the mediator may make oral or written recommendations concerning an appropriate resolution of the dispute. By establishing this rule, the SDSI offers a differentiated solution. The written request of all parties takes into account the self-determination of the parties. In contrast to the view allowing mediators to propose solutions without asking the parties, in this case, the self-determination of the parties is realized to a higher extent because the parties can decide on their own whether or not they would like a mediators' proposal. Notwithstanding, this view is contrary to the underlying understanding of mediation.

A rule about dealing with proposing solutions by the mediator does not seem to be included in the regulations of the SDRCC. For the sake of clarity and transparency, the SDRCC should insert a rule about the mediator's influence on conflict solution in its code in order to define the attitude of the mediator's approach. In addition, the missing rule again raises the question of the distinction and delimitation between resolution facilitation and mediation.²¹⁷

SRUK hold a narrow view in formulating that the mediator will not at any time advise a party or offer an opinion. The advantage of strict regulation is that there is no ambiguity in the role of the mediator; the disadvantage, however, may be that the mediator may have a solution in mind that takes due account of the

²¹⁵ Art. 9 c. CASMR.

²¹⁶ Rule 40.1 SDSIR.

²¹⁷ See 3.2.4.2.1.2..

parties' interests and that the parties do not see by themselves, and he is not allowed to present it.²¹⁸ Nevertheless, this view corresponds to the underlying understanding of mediation.

3.2.5. Dealing with the Principle of Multipartiality

The principle of multipartiality, as previously mentioned, is important for the success of a mediation procedure because an infringement of the principle of multipartiality could shatter confidence in the mediator and in the mediation procedure as a whole.²¹⁹ Therefore, in the following, the rules that protect the multipartiality of the mediator are examined and commented upon. The term "multipartiality" shall also contain the terms "impartiality," "independence," and "neutrality."²²⁰

3.2.5.1. Regulatory Treatment

According to the rules of the CAS²²¹, SDSI²²², and the SDRCC²²³, the mediator shall disclose any facts or circumstances which might be of such a nature as to call into question his independence in the eyes of any of the parties. Moreover, in contrast to SDSI and SDRCC, the CAS²²⁴ expressly stipulates that the parties may agree in writing to authorize the mediator to continue his mandate. SRUK does not seem to have established a rule addressing this in its code.

Furthermore, CAS and SDSI have regulated the possibility to appoint another mediator in specific cases. The CAS²²⁵ formulates that "in the event of an objection by any of the parties, or at her/his own discretion if she/he deems herself/himself unable to bring the mediation to a successful conclusion, the mediator shall cease her/his mandate and inform the CAS President accordingly, whereupon the latter will make arrangements to replace her/him, after consulting the parties and offering them the possibility to appoint another CAS mediator."

²¹⁸ Cf. Montada/Kals, *Mediation*³ 69.

²¹⁹ See 2.2.4..

²²⁰ See 2.2.4..

²²¹ Art. 6 CASMR.

²²² Rule 37.2 SDSIR.

²²³ Art. 3.2 (d) CSDRC.

²²⁴ Art. 6 CASMR.

²²⁵ Art. 6 CASMR.

The SDSI²²⁶ has determined that if a party raises an objection to the mediator, if the mediator discloses a potential conflict of interest, or if the mediator indicates that he is unable to act, the Secretariat may replace the mediator after consultation with the parties. SDRCC and SRUK have not, as far as can be seen, explicitly established rules about objections.

A strict restriction or ban on a mediator's activities in connection with his multipartiality (neutrality, impartiality, or independence) is, as far as can be seen, not regulated by any of the providers.²²⁷

²²⁶ Rule 38.1 SDSIR.

²²⁷ Cf. § 2 (3) MediationsG.

Table 7: Dealing with the Principle of Multipartiality

Court of Arbitration for Sport	Sport Dispute Solutions Ireland	Sport Dispute Resolu- tion Centre of Canada	Sport Resolutions (UK)
Art. 6 CASMR	Rule 37.2 SDSIR ; Rule 38.1 SDSIR	Art. 3.2 (d) CSDRC	§ 3.3 SRMP
<p>6. Unless the parties have jointly selected a mediator from the list of CAS mediators, the mediator shall be appointed by the CAS President, after consultation with the parties, from among the list of CAS mediators.</p> <p>In accepting such appointment, the mediator undertakes to devote sufficient time to the mediation proceedings to permit them to be conducted expeditiously.</p> <p>The mediator shall be and must remain impartial, and independent of the parties, and shall disclose any facts or circumstances which might be of such nature as to call into question her/his independence in the eyes of any of the parties.</p> <p>Notwithstanding any such disclosure, the parties may agree in writing to authorize the mediator to continue his mandate.</p> <p>In the event of an objection by any of the parties, or at her/his own discretion if she/he deems herself/himself unable to bring the mediation to a successful conclusion, the mediator shall cease her/his mandate and inform the CAS President accordingly, whereupon the latter will make arrangements to replace her/him, after consulting the parties and offering them the possibility to appoint another CAS mediator.</p>	<p>37.2 The Mediator shall be and must remain independent of the Parties, and is bound to disclose, both to SDSI and to the Parties, any circumstances likely to compromise his/her independence with respect to any of the Parties, or any other matter of which the Mediator is aware which could be regarded as involving a conflict of interest (whether apparent, potential or actual) in the mediation.</p> <p>38.1 If a Party raises an objection to the Mediator, if the Mediator discloses a potential conflict of interest, or if the Mediator indicates that he/she is unable to act, the Secretariat may replace the Mediator, after consultation with the Parties.</p>	<p>3.2 (d) Upon being appointed to deal with a particular Sports-Related Dispute, all Mediators, Arbitrators and Med/Arb Neutrals shall immediately disclose to the Parties and the SDRCC any conflict or potential conflict of interest and any circumstances that could create a reasonable apprehension of bias in respect of their appointment.</p>	<p>3.3 The Mediator will not at any time advise a party or offer an opinion. The Mediator's independence and impartiality is to be maintained throughout the Mediation.</p>

3.2.5.2. Comment

With regard to regulatory treatment in dealing with the principle of multipartiality, it has already been noted that the principle of multipartiality is not mentioned explicitly in any of the examined codes. To this extent, as far as can be seen, no institution has regulated the support of the mediator for an occasional “weaker” party that is contained in the principle of multipartiality.²²⁸ However, the importance of the mediator’s impartiality or/and independence is contained in the rules of the CAS, SDSI, SDRCC, and SRUK.²²⁹

Furthermore, the providers have established rules in order to protect the principle of multipartiality. These rules indirectly contain the principle of multipartiality as well, but the design of these rules differs.

Three of the four examined codes contain rules about disclosure.²³⁰ Especially with regard to the protection of independence and the principle of multipartiality, SRUK is advised to establish a rule that requires a disclosure of the mediator, if there are any facts or circumstances that might be of such nature as to call into question his independence in the eyes of any of the parties.

Unlike the CAS²³¹, SDSI²³² and SDRCC²³³ have not explicitly described the consequences of any disclosure of the mediator. In this respect, according to the principle of self-determination, it can be assumed that the mediator will remain even if the parties do not express any objections. The rule of the CAS that “the parties may agree in writing to authorize the mediator to continue his mandate”²³⁴ concretizes the principle of self-determination. Furthermore, the textualization ensures legal certainty and can serve as proof.

The rule of the CAS²³⁵ and SDSI²³⁶ dealing with the possibility to appoint another mediator helps the parties to gain trust in the procedure and serves to protect the principle of multipartiality. In this respect, SDRCC and SRUK, which, as far as can be seen, have not established an explicit rule, are advised to insert an explicit rule into their codes.

²²⁸ See 2.2.4..

²²⁹ See 3.2.1..

²³⁰ Art. 6 CASMR; Rule 37.2 SDSIR; Art. 3.2 (d) CSDRC.

²³¹ Art. 6 CASMR.

²³² Rule 37.2 SDSIR.

²³³ Art. 3.2 (d) CSDRC.

²³⁴ Art. 6 CASMR.

²³⁵ Art. 6 CASMR.

²³⁶ Rule 38.1 SDSIR.

Moreover, the lack of a rule about strict restriction or ban from practicing his activity as a mediator is accompanied by a high degree of self-determination of the parties. It is entirely the parties' own choice to appoint another mediator.

3.2.6. Dealing with the Principle of Confidentiality

As previously mentioned,²³⁷ the principle of confidentiality and its protection is significant to finding an amicable solution between the parties. Therefore, the regulatory treatment of the principle of confidentiality is examined and commented upon.

3.2.6.1. Regulatory Treatment

According to the rules of the SDSI and the SDRCC, the meetings between the mediator and the parties "shall be confidential."²³⁸ SRUK²³⁹ formulates that every person involved in the mediation will keep all information confidential. The CAS, however, is, as far as can be seen, the only organization to have explicitly mentioned that the mediator, the parties, their representatives and advisers, and any other person present during the meetings between the parties "shall sign a confidentiality agreement."²⁴⁰

All providers have determined confidentiality obligations to third parties and exceptions for confidentiality in their codes.²⁴¹

Furthermore, all providers have established rules about the handling of statements of a mediator related to mediation in other procedures (e.g. no appointment as a witness).²⁴²

In connection with the initiation of proceedings in relation to the dispute, SDSI²⁴³ has established the rule that "the parties shall not initiate, during the mediation process, any arbitral or judicial proceedings in respect to the dispute, except that a party may initiate arbitral or judicial proceedings when the initiation of such proceedings is necessary in order to preserve its rights in the event that

²³⁷ See 2.2.3..

²³⁸ Rule 59.1 SDSIR; Art. 5.7 (a) CSDRC.

²³⁹ § 11.1 SRMP.

²⁴⁰ Art. 10 CASMR.

²⁴¹ Art. 10 CASMR; Rule 59. SDSIR; Art. 5.7 (b) CSDRC; § 11. SRMP.

²⁴² Art. 10 CASMR; Rule 59.2 (ii) (a) SDSIR; Art. 5.7 (c) CSDRC and Art. 3.3 CSDRC; § 3.6 SRMP.

²⁴³ Rule 38.2 SDSIR.

the mediation is unsuccessful.” According to the rules of SRUK²⁴⁴, “any litigation or arbitration in relation to the dispute may be commenced or continued notwithstanding the mediation unless the parties agree otherwise.” CAS and SDRCC appear to have made no rules about the initiation of proceedings.

CAS²⁴⁵, however, seems to be the only provider to have explicitly mentioned that any information given by one party may be disclosed by the mediator to the other party only with the consent of the former.

Furthermore, according to the rules of the CAS, no record of any kind such as audio or video recording, transcript, or minutes shall be made of the meetings for personal notes of the mediator or the parties.²⁴⁶

²⁴⁴ § 10.1 SRMP.

²⁴⁵ Art. 10 CASMR.

²⁴⁶ Art. 10 CASMR; SRUK has ruled that no formal record or transcript of the mediation will be made, § 7.1 SRMP.

Table 8: Dealing with the Principle of Confidentiality	
Sport Dispute Resolution Centre of Canada	Sport Resolutions (UK)
<p>Art. 3.3 CSDRC ; Art. 5.7 CSDRC</p> <p>3.3 Mediators, Arbitrators, Med/Arb Neutrals, members of the Board of Directors of the SDRCC and staff of the SDRCC are not compellable witnesses in any court or administrative proceeding, including other SDRCC proceedings, and none of the Parties may attempt to subpoena or demand the production of any notes, records or documents prepared by the SDRCC in the course of the Mediation, Arbitration or Med/Arb.</p> <p>5.7 (a) The meetings between the Mediator and the Parties shall be confidential and without prejudice.</p> <p>(b) The Mediator, the Parties, their representatives and advisors, the experts and any other Persons present during the Mediation shall not disclose to any third party any information or document given to them during the Mediation, unless required by law to do so.</p> <p>(c) The Mediator may not be called as a witness and the Parties undertake not to compel the Mediator to divulge records, reports or other documents, or to testify in regard to the Mediation in any arbitral or judicial proceedings, including proceedings before the SDRCC, unless required by law to do so.</p> <p>(d) All written and oral statements and settlement discussions made in the course of Mediation will be treated as having been made without prejudice, and cannot be disclosed to a Panel except after a decision has been rendered, and then, only with respect to the issue of costs.</p>	<p>§ 3.6 SRMP ; § 7.1 SRMP ; § 10.1 SRMP ; § 11. SRMP</p> <p>3.6 None of the Parties to the Mediation Agreement will call the Mediator or Sport Resolutions (UK) (or any employee, consultant, officer or representative of Sport Resolutions (UK)) as a witness, consultant, arbitrator or expert in any litigation or arbitration in relation to the dispute, nor require him/her/them to produce in evidence any record or notes relating to the mediation in any litigation, arbitration or other formal process arising from or in connection with the dispute and the mediation. The Mediator and Sport Resolutions (UK) will not act or agree to act as a witness, consultant, arbitrator or expert in any such process.</p> <p>7.1 No formal record or transcript of the mediation will be made.</p> <p>10.1 Any litigation or arbitration in relation to the dispute may be commenced or continued notwithstanding the mediation unless the Parties agree otherwise.</p> <p>11.1 Every person involved in the mediation will keep confidential and not use for any collateral or ulterior purpose all information, (whether given orally, in writing or otherwise), produced for, or arising in relation to, the mediation including the Settlement Agreement (if any) arising out of it except insofar as is necessary to implement and enforce any such Settlement Agreement.</p> <p>11.2 All documents (which include anything upon which evidence is recorded including tapes and computer discs) or other information produced for, or arising in relation to, the mediation will be privileged and not be admissible as evidence or discoverable in any litigation or arbitration connected with the dispute except any documents or other information which would in any event have been admissible or discoverable in any such litigation or arbitration.</p>

Table 9: Dealing with the Principle of Confidentiality

Court of Arbitration for Sport	Sport Dispute Solutions Ireland
Art. 10 CASMR	Rule 38.2 SDSIR ; Rule 59. SDSIR
<p>10. The mediator, the parties, their representatives and advisers, and any other person present during the meetings between the parties shall sign a confidentiality agreement and shall not disclose to any third party any information given to them during the mediation, unless required by law to do so.</p> <p>Unless required to do so by applicable law and in the absence of any agreement of the parties to the contrary, a party shall not compel the mediator to divulge records, reports or other documents, or to testify in regard to the mediation in any arbitral or judicial proceedings.</p> <p>Any information given by one party may be disclosed by the mediator to the other party only with the consent of the former.</p> <p>But for personal notes of the Mediator or the Parties, no record of any kind such as audio or video recording, transcript or minutes shall be made of the meetings.</p> <p>Unless required to do so by applicable law and in the absence of any agreement of the parties to the contrary, the parties shall not rely on, or introduce as evidence in any arbitral or judicial proceedings:</p> <ul style="list-style-type: none"> a. views expressed or suggestions made by a party with respect to a possible settlement of the dispute; b. admissions made by a party in the course of the mediation proceedings; c. documents, notes or other information obtained during the mediation proceedings; d. proposals made or views expressed by the mediator; or e. the fact that a party had or had not indicated willingness to accept a proposal. 	<p>38.2 The Parties shall not initiate, during the mediation process, any arbitral or judicial proceedings in respect of the dispute, except that a Party may initiate arbitral or judicial proceedings when the initiation of such proceedings is necessary in order to preserve its rights in the event that the mediation is unsuccessful.</p> <p>59.1 All proceedings with SDSI shall be confidential. The Parties, their representatives, experts, witnesses, the Arbitration Panel and or Mediator or the Secretariat or any other person(s) involved in the proceedings may not disclose to any third party any information given to them during the proceeding. All information and documents provided to SDSI in connections in the proceedings shall be confidential save where disclosure of the information may be required by law, to pursue or protect a legal right, to enforce or challenge an award in bona fide legal proceedings or where such documents may already be in the public domain (otherwise than in breach of this undertaking).</p> <p>59.2 Notwithstanding 59.1 above:</p> <ul style="list-style-type: none"> (i) JSI may publish the Arbitration Panel's publish generic, non-identifying information relating to that arbitration to include the decision and its reasons unless the Parties expressly agree prior to the Arbitration Panel making its decision that they should remain confidential. (ii) In respect of all Mediations the Parties shall not: <ul style="list-style-type: none"> (a) Compel the Mediator, or any officer or employee of SDSI, to divulge information or documents or to testify or give evidence in regard to the mediation, in any adversary proceeding or judicial forum. (b) Rely upon, or introduce as evidence in any arbitral, judicial or other proceeding, documents or information obtained during the mediation process; views expressed or suggestions or proposals made by a Party or the Mediator in the course of the mediation process; or admissions made by a Party in the course of the mediation process; or the fact that a Party had or had not indicated a willingness to accept a proposal made by another Party or by the Mediator. <p>59.3 The requirement to confidentiality shall not apply if, and to the extent that:</p> <ul style="list-style-type: none"> (i) All Parties consent to a disclosure; or (ii) The Arbitrator/Mediator is required by law to make disclosure; or (iii) The Arbitrator/Mediator reasonably considers that there is a serious risk of significant harm to the life or safety of any person if the information in question is not disclosed; or (iv) The Arbitrator/Mediator reasonably considers that there is a serious risk of his/her being subject to criminal proceedings unless the information in question is disclosed. The above provisions relating to privacy and confidentiality are subject always, to the ability of the Secretariat, where the proceedings are taking place under the rules, regulations or direction of a third party but the third party is not directly involved in the proceedings, to update that third party of the stage at which the proceedings are at without disclosing any of the substance of those proceedings.

3.2.6.2. Comment

Mironi has claimed that strict confidentiality is an enshrined premise of mediation and is commonly secured not only by legislation, but also by the rules of the institutions providing the mediation services, by codes of professional ethics, and by standard mediation agreements.²⁴⁷ This statement is confirmed even after examining the codes of the providers. Regarding the regulatory treatment of the principle of confidentiality, the principle is explicitly mentioned in the codes of all four providers.²⁴⁸ Furthermore, the rules as to the protection the principle of confidentiality imply the principle of confidentiality as well.

The codes differ in their design. All providers have in common that they have built external confidentiality obligations and exceptions for confidentiality into their codes.²⁴⁹ In doing so, confidentiality obligations may protect confidentiality by sanctioning the public proclamation and disclosure of certain information to third parties, thus creating an incentive to keep this information confidential.²⁵⁰ Furthermore, the established rules about how to handle statements of the mediator related to mediation in other proceedings also serve to protect confidentiality. Creating an open, trusting relationship would be made more difficult if, in the event of the failure of the mediation, the parties were to expect one another to use the disclosed information to their advantage, particularly in a subsequent adversarial procedure.²⁵¹ The confidence of a party that its statements during the mediation procedure cannot be to its own detriment in a subsequent legal proceeding is essential for its willingness to open itself to the other party and to the mediator and thus also for the functioning of the mediation. Furthermore, it should be noted that the confidentiality obligations (and their exceptions) as well as the rules in connection with proceedings differ in detail. A thorough analysis, would go beyond the scope of this paper, but would be well-suited for further study.

In addition to the aforementioned similarities, there are some isolated rules that cannot be found in all of the examined codes.

The CAS²⁵² is the sole provider to have explicitly mentioned the signing of a confidentiality agreement. The establishment of such a rule should not be manda-

²⁴⁷ *Mironi*, *The International Sports Law Journal* 2017, 137.

²⁴⁸ Art. 10 CASMR; Rule 59. SDSIR; Art. 5.7 CSDRC; § 11. SRMP.

²⁴⁹ Art. 10 CASMR; Rule 59. SDSIR; Art. 5.7 (b) CSDRC; 11. SRMP.

²⁵⁰ Hilbert, *Die Sicherung der Vertraulichkeit des Mediationsverfahrens* 19.

²⁵¹ Hilbert, *Die Sicherung der Vertraulichkeit des Mediationsverfahrens* 5.

²⁵² Art. 10 CASMR.

tory; this is because, according to the underlying understanding of mediation, the mediator is responsible for discussing with the parties the confidentiality of the mediation and its regulatory treatment in Phase 1.²⁵³

Furthermore, as far as can be seen, the CAS is the only provider to have explicitly regulated the protection of the “internal confidentiality” of the parties. As previously mentioned, the CAS has established a rule regarding the possibility of conducting one-on-one talks in its code.²⁵⁴ Therefore, it is understandable that it has also created a rule concerning internal confidentiality. An explicit regulation on internal confidentiality (and about the prohibition of records for personal use by the mediator or the parties during the mediation) serves to protect confidentiality and should therefore also be considered by the other providers.

With regard to the initiation of a proceeding, the rule of SRUK provides that any litigation or arbitration in relation to the dispute may be commenced or continued notwithstanding the mediation unless the parties agree otherwise.²⁵⁵ In this context, SRUK should consider reversing the relationship of rule and exception of this clause and instead formulate that any litigation or arbitration in relation to the dispute may not be commenced or continued during the mediation unless the parties agree otherwise. In both cases, the self-determination of the parties is affected. In order to protect the confidentiality and to build up trust between the parties it is better to state that any litigation or arbitration in relation to the dispute may not be commenced or continued during the mediation unless the parties agree otherwise.

3.2.7. Dealing with the Settlement

Whether the parties reach a settlement or not is solely their own responsibility. According to the underlying understanding of mediation, the parties bear responsibility both for the mediation’s content and for the results of the mediation. This can be also seen as an expression of the principle of self-determination.²⁵⁶

In the following, the regulatory treatment of dealing with the settlement is examined and commented upon.

²⁵³ See 2.2.5.1.1..

²⁵⁴ Art. 8 CASMR.

²⁵⁵ § 10.1 SRMP.

²⁵⁶ See 2.2.2..

3.2.7.1. Regulatory Treatment

With respect to the settlement agreement, SDSI²⁵⁷ and SRUK²⁵⁸ have established a rule that the mediator must assist the parties in drawing up any written settlement agreement. CAS and SDRCC, as far as can be seen, have no explicit rule regarding the mediator's duty to assist the parties in drawing up any written settlement agreement, but the CAS²⁵⁹ has determined that the settlement is drawn up by the mediator and signed by the parties and the mediator. Furthermore, SDSI²⁶⁰ has determined that the settlement agreement may be drawn up by, or with the assistance of, the mediator, or by the parties themselves. It shall be signed by the mediator and the parties. As far as can be seen, SDRCC and SRUK have not established in their rules who is required to draw up a settlement agreement.²⁶¹

In relation to the legal bond about commitments or assurances, SDSI²⁶² and SRUK²⁶³ have determined that any settlement reached in the mediation will not be legally binding until it has been reduced to writing and signed by, or on behalf of, the parties. CAS and SDRCC do not appear to have set any regulations as to the legal bond.

CAS²⁶⁴ and the SDSI²⁶⁵ have explicitly determined that the mediator has no decision-making authority. In this regard, the mediator may not impose a solution to the dispute on either party. By contrast, as far as can be seen, SDRCC and SRUK have included no explicit rule in their codes regarding the missing decision-making power of the mediator.

Furthermore, all of the examined codes provide for the termination of the mediation procedure through the signing of a settlement agreement by the parties.²⁶⁶ If the parties cannot agree, the codes have also provided specific rules related to the role of the mediator in the event of subsequent arbitration.²⁶⁷

²⁵⁷ Rule 37.1 (iv) SDSIR.

²⁵⁸ § 3.2 (d) SRMP.

²⁵⁹ Art. 12 CASMR.

²⁶⁰ Rule 43.3 SDSIR.

²⁶¹ Cf. Art. 5.10 CSDRC; § 8.1 SRMP.

²⁶² Rule 43.1 SDSIR.

²⁶³ § 8.1 SRMP.

²⁶⁴ Art. 9 CASMR.

²⁶⁵ Rule 43.2 SDSIR.

²⁶⁶ Art. 11 a. CASMR; Rule 41.1 (c) SDSIR; Art. 5.9 (a) CSDRC; § 9.3 (a) SRMP.

²⁶⁷ Art. 13 CASMR; Rule 44.1 SDSIR; Art. 5.11 CSDRC; § 3.6 SRMP.

Table 10: Dealing with the Settlement			
Court of Arbitration for Sport	Sport Dispute Solutions Ireland	Sport Dispute Resolution Centre of Canada	Sport Resolutions (UK)
Art. 12 CASMR ; Art. 13 CASMR	Rule 37.1 (iv) SDSIR ; Rule 41.1 (c) SDSIR ; Rule 43 SDSIR ; Rule 44.1 SDSIR	Art. 5.9 (a) CSDRC ; Art. 5.10 CSDRC ; Art. 5.11 CSDRC	§ 3.2 (d) SRMP ; § 3.6 SRMP ; § 8.1 SRMP ; § 9.3 (a) SRMP
<p>12. The settlement is drawn up by the mediator and signed by the parties and the mediator. Each party shall receive a copy thereof. In the event of any breach, a party may rely on such copy before an arbitral or judicial authority. In the event of any breach, the parties may agree that the case be resolved by CAS arbitration, in accordance with the Code of Sports-related Arbitration.</p> <p>A copy of the settlement is submitted for inclusion in the records of the CAS Court Office.</p> <p>13. The parties may have recourse to arbitration when a dispute has not been resolved by mediation, provided that an arbitration agreement or clause exists between the parties.</p> <p>The arbitration clause may be included in the mediation agreement. In such a case, the expedited procedure provided for under article R44, paragraph 4 of the Code of Sports-related Arbitration may be applied.</p> <p>In the event of a failure to resolve a dispute by mediation, the mediator shall not accept an appointment as an arbitrator in any arbitral proceedings concerning the parties involved in the same dispute. However, if all parties have explicitly agreed so in writing once the mediation procedure is terminated, it is possible for the mediator to subsequently act as an arbitrator for the same dispute and issue an arbitral award in accordance with the CAS Arbitration Rules ("Med-Arb procedure"). Such mediator can only act as an arbitrator if she/he is also on the list of CAS Arbitrators.</p>	<p>37.1 By accepting his/her appointment, the Mediator undertakes to devote sufficient time to the mediation process as will allow it to be conducted expeditiously and with: [...] (iv) Assist the Parties in drawing up any written settlement agreement if required; [...].</p> <p>41.1 The mediation will be considered to be over when: [...] (c) A written settlement agreement is concluded between the Parties.</p> <p>43.1 Any settlement reached in the mediation will not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties.</p> <p>43.2 The Mediator does not have the authority to impose a settlement on the Parties.</p> <p>43.3 The settlement agreement may be drawn up by, or with the assistance of, the Mediator, or by the Parties and shall be signed by the Mediator and the Parties. A copy of the settlement agreement shall be provided to SDSI and to each Party. In the event of any breach of the settlement agreement, a Party may rely on such copy before an arbitral or judicial authority.</p> <p>44.1 The Mediator may not act as an arbitrator or as a representative of, or counsel to, a Party in any arbitral or judicial proceedings relating to the Dispute.</p>	<p>5.9 The Mediation shall be terminated on the first of the following events to occur: (a) the signing of a settlement agreement by the Parties; [...].</p> <p>5.10 If the Parties settle at the Mediation, a document evidencing the terms of the settlement should be prepared and signed by the Parties. A copy of the settlement agreement shall be submitted to the SDRCC.</p> <p>5.11 In the event of a failure to resolve a Sports-Related Dispute by Mediation, the Mediator shall not accept an appointment as an Arbitrator in any arbitral proceedings concerning the Parties involved in the same dispute unless a Med/Arb agreement has been signed by the Parties, or unless all Parties (including any Affected Parties) otherwise consent in writing. If the Parties do not settle at Mediation, they shall continue on to Arbitration pursuant to this Code unless otherwise agreed by the Parties in writing.</p>	<p>3.2 The Mediator will: [...] (d) assist the Parties in drawing up any written settlement agreement; [...].</p> <p>3.6 None of the Parties to the Mediation Agreement will call the Mediator or Sport Resolutions (UK) (or any employee, consultant, officer or representative of Sport Resolutions (UK)) as a witness, consultant, arbitrator or expert in any litigation or arbitration in relation to the dispute, nor require him/her/hem to produce in evidence any record or notes relating to the mediation in any litigation, arbitration or other formal process arising from or in connection with the dispute and the mediation. The Mediator and Sport Resolutions (UK) will not act or agree to act as a witness, consultant, arbitrator or expert in any such process.</p> <p>8.1 Any settlement reached in the mediation will not be legally binding until it has been reduced to writing and signed by, or on behalf of, the parties.</p> <p>9.3 The mediation will terminate when: (a) a written Settlement Agreement is concluded; or [...].</p>

3.2.7.2. Comment

As previously mentioned, the parties' responsibility for the results of the mediation can be seen as an expression of the principle of self-determination.

By determining the non-decision-making authority of the mediator, CAS²⁶⁸ und SDSI²⁶⁹ have clarified in their codes that the parties are responsible for the results of the mediation. In order to enhance the mediator's profile and to emphasize responsibility for the results as an expression of the parties' self-determination, SDRCC and SRUK are advised to establish appropriate rules in their codes.

Furthermore, the examined codes differ in the details regarding the regulatory treatment of the settlement agreement.

Therefore, CAS and SDRCC, who, as far as can be seen, do not have a rule regarding the mediator's duty to assist the parties in drawing up any written settlement agreement, are advised to set such a rule in order to enhance the mediator's profile.

SRUK and SDRCC do not seem to have made any rules regarding the responsibility for the textualization of the agreement.²⁷⁰ It is also in line with the principle of self-determination if the parties have the decision as to whether they or the mediator writes the settlement agreement. Therefore, for clarification, it is recommended that both providers establish specific rules for the responsibility for the textualisation of the settlement agreement.

The CAS has explicitly regulated that the settlement is to be drawn up by the mediator and signed by both the parties and the mediator. With regard to this rule, it should be considered that it may also restrict the self-determination of the parties. Even if the mediator may have more experience in dealing with the textualization of an agreement, the CAS should consider amending the rule to permit the parties to write their own settlement in order to strengthen their self-determination.

In contrast to SDSI²⁷¹ and SRUK²⁷², CAS and SDRCC do not appear to have formed any regulations about the legal bond of commitments or assurances made

²⁶⁸ Art. 9 CASMR.

²⁶⁹ Rule 43.2 SDSIR.

²⁷⁰ About the difference between memorandum and final agreement, see, Harms/Schmitz-Vornmoor, Lehrmodul 19: Abschluss der Mediation, ZKM 2013, 154 (155).

²⁷¹ Rule 43.1 SDSIR.

²⁷² § 8.1 SRMP.

by a party prior to signing an agreement. CAS and SDRCC are recommended to regulate the handling of commitments or assurances that have already been made by a party before signing an agreement in order to avoid conflicts about the legal bond of such commitments if they are not included in the settlement agreement. It may also be helpful to enact a rule that partial and provisional agreements are only legally binding if the parties expressly determine this.²⁷³ Such a rule helps to avoid a possible conflict over whether a party can accept proposals that have been submitted after the conclusion of the mediation procedure.²⁷⁴

3.2.8. Termination

The institutions have also regulated the possibilities of ending mediation, e.g. the termination by the parties or by a specific time. The parties' ability to terminate the mediation process at each stage can be seen as an expression of the principle of voluntariness.²⁷⁵ In the following, the regulatory treatment of the termination of the mediation by the parties and by a time limit is examined and commented upon.

3.2.8.1. Regulatory Treatment

All four examined codes provide for the termination of mediation by a party.²⁷⁶ All providers have established the rule that the parties are not required to provide a reason for their withdrawal from the mediation.²⁷⁷ According to the rules of CAS²⁷⁸ and SDRCC²⁷⁹, termination by a party requires a written declaration. In the codes of SDSI²⁸⁰ and SRUK²⁸¹, there is no written declaration necessary.

Furthermore, some of the providers have established rules in order to be permitted to terminate mediation by a specific time. The CAS²⁸² has regulated that

²⁷³ Cf. Schwarz, *Mediationsvereinbarung – Muster mit Kommentierungen*, ZKM 2008, 111 (114).

²⁷⁴ Schwarz, ZKM 2008, 116.

²⁷⁵ See 2.2.1..

²⁷⁶ To any further possibilities of termination, see Art. 11 CASMR; Rule 41.1 SDSIR; Art. 5.9 CSDRC; § 9.3 SRMP.

²⁷⁷ Art. 11 c. CASMR; Rule 41.1 (a) SDSIR; Art. 5.9 (d) CSDRC § 9.3 (b) SRMP.

²⁷⁸ Art. 11 c. CASMR.

²⁷⁹ Art. 5.9 (d) CSDRC.

²⁸⁰ Rule 41.1 (a) SDSIR.

²⁸¹ § 9.3 (b) SRMP.

²⁸² Art. 11 d. CASMR.

the mediation shall be terminated where one of the parties, or both, refuse(s) to pay its (their) share of the mediation costs within the time limit fixed pursuant to Article 14 of the CASMR. According to the rule of the SDSI,²⁸³ the secretariat shall have the power to terminate mediation where no written settlement agreement is in place between the parties within 30 days of the commencement date. The SDRCC²⁸⁴ has explicitly regulated that occurring the expiry of the established time limit shall terminate the mediation. SRUK does not appear to have any rule regarding the termination of mediation by a specific time.

²⁸³ Rule 41.2 SDSIR; see also 5.3 (d) Rules & Regulations of the WBC: “The mediation shall be conducted within thirty (30) days of the selection of the mediator, absent special circumstances.”

²⁸⁴ Art. 5.9 (e) and Art. 5.8 CSDRC: “Upon commencing a Mediation, the Parties and the Mediator will agree upon a time when the Mediation proceeding will terminate. In the event that the Parties cannot agree on a time limit for the Mediation, the Mediator will set a time limit, considering the date by which the Sports-Related Dispute must be resolved and the amount of time that would reasonably be required to resolve the Sports-Related Dispute should it go to Arbitration.”

Table 11: Termination				
Court of Arbitration for Sport	Sport Dispute Solutions Ireland	Sport Dispute Resolution Centre of Canada	Sport Resolutions (UK)	
Art. 11 CASMR	Rule 41.1. SDSIR	Art. 5.8 ; Art. 5.9 CSDRC	§ 9.3 SRMP	
11. Either party or the mediator may terminate the mediation at any time. The mediation shall be terminated: a. by the signing of a settlement by the parties; b. by a written declaration of the mediator to the effect that further efforts at mediation are no longer worthwhile; c. by a written declaration of a party or the parties to the effect that the mediation proceedings are terminated; d. where one of the parties, or both, refuse(s) to pay its (their) share of the mediation costs within the time limit fixed pursuant to Article 14 of the Rules.	41.1 The mediation will be considered to be over when: (a) A Party withdraws from the mediation; or (b) The Mediator, at his/her discretion, withdraws from the mediation in writing; or (c) A written settlement agreement is concluded between the Parties. 41.2 The Secretariat shall have the power to declare a Mediation over where no written settlement agreement is in place between the Parties within thirty (30) days of the Commencement Date.	5.8 Upon commencing a Mediation, the Parties and the Mediator will agree upon a time when the Mediation proceeding will terminate. In the event that the Parties cannot agree on a time limit for the Mediation, the Mediator will set a time limit, considering the date by which the Sports-Related Dispute must be resolved and the amount of time that would reasonably be required to resolve the Sports-Related Dispute should it go to Arbitration. 5.9 The Mediation shall be terminated on the first of the following events to occur: (a) the signing of a settlement agreement by the Parties; (b) a written declaration by the Mediator to the effect that further efforts at Mediation are no longer worthwhile; (c) a resignation by the Mediator for other reasons; (d) a written notice by either the Claimant or the Respondent terminating the Mediation; or (e) the expiry of the time limit established pursuant to Section 5.8 herof.	9.3 The mediation will terminate when: (a) a written Settlement Agreement is concluded; or (b) a Party withdraws from the mediation; or (c) the Mediator decides to retire where he/she deems it to be professional to do so.	

3.2.8.2. Comment

With regard to the termination of mediation by the parties, it has become apparent that SDSI²⁸⁵ and SRUK²⁸⁶, unlike CAS²⁸⁷ and SDRCC²⁸⁸, do not require a written declaration. In order to avoid ambiguity in terminating the procedure, therefore, SDSI and SRUK are advised to set rules that require a written declaration by one of the parties at any time during the procedure in order to terminate the mediation.

Furthermore, it may prove useful for all providers to adopt a rule according to which the mediator (or the institution), upon receipt of a corresponding declaration of a party, determine in writing the termination of the mediation procedure.²⁸⁹ In this respect, a written declaration about the termination of the mediation could avoid ambiguities with regard to the restarting of the limitation period.²⁹⁰

In the context of the principle of self-determination, the setting of a time limit by the CAS in order to terminate the mediation is not problematic because the parties have the choice of simply paying their share of the mediation costs.

However, in the setting of a specific time limit for mediation, the same problems may arise that *Jung* has mentioned in connection with short-term mediation²⁹¹: the principle of self-determination during the mediation can be limited through the definition of a specific timeframe. By setting a specific timetable for the mediation procedure, the mediator is likely to limit interventions by the parties during the procedure in order to adhere to the determined timetable.²⁹² This risks that the mediator, rather than the parties, takes over the active part of the mediation process and thus becomes the director of the procedure.²⁹³ Such a restriction of the parties' self-determination can be explained by the characteris-

²⁸⁵ Rule 41.1 (a) SDSIR.

²⁸⁶ § 9.3 (b) SRMP.

²⁸⁷ Art. 11 c. CASMR.

²⁸⁸ Art. 5.9 (d) CSDRC.

²⁸⁹ Cf. Schwarz, ZKM 2008, 116.

²⁹⁰ Cf. Schwarz, ZKM 2008, 116.

²⁹¹ See *Jung*, Unter Zeitdruck: Die Kurzzeitmediation – was spart sie ein, und was spart sie aus?, ZKM 2013, 63f.

²⁹² Cf. *Jung*, ZKM 2013, 64.

²⁹³ Cf. *Jung*, ZKM 2013, 64; according to *Krabbe/Fritz* the reference to the scarce resource time affects neither the self-responsibility nor the results openness of the parties, see *Krabbe/Fritz*, Werkstattbericht Kurz-Zeit-Mediation, ZKM 2013, 76 (78).

tics of sports. The fast pace of sports often requires quick solutions and also creates a pressure to reach an agreement rapidly. Nevertheless, this fact should not be at the expense of the parties. From my perspective, the motto with regard to finding a solution should therefore be: “sustainability before speed.” A fast solution is not always a sustainable solution. According to the underlying mediation understanding the way to a sustainable solution is only possible through the elaboration of interests.

4. Conclusions and Suggestions

The present thesis has dealt with the following research question: To what extent do institutional mediation regulations in the sports sector contain the principles of mediation?

The first Chapter demonstrated that some authors have already dealt with mediation and sports, especially “the institutionalization of mediation in sports”, but, as far as can be seen, nobody has addressed the raised research question. In this context, only *Blackshaw* has ascertained that mediation services provided by sports bodies are a complete subject in their own right and worthy of further study.²⁹⁴

The second Chapter dealt with the measure of investigation that was necessary in order to be able to answer the raised research question. First, the researcher’s own understanding of mediation was presented. In summary, the definition of mediation according to the underlying understanding of mediation reads as follows: mediation is a confidential and structured procedure in which the parties voluntarily and self-determinately, with the support of a multipartial third party who is not allowed to propose solutions and has no decision-making power (“the mediator”), strive for an amicable conflict resolution based on the parties’ needs and interests. Furthermore, the principles of mediation (i.e. voluntariness, self-determination, confidentiality, multipartiality, and focusing on interests) were discussed. In connection to the principle of focusing on interests, the five-phase model as the predominating mediation model in Germany was explained. According to the five-phase model, the elaboration of interests in Phase 3 represents the so-called heart of mediation.

Finally, an overview of the bodies and institutions in the sports sector that have enacted mediation rules was given, showing that there are many different bodies and institutions in the field of sports that have integrated and enacted mediation rules in their statutes and codes in different ways.

The codes of the international sports federations contain only isolated rules regarding mediation, which are individually tailored to the needs and interests of the respective federation. By contrast, the mediation procedure has been entirely

²⁹⁴ Blackshaw in Nafziger/Ross, Handbook on International Sports Law 82.

regulated in the codes of CAS, SDSI, SDRCC, and SRUK, which has enabled comparability with regard to regulatory treatment of the principles.

The third Chapter centered on the principles of mediation and their regulatory treatment in the mediation codes of CAS, SDSI, SDRCC, and SRUK.

Firstly, the relationship between “principles” and “rules” was explained. A set of rules consists of both rules and principles. Rules are generally based on one or more principles. In this sense, principles can be contained explicitly and immediately as well as implicitly and indirectly within a particular rule. Rules thus concretize one or more principles and thereby also serve in the observance and enforcement of principles. It is also possible that a rule may contain several principles; from this, a ranking of these principles within this particular rule can be derived. In order to answer the raised research question, it was necessary to examine the regulatory treatment of the principles.

Furthermore, selected regulatory areas were formed by the author that allow comparability: the definition of mediation, participation, dealing with representatives, selection and role of the mediator, dealing with the principle of multipartiality, dealing with the principle of confidentiality, dealing with settlement and termination. In the following Chapter, it was examined to what extent these selected regulatory areas do contain the mediation principles.

First, it was examined whether the mediation definitions of the respective mediation codes of CAS, SDSI, SDRCC, and SRUK contain the five aforementioned principles. In summary, no mediation definition of the four examined codes explicitly contained all of the five principles. Therefore, it would be useful to include the principles explicitly in the definitions of the individual codes in order to emphasize their significance and importance in relation to the mediation procedure. The previously mentioned own definition can serve as an example.

In addition to the mediation definition, the other selected regulatory areas were also examined in each of the organizations. Regarding the raised research question, it may be stated that the principle of voluntariness is contained within all four investigated codes. The rules about the conclusion of a mediation agreement affect the principle of voluntariness, even if this principle is not explicitly mentioned in the codes. Furthermore, all four examined codes provide for the termination of mediation by a party without the need to provide a reason. This can be seen as an expression of the principle of voluntariness.

The principle of self-determination affects several of the examined regulatory areas.

Although the rules for dealing with representatives of the four providers differ with regard to the details of their concrete design, all providers allow the parties

the opportunity to use a representative during the mediation procedure. This can be seen as a concretization and expression of the principle of self-determination.

Furthermore, all providers enable the parties the freedom to select a mediator based on their own agreement, which also can be seen as an expression of the principle of self-determination. In this context, the design of the rules differs from code to code. From my point of view, it would be interesting for further studies to examine the providers' rules about the qualifications and requirements of the mediator.

Additionally, it was shown that the principle of self-determination is also contained within the rules regarding the conduct of the procedure.

The investigation of the regulatory treatment of the control of the procedure has shown that the various providers assess the relationship between the principle of self-determination and procedural control differently. According to the underlying mediation understanding, however, the mediator has procedural control, while the parties retain responsibility for the content and results of the mediation. The procedural control of the mediator therefore must supplant the parties' self-determination as regards the determination of the procedure. Furthermore, CAS and SDRCC are advised to modify their rules so that the procedural control lies exclusively with the mediator.

It has also been shown that the measure of self-determination is dependent on the "measure of solution activity."²⁹⁵ In terms of the mediator's influence on conflict solution, all providers have established different rules. This is remarkable because, in accordance with the underlying mediation understanding, the distinction between mediation and conciliation depends on the extent of third-party-intervention. The different design of the third party's solution activity in the examined codes again confirms that there is no uniform understanding of mediation in the international comparison. In this context, SRUK was the only provider to establish the rule that the mediator shall not at any time advise a party or offer an opinion²⁹⁶, which corresponds with the underlying understanding of mediation in this thesis. The view of the CAS and the SDSI do not correspond to the understanding of mediation according to this thesis. They are advised to discuss about the advantages and disadvantages of proposing a solution by a mediator. A rule about dealing with proposing solutions by the mediator does not seem to be in-

²⁹⁵ Röthemeyer, ZKM 2013, 49.

²⁹⁶ § 3.3 SRMP.

cluded in the regulations of the SDRCC. For the sake of clarity and transparency, the SDRCC should insert a rule about the mediator's influence on conflict solution in its code in order to define the attitude of the mediator's approach.

As previously mentioned, the responsibility for results can be seen as an expression of the principle of self-determination. By determining the lack of decision-making authority of the mediator, CAS and SDSI have clarified in their codes that the parties are responsible for the results of the mediation.²⁹⁷ In order to enhance the mediator's profile and to emphasize the responsibility for results as an expression of the self-determination of the parties, SDRCC and SRUK are advised to establish an appropriate rule in their codes.

Furthermore, the principle of focusing on interests is not explicitly mentioned in the examined codes.²⁹⁸ This principle is also contained in the predominating German mediation model and, moreover, characterizes the attitude of the mediator according to the underlying understanding of mediation. The individual mediation codes do not presuppose a specific approach of the mediator with regard to the design of the procedure. Therefore, it is not surprising that both the principle of interest orientation and the five-phase model are not included in the individual codes. The providers are advised to consider whether to insert information about the mediator's approach, a specific phase model, or mediation style in their codes. This could positively influence the decision to choose a particular code and make the mediation process more transparent from the parties' point of view. In addition, mediation could be perceived less as an art form and more as a structured decision-making process.

With regard to the distinction between the two procedures of the SDRCC, resolution facilitation and mediation, it has been noted that from the code itself as well as from the information of the website of the SDRCC, a clear separation or two procedures does not arise. This finding has raised further questions. First, the question arises as to how the two procedures differ and what relevance and added value the rules of resolution facilitation have. From the parties' point of view, this raises the question of which criterion is decisive for the selection of one of the two procedures. Furthermore, from the point of view of the SDRCC, it is to be considered whether a merger of the rules of mediation and resolution facilitation

²⁹⁷ Art. 9 CASMR; Rule 43.2 SDSIR.

²⁹⁸ In this regard, Sandu's statement that CAS mediation has all of the characteristics of mediation can certainly be viewed critically, at least in terms of the principle of interest orientation, see Sandu, *Conflict Studies Quarterly*, Issue 11, April 2015, 62.

makes sense. Of course, answering these questions would go beyond the scope of this research and be too far removed from the research question. Nevertheless, these questions show that such a difficulty of differentiation between mediation and resolution facilitation can have negative consequences in several areas. From the parties' point of view, the choice of a suitable procedure is made more difficult. Furthermore, the reputation of the SDRCC as an institution may suffer as well. Moreover, such handling of the terminology also damages ADR in general. In this respect, the SDRCC is advised to revise their resolution facilitation and mediation regulations and clearly define the profile of the resolution facilitator and the mediator in order to allow an explicit distinction between these procedural forms.

With regard to regulatory treatment in dealing with the principle of multipartiality, it has been noted that the principle of multipartiality is not mentioned explicitly in any of the examined codes. However, impartiality or/and independence are contained in the rules of all providers. Furthermore, all providers have established rules in order to protect the principle of multipartiality. These rules indirectly contain the principle of multipartiality, but differ in design.

The principle of confidentiality is explicitly mentioned in all codes. Each of the four examined codes contains its own clause mentioning the principle of confidentiality and regulating the protection of confidentiality (e.g. rules about confidentiality obligations), but are varied with respect to the design. Notwithstanding, it would be useful to examine and compare some specific rules of the codes in a more detailed fashion (e.g. rules on confidentiality obligations or those dealing with statements of the mediator in other procedures).

The rules on ending mediation within a certain time frame make it clear that conflict resolution in sports often requires quick decisions and solutions. This also creates a pressure to reach an agreement rapidly. Nevertheless, this fact should not be at the expense of the parties. From my perspective, the motto with regard to finding a solution should therefore be: "sustainability before speed." A fast solution is not always a sustainable solution. According to the underlying mediation understanding the way to a sustainable solution is only possible through the elaboration of interests. The mediator must consider this despite the setting of the time limit.

In summary, it can be stated that the individual providers have considered the individual principles to different degrees in their mediation codes. From a scientific point of view, this diversity of design possibilities is undoubtedly enriching, but should also be viewed critically: It should be noted that this also makes it more difficult to establish mediation as a serious ADR procedure, especially if

each institution interprets the role of the mediator differently. In this respect, the existing bodies and institutions should ask themselves whether it makes sense to standardise mediation in sports at certain points, e.g. in the role description of the mediator.

Furthermore, the institutions do not make it sufficiently clear what advantages mediation offers over other procedures (e.g. arbitration), namely the activation of the parties' self-responsibility, based on the assumption that no one can evaluate the elements that should be part of a conflict resolution better as well as the mediation parties themselves. In order to establish mediation in sports-related disputes alongside arbitration, it would make sense to emphasise this purpose and advantage in comparison to arbitration, for example by presenting the role of the parties in mediation in a preamble.

But it can also be stated that all examined mediation codes have in common the following regulatory areas: the definition of mediation, participation, dealing with representatives, selection and role of the mediator, dealing with the principle of multipartiality, dealing with the principle of confidentiality, dealing with settlement and dealing with termination. In this respect, the examination of the individual regulatory areas, in particular their similarities and differences, can also be useful for a potential body or institution in designing its own code. The institutions in the sports sector are, therefore, recommended to design the above-mentioned regulatory areas according to their needs (and the needs of the mediation parties). When designing and formulating these areas of regulation, they should always take into account how the principles of mediation can be implemented as far as possible. It needs to be clarified which understanding of mediation should form the basis of the code, i.e. how mediation should be defined in the sense of the respective code, since this decision would influence the regulatory treatment of the principles. Therefore, an institution must, in my opinion, create rules which, on the one hand, contain flexible elements in order to give space to the individual needs and requirements of the mediation parties and to guarantee the principle of self-determination in the best possible way, and, on the other hand, insert immovable elements which serve the protection of the parties and mediation as a special method of conflict resolution.

In the course of the investigation of the individual areas of regulation, it has unfortunately not become clear to what extent the mediation rules from the sports sector differ from general mediation rules. To this end, it would be interesting to conduct a further investigation about the similarities and differences.

A primary goal of this investigation was to stimulate a discussion between the bodies and institutions in the field of sports regarding the handling of mediation

principles and their regulatory treatment in their codes. In this respect, the identified similarities and differences in the regulatory treatment of the principles may serve as a basis for such a discussion.

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List of Acronyms

A

ADR	Alternative Dispute Resolution
ARSP	Archiv für Rechts- und Sozialphilosophie / Archives for Philosophy of Law and Social Philosophy
Art.	article
ASA	Amateur Swimming Association

B

BAFM	Bundesarbeitsgemeinschaft für Familienmediation e.V.
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C

CAS	Court of Arbitration for Sport
CASMR	CAS Mediation Rules
CEDR	Centre for Effective Dispute Resolution
cf.	confer
CSDRC	Canadian Sport Dispute Resolution Code

D

DIS	Deutsche Institution für Schiedsgerichtsbarkeit e.V. / The German Arbitration Institute
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E

ECA	European Club Association
ed	editor
eds.	editors
e.g.	for example
Einl.	Einleitung
ESLJ	Entertainment and Sports Law Journal
e.V.	eingetragener Verein

F

f	and the following
ff	and the following
FIFA	Fédération Internationale de Football Association
fn.	footnote

I

i.e.	id est
IHUK	Ice Hockey UK
IIHF	International Ice Hockey Federation
Inc.	Incorporated

J

JAMS	Judicial Arbitration and Mediation Services, Inc.
JSI	Just Sport Ireland
JZ	Juristenzeitung

M

MediationsG	Mediationsgesetz / German Mediation Law
m.n.	margin number

N

No.	Number
NSOs	National Sport Organizations

R

RW	Rechtswissenschaft. Zeitschrift für rechtswissenschaftliche Forschung
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S

SDRCC	Sport Dispute Resolution Centre of Canada
SDRP	Sports Resolution Dispute Resolution Panel
SDSI	Sport Dispute Solutions Ireland

List of Acronyms

SDSIR	Sport Dispute Solutions Ireland Rules
SPARC	Sport and Recreation New Zealand
SRMP	Sport Resolutions (UK) Mediation Procedure
SRUK	Sport Resolutions (UK)

U

UK	United Kingdom
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V

Vol.	Volume
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W

WBC	World Boxing Council
WIPO	World Intellectual Property Organization

Z

ZKM	Zeitschrift für Konfliktmanagement
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Appendix 1 - CAS Mediation Rules

(in force as from 1 September 2013; amended on 1 January 2016)

Pursuant to Articles S2 and S6 paragraphs 1 and 10 of the Code of Sports-related Arbitration, the International Council of Arbitration for Sport adopts the present Mediation Rules (the “Rules”).

A. DEFINITIONS

Article 1

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 contractual disputes. 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 disciplinary matters may be submitted to CAS mediation.

Article 2

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 a separate agreement.

B. SCOPE OF APPLICATION OF RULES

Article 3

Where a mediation agreement provides for mediation under the CAS Mediation Rules, these Rules shall be deemed to form an integral part of such mediation agreement. Unless the parties have agreed otherwise, the version of these Rules in force on the date when the mediation request is filed shall apply.

The parties may however agree to apply other rules of procedure.

C. COMMENCEMENT OF THE MEDIATION

Article 4

A party wishing to institute mediation proceedings shall address a request to that effect in writing to the CAS Court Office.

The request shall contain: the identity of the parties and their representatives (name, address, email address, telephone and fax numbers), a copy of the mediation agreement and a brief description of the dispute.

The day on which the mediation request is received by the CAS Court Office shall be considered as the date on which the mediation proceedings commence. The CAS Court Office shall immediately inform the parties of the date on which the mediation commences, and shall fix the time limit by which the parties shall pay their share of the administrative costs and the advance of costs pursuant to Article 14 and Appendix I of the Rules.

If the parties agree to submit an ordinary / appeal arbitration procedure to mediation, the CHF 1,000 (one thousand Swiss francs) Court Office fee paid by the Claimant / Appellant in the arbitration procedure shall be credited to the mediation procedure and used to cover the administrative costs for the mediation.

If the advance of costs is not paid by both parties and if one party does not agree to pay the share of the other party (-ies), the mediation procedure is immediately terminated.

D. APPOINTMENT OF THE MEDIATOR

Article 5

The ICAS draws up the list of mediators available to be appointed in CAS mediation procedures.

The personalities whom the ICAS appoints appear on the list of mediators for a four-year period, and are thereafter eligible for reselection.

Article 6

Unless the parties have jointly selected a mediator from the list of CAS mediators, the mediator shall be appointed by the CAS President, after consultation with the parties, from among the list of CAS mediators.

In accepting such appointment, the mediator undertakes to devote sufficient time to the mediation proceedings to permit them to be conducted expeditiously.

The mediator shall be and must remain impartial, and independent of the parties, and shall disclose any facts or circumstances which might be of such nature as to call into question her/his independence in the eyes of any of the parties. Notwithstanding any such disclosure, the parties may agree in writing to authorize the mediator to continue his mandate.

In the event of an objection by any of the parties, or at her/his own discretion if she/he deems herself/himself unable to bring the mediation to a successful conclusion, the mediator shall cease her/his mandate and inform the CAS President accordingly, whereupon the latter will make arrangements to replace her/him, after consulting the parties and offering them the possibility to appoint another CAS mediator.

E. REPRESENTATION OF PARTIES

Article 7

The parties may be represented or assisted in their meetings with the mediator.

If a party is being represented, the other party, the mediator and the CAS must be informed beforehand as to the identity of such representative.

The representative must have full written authority to settle the dispute alone, without needing to consult the party she/he is representing.

F. CONDUCT OF MEDIATION

Article 8

Unless the parties have agreed to conduct the mediation in a particular manner, the mediator shall determine how the mediation will proceed, after consultation with the parties and taking due consideration of the CAS Mediation Guidelines. Upon her/his appointment, the mediator shall establish the terms and timetable for submission by each party of a statement summarizing the dispute, including the following details:

- a brief description of the facts and points of law, including a list of the issues submitted to the mediator with a view to resolution;
- a copy of the mediation agreement.

Where the parties agree to submit an ordinary / appeal arbitration case to mediation, the mediator may consider the request for arbitration / statement of appeal as one party's summary of its dispute and may invite only the other party to submit its summary of the dispute.

Each party shall cooperate in good faith with the mediator and shall guarantee her/him the freedom to perform her/his mandate to advance the mediation as expeditiously as possible. The mediator may make any suggestions she/he deems appropriate in this regard. The mediator may at any time communicate separately with the parties if she/he deems it necessary to do so.

G. ROLE OF THE MEDIATOR

Article 9

The mediator shall promote the settlement of the issues in dispute in any manner that she/he believes to be appropriate. To achieve this, the mediator will:

- a. identify the issues in dispute;
- b. facilitate discussion of the issues by the parties;
- c. propose solutions.

However, the mediator may not impose a solution of the dispute on either party.

H. CONFIDENTIALITY

Article 10

The mediator, the parties, their representatives and advisers, and any other person present during the meetings between the parties shall sign a confidentiality agreement and shall not disclose to any third party any information given to them during the mediation, unless required by law to do so.

Unless required to do so by applicable law and in the absence of any agreement of the parties to the contrary, a party shall not compel the mediator to divulge records, reports or other documents, or to testify in regard to the mediation in any arbitral or judicial proceedings.

Any information given by one party may be disclosed by the mediator to the other party only with the consent of the former.

But for personal notes of the Mediator or the Parties, no record of any kind such as audio or video recording, transcript or minutes shall be made of the meetings. Unless required to do so by applicable law and in the absence of any agreement of the parties to the contrary, the parties shall not rely on, or introduce as evidence in any arbitral or judicial proceedings:

- a. views expressed or suggestions made by a party with respect to a possible settlement of the dispute;
- b. admissions made by a party in the course of the mediation proceedings;
- c. documents, notes or other information obtained during the mediation proceedings;
- d. proposals made or views expressed by the mediator; or
- e. the fact that a party had or had not indicated willingness to accept a proposal.

I. TERMINATION

Article 11

Either party or the mediator may terminate the mediation at any time.

The mediation shall be terminated:

- a. by the signing of a settlement by the parties;
- b. by a written declaration of the mediator to the effect that further efforts at mediation are no longer worthwhile;
- c. by a written declaration of a party or the parties to the effect that the mediation proceedings are terminated;
- d. where one of the parties, or both, refuse(s) to pay its (their) share of the mediation costs within the time limit fixed pursuant to Article 14 of the Rules.

J. SETTLEMENT

Article 12

The settlement is drawn up by the mediator and signed by the parties and the mediator.

Each party shall receive a copy thereof. In the event of any breach, a party may rely on such copy before an arbitral or judicial authority. In the event of any breach, the parties may agree that the case be resolved by CAS arbitration, in accordance with the Code of Sports-related Arbitration.

A copy of the settlement is submitted for inclusion in the records of the CAS Court Office.

K. FAILURE TO SETTLE

Article 13

The parties may have recourse to arbitration when a dispute has not been resolved by mediation, provided that an arbitration agreement or clause exists between the parties.

The arbitration clause may be included in the mediation agreement. In such a case, the expedited procedure provided for under article R44, paragraph 4 of the Code of Sports-related Arbitration may be applied.

In the event of a failure to resolve a dispute by mediation, the mediator shall not accept an appointment as an arbitrator in any arbitral proceedings concerning the parties involved in the same dispute. However, if all parties have explicitly agreed so in writing once the mediation procedure is terminated, it is possible for the mediator to subsequently act as arbitrator for the same dispute and issue an arbitral award in accordance with the CAS Arbitration Rules ("Med- Arb proce-

ture”). Such mediator can only act as an arbitrator if she/he is also on the list of CAS Arbitrators.

L. COSTS

Article 14

Each party shall pay the CAS administrative costs within the time limit provided in Article 4 of the Rules. In the absence of such payment, the mediation proceedings will not be initiated.

The parties shall pay their own mediation fees and expenses.

Unless otherwise agreed between the parties, the final costs of the mediation, which include the CAS administrative costs of CHF 1,000, the costs and fees of the mediator calculated on the basis of the CAS fee scale set out in Appendix I, and a contribution towards the CAS expenses will be borne by the parties in equal shares. At the outset of the mediation proceedings, the CAS Court Office shall require the parties to deposit an equal amount as an advance towards the costs of the mediation.

At the conclusion of the mediation, any portion of the advance of costs which is not used, shall be reimbursed to the parties in equal shares or in the proportion in which the parties paid the advance of costs.

Appendix 2 - SDSI RULES

including Arbitration and Mediation rules

PART 4 - MEDIATION

Part 4 of these rules details how SDSI Mediation is to be conducted and the Parties shall be taken to have agreed that the mediation shall be conducted in accordance with the Mediation Procedure.

33. WHAT IS SDSI MEDIATION?

33.1 SDSI mediation is a flexible process in which each party to a dispute (the “Party”) undertakes to attempt to negotiate a settlement in good faith with the other Party, with the assistance of an independent third party (the “Mediator”).

34. ROLE OF SDSI IN MEDIATION

34.1 The role of SDSI in Mediation is to appoint the Mediator and thereafter in conjunction with the Mediator to make the necessary arrangements in respect of and for the mediation including as required;

- (i) Organising suitable venue and dates;
- (ii) Organising the exchange of the Summaries and Documents
- (iii) Meeting with any or all of the representatives of both Parties (and the Mediator if he/she has been appointed) either together or separately, to discuss any matters or concerns relating to the mediation;
- (iv) General administration in relation to the mediation including post-mediation follow up.

35. ABILITY TO USE SDSI MEDIATION

35.1 In order to initiate mediation with SDSI mediation there must be an agreement between the Parties to submit to mediation a sports-related dispute. This agreement may take the form of:

- (i) A clause inserted into a contract,
- (ii) A mediation clause contained in the statutes or regulations of a sports-related body, or
- (iii) A separate mediation agreement the entry into which can be facilitated by SDSI if required.

36. HOW A SDSI MEDIATOR IS APPOINTED

36.1 The Parties will agree a Mediator from the List of Mediators maintained by SDSI. If they cannot agree as to who should be appointed, the Mediator shall be appointed by the Secretariat.

36.2 SDSI shall seek to appoint a Mediator within seven (7) days of an agreement to mediate being established between the Parties.

36.3 An assistant Mediator may accompany the Mediator. The Assistant is present to gain experience and assist the Mediator as appropriate and attends without cost to the Parties. All references to Mediator in these Rules also apply to the Assistant Mediator.

37. DUTIES OF A MEDIATOR

37.1 By accepting his/her appointment, the Mediator undertakes to devote sufficient time to the mediation process as will allow it to be conducted expeditiously and will:

- (i) Attend any meetings with any or all of the parties preceding the mediation, if requested or if the mediator decides this is appropriate;
- (ii) Read before the mediation each Case Summary and all the Documents sent to him/or her in accordance with these rules.
- (iii) Determine the procedure;
- (iv) Assist the Parties in drawing up any written settlement agreement if required;
- (v) Abide by the terms of the Mediation Procedure, the Mediation Agreement and the SDSI Code of Conduct for Arbitrator's and Mediators as may be amended from time to time.

37.2 The Mediator shall be and must remain independent of the Parties, and is bound to disclose, both to SDSI and to the Parties, any circumstances likely to compromise his/her independence with respect to any of the Parties, or any other matter of which the Mediator is aware which could be regarded as involving a conflict of interest (whether apparent, potential or actual) in the mediation.

38. OBJECTING TO A MEDIATOR

38.1 If a Party raises an objection to the Mediator, if the Mediator discloses a potential conflict of interest, or if the Mediator indicates that he/she is unable to act, the Secretariat may replace the Mediator, after consultation with the Parties.

38.2 The Parties shall not initiate, during the mediation process, any arbitral or judicial proceedings in respect of the dispute, except that a Party may initiate arbitral or judicial proceedings when the initiation of such proceedings is necessary in order to preserve its rights in the event that the mediation is unsuccessful.

39. HOW A SDSI MEDIATION IS CONDUCTED

39.1 The Parties, the Mediator and JSI wishing to proceed with JSI Mediation will enter into an agreement based on the JSI Standard “Mediation Agreement”, as amended from time to time, which sets out how the mediation will be conducted including but not limited to the following:

- (a) the terms and timetable for each Party to submit simultaneously (through the Secretariat), to the Mediator and to the other Party;
- (i) A statement summarising its case in the Dispute, (collectively referred to as the “Case Summary”); and
- (ii) Copies of all documents to which it refers in the Summary and to which it may want to refer to in the mediation (the “Documents”).

Provided always that any Party may submit further documentation to the Mediator (through the Secretariat), which it wishes to disclose in confidence to the Mediator but not to any other Party, clearly stating in writing that such documentation is confidential to the Mediator and to the Secretariat;

- (b) the maximum number of pages of each Summary;
- (c) the Parties availability to attend at Mediation; and
- (d) the preferred location of the Mediation.

The SDSI Standard Mediation Agreement is available for download from the SDSI website or can be obtained from the SDSI Secretariat on request.

39.2 The Parties together with the appointed Mediator shall be obliged to enter into the Mediation Agreement within (7) seven days of the appointment of the Mediator or the Mediation will be held to be at an end.

39.3 The date of receipt by SDSI of the signed Mediation Agreement shall be the date the mediation commenced (the “Commencement Date”).

40. RECOMMENDATIONS

40.1 If requested by all Parties in writing, the Mediator may make oral or written recommendations concerning an appropriate resolution of the dispute. Otherwise, the Mediator will not at any time advise a party or offer an opinion.

41. ENDING OF A MEDIATION

41.1 The mediation will be considered to be over when:

- (a) A Party withdraws from the mediation; or
- (b) The Mediator, at his/her discretion, withdraws from the mediation in writing;
or
- (c) A written settlement agreement is concluded between the Parties.

41.2 The Secretariat shall have the power to declare a Mediation over where no written settlement agreement is in place between the Parties within thirty (30) days of the Commencement Date.

42. ADJOURNMENT

42.1 The Mediator may adjourn the mediation in order to allow the Parties to consider specific proposals, acquire information or for any other reason that the Mediator considers helpful in furthering the mediation process. The Mediator will reconvene the mediation after consultation with the Parties.

43. AGREEING A SETTLEMENT

43.1 Any settlement reached in the mediation will not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties.

43.2 The Mediator does not have the authority to impose a settlement on the Parties.

43.3 The settlement agreement may be drawn up by, or with the assistance of, the Mediator, or by the Parties and shall be signed by the Mediator and the Parties. A copy of the settlement agreement shall be provided to SDSI and to each Party. In the event of any breach of the settlement agreement, a Party may rely on such copy before an arbitral or judicial authority.

44. POST-MEDIATION CONDUCT OF A MEDIATOR

44.1 The Mediator may not act as an arbitrator or as a representative of, or counsel to, a Party in any arbitral or judicial proceedings relating to the Dispute.

45. GENERAL RULES

45.1 General Rules relating may be found at Part 6 of these Rules and shall apply to Arbitrations.

Additional Rules

58. REPRESENTATION

58.1 The Parties may be represented or assisted by persons of their choice.

58.2 If a Party is being represented, it shall inform SDSI and the other Party of the identity of such representative at the earliest opportunity.

58.3 Parties may be represented at a hearing by a third party, but should appear personally where requested to do so.

59. CONFIDENTIALITY

59.1 All proceedings with SDSI shall be confidential. The Parties, their representatives, experts, witnesses, the Arbitration Panel and or Mediator and the Secretariat or any other person(s) involved in the proceedings may not disclose to any third party any information given to them during the proceeding. All information and documents provided to SDSI in connections in the proceedings shall be confidential save where disclosure of the information may be required by law, to pursue or protect a legal right, to enforce or challenge an award in bona fide legal proceedings or where such documents may already be in the public domain (otherwise than in breach of this undertaking).

59.2 Notwithstanding 59.1 above:

(i) JSI may publish the Arbitration Panel's publish generic, non-identifying information relating to that arbitration to include the decision and its reasons unless the Parties expressly agree prior to the Arbitration Panel making its decision that they should remain confidential.

(ii) In respect of all Mediations the Parties shall not:

(a) Compel the Mediator, or any officer or employee of SDSI, to divulge information or documents or to testify or give evidence in regard to the mediation, in any adversary proceeding or judicial forum.

(b) Rely upon, or introduce as evidence in any arbitral, judicial or other proceeding, documents or information obtained during the mediation process; views expressed or suggestions or proposals made by a Party or the Mediator in the course of the mediation process; or admissions made by a Party in the course of the mediation process; or the fact that a Party had or had not indicated a willingness to accept a proposal made by another Party or by the Mediator.

59.3 The requirement to confidentiality shall not apply if, and to the extent that:

(i) All Parties consent to a disclosure; or

(ii) The Arbitrator/Mediator is required by law to make disclosure; or

(iii) The Arbitrator/Mediator reasonably considers that there is a serious risk of significant harm to the life or safety of any person if the information in question is not disclosed; or

(iv) The Arbitrator/Mediator reasonably considers that there is a serious risk of his/her being subject to criminal proceedings unless the information in question is disclosed.

The above provisions relating to privacy and confidentiality are subject always, to the ability of the Secretariat, where the proceedings are taking place under the rules, regulations or direction of a third party but the third party is not directly

involved in the proceedings, to update that third party of the stage at which the proceedings are at without disclosing any of the substance of those proceedings.

Appendix 3 - Canadian Sport Dispute Resolution Code

January 1, 2015

Article 5 Mediation

5.1 General

(a) The term “Mediation” used in this Code includes a Mediation process and the Mediation portion of the Med/Arb, and the term “Mediator” includes a Med/Arb Neutral acting as a Mediator.

(b) Mediation under the provisions of this Article is a non-binding and informal procedure, in which each Party undertakes in good faith to negotiate with all other Parties, with the assistance of a Mediator, with a view to settling a Sports-Related Dispute.

5.2 Application of Mediation Rules

Where an agreement provides for Mediation under this Code, the rules set forth in this Article shall be deemed to form an integral part of such Mediation agreement. Unless the Parties agree otherwise, the version of these Mediation rules in force on the date when the Request is filed shall apply. The Parties may, however, agree to apply other rules of procedure. The Parties shall sign a Mediation agreement, the form of which will be provided by the SDRCC unless they have agreed to a different form of agreement.

5.3 Commencement of the Mediation

The Mediation shall be commenced:

(a) when a Request filed in accordance with Section 3.4 hereof states that the Claimant would like to attempt Mediation, and where the Answer states that the Respondent agrees to proceed by way of Mediation; or

(b) where the Parties agree, after the filing of a Request and Answer, to proceed by way of Mediation.

5.4 Selection of Mediator

Unless the Parties have agreed between themselves on a Mediator, the SDRCC will provide them a list of three (3) Mediators selected on a rotational basis. The Parties shall choose a Mediator from the list provided. If the Parties do not agree on a Mediator within the time limit set by the SDRCC, the SDRCC shall appoint the Mediator on a rotational basis.

5.5 Authority to Settle

The Persons present at the Mediation must have full authority to settle the Sports-Related Dispute without consulting anyone who is not present.

5.6 Conduct of Mediation

(a) The Mediation shall be conducted in the manner agreed by the Parties. Failing such agreement between the Parties, the Mediator shall determine the manner in which the Mediation will be conducted.

(b) Each Party shall cooperate in good faith with the Mediator.

(c) The Mediator shall devote sufficient time to the Mediation proceedings to allow it to be conducted expeditiously.

5.7 Confidentiality of Mediation Process

(a) The meetings between the Mediator and the Parties shall be confidential and without prejudice.

(b) The Mediator, the Parties, their representatives and advisors, the experts and any other Persons present during the Mediation shall not disclose to any third party any information or document given to them during the Mediation, unless required by law to do so.

(c) The Mediator may not be called as a witness and the Parties undertake not to compel the Mediator to divulge records, reports or other documents, or to testify in regard to the Mediation in any arbitral or judicial proceedings, including proceedings before the SDRCC, unless required by law to do so.

(d) All written and oral statements and settlement discussions made in the course of Mediation will be treated as having been made without prejudice, and cannot be disclosed to a Panel except after a decision has been rendered, and then, only with respect to the issue of costs.

5.8 Time Limit of Mediation

Upon commencing a Mediation, the Parties and the Mediator will agree upon a time when the Mediation proceeding will terminate. In the event that the Parties cannot agree on a time limit for the Mediation, the Mediator will set a time limit, considering the date by which the Sports-Related Dispute must be resolved and the amount of time that would reasonably be required to resolve the Sports-Related Dispute should it go to Arbitration.

5.9 Termination of Mediation

The Mediation shall be terminated on the first of the following events to occur:

- (a) the signing of a settlement agreement by the Parties;
- (b) a written declaration by the Mediator to the effect that further efforts at Mediation are no longer worthwhile;
- (c) a resignation by the Mediator for other reasons;
- (d) a written notice by either the Claimant or the Respondent terminating the Mediation; or
- (e) the expiry of the time limit established pursuant to Section 5.8 hereof.

5.10 Settlement

If the Parties settle at the Mediation, a document evidencing the terms of the settlement should be prepared and signed by the Parties. A copy of the settlement agreement shall be submitted to the SDRCC.

5.11 No Settlement

In the event of a failure to resolve a Sports-Related Dispute by Mediation, the Mediator shall not accept an appointment as an Arbitrator in any arbitral proceedings concerning the Parties involved in the same dispute unless a Med/Arb agreement has been signed by the Parties, or unless all Parties (including any Affected Parties) otherwise consent in writing. If the Parties do not settle at Mediation, they shall continue on to Arbitration pursuant to this Code unless otherwise agreed by the Parties in writing.

5.12 Costs of Mediation

Except for the costs outlined in Subsection 3.9(e) and Section 3.10 hereof, the Parties will pay their own costs for the Mediation, including costs of representatives.

Additional Rules

2.1 Administration

- (a) The SDRCC administers this Code to resolve Sports-Related Disputes.
- (b) Subject to Subsection 2.1(c) hereof, this Code applies to a Sports-Related Dispute where the SDRCC has jurisdiction to resolve the dispute. This Code will therefore apply to any Sports-Related Dispute:
 - (i) in relation to which a Mediation, Arbitration or Med/Arb agreement exists between the Parties to bring the dispute to the SDRCC;
 - (ii) that the Parties are required to resolve through the SDRCC; or

- (iii) that the Parties and the SDRCC agree to have resolved using this Code.
- (c) This Code shall not apply to any dispute that a Panel determines, in its discretion, is not appropriate to bring before the SDRCC or to a dispute where the Panel determines that the SDRCC does not have jurisdiction to deal with the dispute.

3.2 Mediators, Arbitrators and Med/Arb Neutrals

- (a) To assist in the resolution of Sports-Related Disputes, the SDRCC will establish and maintain lists of Mediators, Arbitrators and Med/Arb Neutrals. The lists and all modifications thereto shall be published by the SDRCC. The name of an individual may appear on more than one list.
- (b) In establishing the lists of Mediators, Arbitrators or Med/Arb Neutrals, the SDRCC shall:
 - (i) designate individuals with appropriate training who possess recognized competence with regard to sport and alternative dispute resolution procedure and have the requisite experience in conducting such matters; and
 - (ii) whenever possible, ensure fair representation of the different regions, cultures, genders and bilingual character of the Canadian society.
- (c) Upon their appointment to the relevant list, the Mediators, Arbitrators and Med/Arb Neutrals shall sign a declaration undertaking to exercise their functions personally with impartiality and in conformity with the provisions of this Code and, when applicable, shall also disclose any reasons that could affect their ability to appear on the rotating list of the SDRCC as described under Subsection 6.8(d) hereof.
- (d) Upon being appointed to deal with a particular Sports-Related Dispute, all Mediators, Arbitrators and Med/Arb Neutrals shall immediately disclose to the Parties and the SDRCC any conflict or potential conflict of interest and any circumstances that could create a reasonable apprehension of bias in respect of their appointment.

3.3 Other Proceedings Mediators, Arbitrators, Med/Arb Neutrals, members of the Board of Directors of the SDRCC and staff of the SDRCC are not compellable witnesses in any court or administrative proceeding, including other SDRCC proceedings, and none of the Parties may attempt to subpoena or demand the production of any notes, records or documents prepared by the SDRCC in the course of the Mediation, Arbitration or Med/Arb.

3.11 Representation and Assistance

(a) The Parties have a right to counsel at all SDRCC proceedings and may be represented or assisted by Persons of their choice at their own expense. The names, addresses, telephone and facsimile numbers, and email addresses of the representatives of the Parties shall be communicated to all other Parties and to the SDRCC.

(b) Minors involved in SDRCC proceedings shall be represented by a parent or by a legal guardian. Subject to Subsection 3.11(a) hereof, the parent or legal guardian may authorize another adult to represent or speak on behalf of the Minor.

4.1 Resolution Facilitation

(a) Resolution Facilitation is a simple and informal process offered to Parties to a Sports-Related Dispute whereby a Resolution Facilitator (RF) appointed by the SDRCC works with Parties towards an agreement, focusing on effective communication and the interests of the Parties.

(b) The RF can also help Parties better understand the other options available from the SDRCC to help resolve the dispute.

(c) The Parties work with the RF to attempt to resolve the dispute until one of the Parties terminates the Resolution Facilitation process or if the RF determines that further discussions are unlikely to lead to a resolution.

4.3 Mandatory Resolution Facilitation in Arbitration

(a) Resolution Facilitation is mandatory where Parties to a Sports-Related Dispute request Arbitration.

(b) The Parties must be prepared to spend at least three (3) hours with the RF. The Parties must, in an attempt to resolve the dispute, spend the aforementioned time with the RF prior to the date scheduled for an Arbitration. The Parties will continue to work with the RF to attempt to resolve the dispute until one of the Parties terminates the process (if that Party has spent more than three (3) hours with the RF) or if the RF determines that further discussions are unlikely to lead to a resolution.

(c) If a Party in an Arbitration refuses to spend the aforementioned time with the RF or is so inadequately prepared as to frustrate the purpose of the Resolution Facilitation, the Panel may award costs against such Party pursuant to Section 6.22 hereof.

(d) The RF process should not delay the Arbitration. The Parties may continue with the process of appointing a Panel while the RF is assisting them to resolve the dispute.

(e) Where the Parties do not have adequate time to schedule meetings with the RF prior to an Arbitration (due to severe time constraints), the Parties may jointly apply to the SDRCC to waive the requirement to participate with the RF in settlement discussions. Upon receipt of such application, the SDRCC may in its discretion waive the requirement to participate in the RF process.

(f) The RF may provide the Parties with a written opinion of the likely outcome of an Arbitration of the dispute, or of any findings under 4.3(c). The opinion of the RF will not be communicated to the Panel until a decision is rendered by the Panel. Following the rendering of a decision, the RF's opinion may be communicated to the Panel regarding any submission made with respect to the costs of the Arbitration.

(g) When Resolution Facilitation does not resolve the dispute, Parties may continue to work with the RF in preparation for the Arbitration, such as developing an agreed statement of facts or narrowing the questions upon which the Panel will decide.

Appendix 4 - Sport Resolutions (UK) Mediation Procedure

The following procedure (“the Mediation Procedure”) (as amended by Sport Resolutions (UK) from time to time) shall govern the mediation of any dispute and the Parties shall be taken to have agreed that the mediation shall be conducted in accordance with the Mediation Procedure.

1. Mediation Procedure

1.1 Mediation is, in general terms, a negotiation assisted by an independent third party (“the Mediator”). The process is flexible and determined by the Mediator in consultation with the Parties and normally comprises a series of confidential joint and private meetings. Except as noted in clause 11 all communications relating to, and at, the mediation are confidential and without prejudice.

1.2 The representatives of the Parties must have the necessary authority to settle the dispute.

2. Mediation Agreement

2.1 The Parties, the Mediator and Sport Resolutions (UK) will enter into an agreement based on Sport Resolutions (UK) Mediation Agreement (“the Mediation Agreement”).

3. The Mediator

3.1 The Parties will agree a Mediator from the list of mediators provided by Sport Resolutions (UK). If they cannot agree as to who should be appointed, the Mediator shall be appointed by the Executive Director of Sport Resolutions (UK).

3.2 The Mediator will:

- (a) attend any meetings with any or all of the parties preceding the mediation, if requested or if the mediator decides this is appropriate;
- (b) read before the mediation each Summary and all the Documents sent to him/her in accordance with paragraphs 6.1 and 6.2 below;
- (c) determine the procedure (see paragraph 1.1 above);
- (d) assist the Parties in drawing up any written settlement agreement;
- (e) abide by the terms of the Mediation Procedure, the Mediation Agreement and any Code of Conduct adopted from time to time (“the Code of Conduct”).

3.3 The Mediator will not at any time advise a party or offer an opinion. The Mediator’s independence and impartiality is to be maintained throughout the Mediation.

3.4 The Mediator and any member of a firm or company associated with the Mediator will not act for any of the Parties individually in connection with the dispute in any capacity during the currency of the Mediation Agreement.

3.5 The Parties accept that in relation to the dispute neither the Mediator nor Sport Resolutions (UK) is an agent of, or acting in any capacity for, any of the Parties. The Parties and the Mediator accept that the Mediator is acting as an independent contractor and not as agent or employee of Sport Resolutions (UK).

3.6 None of the Parties to the Mediation Agreement will call the Mediator or Sport Resolutions (UK) (or any employee, consultant, officer or representative of Sport Resolutions (UK)) as a witness, consultant, arbitrator or expert in any litigation or arbitration in relation to the dispute, nor require him/her/them to produce in evidence any record or notes relating to the mediation in any litigation, arbitration or other formal process arising from or in connection with the dispute and the mediation. The Mediator and Sport Resolutions (UK) will not act or agree to act as a witness, consultant, arbitrator or expert in any such process.

3.7 An Assistant Mediator may accompany the Mediator. The Assistant is present to gain experience and assist the Mediator as appropriate and attends without cost to the Parties. All references to ‘Mediator’ in this Procedure also apply to the Assistant Mediator.

4. Sport Resolutions (UK)

4.1 Sport Resolutions (UK), in conjunction with the Mediator, will make the necessary arrangements for the mediation including, as necessary:

- a) assisting the Parties in appointing the Mediator and in drawing up the Mediation Agreement;
- b) organising a suitable venue and dates;
- c) organising exchange of the Summaries and Documents;
- d) meeting with any or all of the representatives of both Parties (and the Mediator if he/she has been appointed) either together or separately, to discuss any matters or concerns relating to the mediation;
- e) general administration in relation to the mediation including post-mediation follow-up.

5. Other Participants

5.1 Each Party will notify the other Party or Parties, through Sport Resolutions (UK), of the names of those people that it intends will be present on its behalf at the mediation.

6. Exchange of Information

6.1 Each Party will, simultaneously through Sport Resolutions (UK), exchange with the other and send to the Mediator at least two weeks before the mediation or such other date as may be agreed between the Parties:

- (a) a concise summary (“the Summary”) stating its case in the dispute;
- (b) copies of all key documents to which it refers in the Summary and to which it may want to refer in the mediation (“the Documents”).

6.2 In addition, each Party may send to the Mediator (through Sport Resolutions (UK)) and/or bring to the mediation further documentation which it wishes to disclose in confidence to the Mediator but not to any other Party, clearly stating in writing that such documentation is confidential to the Mediator and Sport Resolutions (UK).

6.3 The Parties will, through Sport Resolutions (UK), agree the maximum number of pages of each Summary and of the Documents and try to agree a joint set of documents from their respective Documents.

7. Records

7.1 No formal record or transcript of the mediation will be made.

8. Settlement

8.1 Any settlement reached in the mediation will not be legally binding until it has been reduced to writing and signed by, or on behalf of, the parties.

9. Law and Jurisdiction

9.1 Except where the parties have otherwise agreed, this Agreement shall be governed by, be construed and take effect in accordance with English law, and the courts of England and Wales shall have exclusive jurisdiction to settle any claim, dispute or matter of difference which may arise out of or in connection with the mediation.

9.2 The referral of the dispute to mediation does not affect any rights that may exist under Article 6 of the European Convention on Human Rights. If the dispute is not settled by mediation, the Parties rights to a fair trial are unaffected.

9.3 The mediation will terminate when:

- (a) a written Settlement Agreement is concluded; or
- (b) a Party withdraws from the mediation; or
- (c) the Mediator decides to retire where he/she deems it to be professional to do so.

10. Proceedings

10.1 Any litigation or arbitration in relation to the dispute may be commenced or continued notwithstanding the mediation unless the Parties agree otherwise.

11. Confidentiality

11.1 Every person involved in the mediation will keep confidential and not use for any collateral or ulterior purpose all information, (whether given orally, in writing or otherwise), produced for, or arising in relation to, the mediation including the Settlement Agreement (if any) arising out of it except insofar as is necessary to implement and enforce any such Settlement Agreement.

11.2 All documents (which include anything upon which evidence is recorded including tapes and computer discs) or other information produced for, or arising in relation to, the mediation will be privileged and not be admissible as evidence or discoverable in any litigation or arbitration connected with the dispute except any documents or other information which would in any event have been admissible or discoverable in any such litigation or arbitration.

12. Fees, Expenses and Costs

12.1 Unless otherwise agreed, Sport Resolutions (UK)'s fees (which include the Mediator's fees) and the other expenses of the mediation will be borne equally by the Parties. Payment of these fees and expenses will be made to Sport Resolutions (UK) in accordance with its Fee Schedule and Terms of Business.

12.2 Unless otherwise agreed, each Party will bear its own costs and expenses of its participation in the mediation.

Über den Autor

Marcel Voitalla, geboren am 05.09.1989 in Wiesbaden, ist derzeit Rechtsreferendar am Landgericht Dresden.

Nach dem Studium der Rechtswissenschaften an der Johann Wolfgang Goethe-Universität in Frankfurt am Main und der Westfälischen Wilhelms-Universität in Münster und dem erfolgreichen Abschluss des Ersten Juristischen Staatsexamens promovierte er an der Leopold-Franzens-Universität in Innsbruck über ein sportrechtliches Thema. Neben der Bearbeitung rechtlicher Fragestellungen interessiert sich Herr Voitalla auch für sämtliche Formen der außergerichtlichen Konfliktlösung. Aus diesem Grund nahm er während seiner Promotion am Master-Studiengang „Mediation und Konfliktmanagement“ an der Europa-Universität Viadrina in Frankfurt (Oder) teil. Im Rahmen der Erstellung seiner englischsprachigen Masterarbeit, in der er sich schwerpunktmäßig mit Mediationsordnungen aus dem Sportbereich befasste, gelang es ihm die drei Themenfelder Mediation, Sport und Recht miteinander zu verknüpfen.