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The American University in Cairo

School of Global Affairs and Public Policy

THE 2017 EGYPTIAN SPORTS LAW: ASSESSING DISPUTE RESOLUTION AMIDST PLURALISTIC GLOBALIZATION

A Thesis Submitted to the

Department of Law

in partial fulfillment of the requirements for the
LL.M. Degree in International and Comparative Law

By

Ahmed Mohamed Mohamed Mesbah

May 2020

The American University in Cairo
School of Global Affairs and Public Policy

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in partial fulfillment of the requirements for
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DEDICATION

I dedicate this work to my family who has been supportive all the way in every situation and every hardship. I dedicate it to the soul of my late father who has been an inspiration for my achievements. I dedicate it to my mother who has been my aid in every step. I dedicate it to my soulmate who has been supportive and compassionate about my progress. I finally dedicate it to everyone who seeks to share knowledge with others and making this world a better place, even within the smallest possible scale.

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THE 2017 EGYPTIAN SPORTS LAW: ASSESSING DISPUTE RESOLUTION AMIDST PLURALISTIC GLOBALIZATION

Ahmed Mohamed Mohamed Mesbah

Supervised by Professor Thomas Skouteris

ABSTRACT

The issuance of the 2017 Egyptian sports law where an apparent adoption of the international standards of sports has been followed has significantly affected the Egyptian sports field, especially through establishing a sports arbitration and settlement center to follow the international role model of the Court of Arbitration for Sport, the CAS. Not only has the establishment of such nonjudicial sports dispute resolution mechanism affected the predictability of the sports disputes as a core element for the investment in the rising sports industry but also it has jeopardized the achievement of sports justice as an ultimate goal of settling disputes. The Egyptian legislator's approach of adopting a nonjudicial approach of settling sports disputes can be better understood through examining the new legal pluralism in the field of sports where the international sports legal regime has proven its superiority in the rulemaking powers and the enforcement mechanism through its dispute resolution forums. Such superiority has favored the needs of the sports market over the state's traditional judicial approaches of settling disputes. Nonetheless, the fact that the administrative judiciary court of the Egyptian Council of State extended its jurisdiction over sports disputes under the same law that created the sports arbitration and settlement center has made the situation more complex, especially after the intense judicial resistance against the center's jurisdiction which has reached the limits of referring articles of the law and the center's statute to the Supreme Constitutional Court on claims of unconstitutionality. The paper analyzes the pluralistic globalization of sports and examines the qualitative potentials of the two Egyptian sports dispute resolution forums. It examines the newly established nonjudicial sports arbitration and settlement center, in light of the leading model of the CAS, in addition to the existing judicial mechanism of settling sports. The paper eventually argues that the two Egyptian sports dispute resolution forums relatively lack the comprehensive capacity to efficiently satisfy the aspirations of sports stakeholders after such legal development quest. It concludes with suggesting legislative reforms for the two forums to be adopted by the Egyptian legislator that shall lead to fitting such forums to the fuss.

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I. Introduction

The field of sports has evolved from an amateur activity that aims generally to improve physical health and entertain a limited target audience to a professional industry that attracts increasing capital investment and constitutes a source of living for millions of people on the national[1] and international[2] levels.[3] The globalized governance of the evolving sports field has been creating controversy that results from the existence of overlapping jurisdictions.[4] On the national level, the sports practice and sports governing bodies are bound by the national laws, bylaws and regulations.[5] Nonetheless, different sports stakeholders, amateurs and professionals, individuals and entities, aim to participate in international sports events that are regulated through international sports organizations. On the international level, the boundaries of sports practice and its governance are regulated through the charters and statutes of the international sports organizations.

These overlapping regulations create controversial issues that arise when there is a violation of a certain legal rule by a sports stakeholder. such ambiguity results from the coexistence of two regulatory powers in the same sports venue with different, and sometimes contradicting, regulations.[6] Consequently, attempting to settle a sports dispute rising from such violation, that range, for instance, from labor disputes to the limit of

[1] For instance, taking the Egyptian sports legal framework as an example of the sports organization on the national level, the preparatory works of the 2014 Egyptian constitution documents what Mr. Amr Salah, a member of Constituent Assembly assured while discussing article 84 of the constitution draft that nearly five million people work in this sector in Egypt. Although this constitutes approximately 5% of the then ninety-two million population, the field enjoys both direct and indirect relation with increasing stakeholders.
[2] On the international level, international sports practice is governed through international sports entities and federations in a global system that has the International Olympic Committee and its related sports bodies at its top to accommodate the different stakeholder whether they are practitioners, spectators, governing bodies, etc.
[3] *See* generally Matthew J. Mitten & Hayden Opie, *Sports Law: Implications for the Development of International, Comparative, and National Law and Global Dispute Resolution*, 85 Tul. L. Rev. 269 (2010).
[4] The globalization no longer poses a new model of crisis of law. It rather pushes the law to travel beyond the national boundaries of the state through an international regulatory framework. *See* generally Peer Zumbansen, *Transnational Legal Pluralism*, 1 TRANSNAT'L LEGAL THEORY 141–190 (2010) at 167 - 185.
[5] The national legal regime claims that it has the final say in what to be applied as law and the coercive power to implement its decisions. *See* Kaius Tuori, *The Disputed Roots of Legal Pluralism*, 9 LAW, CULTURE & HUMAN. 330–351 (2013) at 336.
[6] Although the state asserts its supremacy over all the rules produced by nonstate groups, which include sports bodies, such groups claim authority from other sources that are separate from the state. This allows them to apply and enforce their rules regardless of the state's attitude towards such application whether supportive or hostile. *See* for example Shaun Larcom, *Problematic Legal Pluralism: Causes and Some Potential Cures*, J. LEGAL PLURALISM & UNOFFICIAL L. 193–217 (2014) at 193.

disputes related to contracts, satellite broadcast rights, club ownership, organizing competitions, etc., becomes relatively problematic.

The dispute resolution mechanisms in the field of sports have been attracting growing concern due to the increasing modifications on both the national and international levels.[7] On the international level, is has been proved that nonjudicial mechanisms are the most effective due to the special nature of settling international disputes in general and sports disputes in particular. On the national level, those mechanisms have been ranging from judicial to nonjudicial approaches according to the legislator's choice. Nonetheless, it is noticeable that national legislators have recently been making the choice to abandon the judicial approach of settling sports disputes towards nonjudicial approaches. Such choice is usually justified by the efficiency and efficacy of the nonjudicial approaches in this particular field as courts are regarded as not the best forum for settling such disputes.[8]

In Egypt, the legal perspective of the field of sports has been attracting more attention since the Egyptian revolution in 2011. In the first post-revolution constitution in 2012, the sports field has attracted the attention of the Egyptian constitutional legislator for the first time.[9] This attention developed further in the 2014 constitution where the constitutional legislator clearly expressed the intention to abide by the international standards and delegated the parliament to organize the disputes resolution mechanism in this rising field. Consequently, the Egyptian Parliament has adopted issuing a new sports law in 2017 considering the constitutional vision after lengthy discussions and debates. This new law has minimalized the governmental guardianship over sports entities for the first time in the history of sports practice in Egypt. It also established a sports arbitration and disputes settlement center which reflected the intention of resorting to a nonjudicial mechanism of settling sports disputes. The center has become entitled with settling sports disputes in Egypt; however,

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[7] The emergence of alternative dispute resolution movement has played a significant role in settling disputes of national, transnational and international nature, including sports disputes. *See* Orna Rabinovich-Einy & Ethan Katsh, *A New Relationship between Public and Private Dispute Resolution: Lessons from Online Dispute Resolution*, OHIO ST. J. ON DISP. RESOL. 695–724 (2017) at 696.

[8] *See* generally David Mcardle, *Judicial deference and anti-doping: Sport, arbitration and redefining the limits of law*, 3 PERFORMANCE ENHANCEMENT & HEALTH 107–108 (2014).

[9] The constitutional organization of the sports field has been of increasing importance as, for instance, certain bylaws of clubs may allow the admittance of members which may be counter to the constitutional rights and privileges. *See* for example LARCOM, *supra* note 6, at 195.

the law did not prohibit the pursuance of judicial remedy to sports disputes.[10] The center's establishment has provoked the resistance of the judiciary which remains reluctant in accepting the jurisdiction of such center and keeps examining cases that are filed before the courts through an expandatory interpretation of the sports legal context.[11]

Sports stakeholders, especially those of legal backgrounds, have found themselves in a dilemmatic situation of seeking jurisprudentially predictable remedy through the coexisting Egyptian sports dispute resolution forums. On the one hand, the jurisprudence to be applied by the administrative judges and the sports center's newly appointed arbitrators, who have been mostly administrative judges in the early days of the sports arbitration center, considering the minimalized governmental guardianship has been dichotomously vague. While the relatively stable judicial jurisprudence regarding sports disputes on the national level was produced by the administrative judiciary of the Egyptian Council of State based on an administrative shell established upon an alleged public nature of sports practice and entities, the relatively stable nonjudicial jurisprudence in the same field on the international level has been produced by international dispute resolution forums whose international standards' application on the national level, according to the constitution and the 2017 sports law, creates vagueness. On the other hand, the existence of two forums of settling sports disputes creates confusing pursuance of remedy between the efficiency of the alternative dispute resolution, especially arbitration, and fairness of the due process of the litigation process through courts.[12] Such dichotomy makes the outcomes of sports disputes settled through the new Egyptian sports arbitration center relatively unpredictable which affects many aspects including the increasing investment in the field, which has been promoted by the 2017 sports law itself.

Examining the Egyptian legislator's choice to resort to a nonjudicial approach, the vagueness and the jurisprudential dichotomy that surrounds the Egyptian sports dispute resolution and the unpredictability of sports disputes outcome that results from such

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[10] This might be supported with the argument that greater access to the state courts of law shall lead to the convergence of nonstate rules with state rules. *Id.* at 197.

[11] *See* RABINOVICH-EINY, *supra* note 7, at 701.

[12] *Id.* at 697.

complexity leads to a conclusion that such situation is an example of legal pluralism[13] in the very specific field of sports.[14] This new rather than classic legal pluralism is justified as the right to practice sports has been recognized as a human right by the Olympic Charter,[15] and it has become a constitutionally protected right by the 2014 Egyptian constitution.[16] The national legislator claims undisputed right to regulate any conduct within its jurisdiction, including the field of sports, as an evidence of sovereignty which can be illustrated through the extended legal organization of sports in Egypt that dates back to 1949. However, in the very specific sports field, the international regime did not refrain from regulating and governing the field of sports regardless of the national regulations. This chaotic legal situation of overlapping regulatory powers leads to the national courts' resistance to the application of international normative regulations[17] developed by international legal persons. However, the international sports organizations, with the international Olympic Committee on their top, have exercised monopolistic powers in setting sports regulations that could even lead to excluding the participation of national sports stakeholders in international sports events in case of violation of the international regulations.[18]

In such pluralistic globalization of sports where the international regime seems to overpower the national one, the state struggles to reassert its previously played roles and positions of power through its legislative authority supported by its courts of law.[19] Since the sports supreme legislative powers have been practically conquered by the international regime thanks to its monopolistic powers, which affects not only the policy of the national sports regulation but also the legislator's approach of settling such disputes, the plurality of sports in the Egyptian dispute resolution context has led to contradictory pursuance of

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[13] See generally Berihun A. Gebeye, *Decoding legal pluralism in Africa*, 49 THE JOURNAL OF LEGAL PLURALISM AND UNOFFICIAL LAW 228–249 (2017) at 231.
[14] *See* TUORI, *supra* note 5, at 331.
[15] *See* Matthew J. Mitten, *The Court of Arbitration for Sport and its Global Jurisprudence: International Legal Pluralism in a World without National Boundaries*, OHIO ST. J. ON DISP. RESOL. 1–44 (2014) at 7.
[16] The classic legal pluralism is where customary and religious laws are the main pillars while the new legal pluralism is where human rights, democratic and constitutional principles are its dominant themes. *See* GEBEYE, *supra* note 13, at 244.
[17] *Id.* at 234.
[18] *See* MITTEN, *supra* note 3, at 321.
[19] *See* ZUMBANSEN, *supra* note 4, at 182.

jurisdiction over sports disputes between the vision set by the state's legislative authority and the Egyptian administrative judiciary affecting the predictability of sports disputes.
The predictability of sports disputes, that result from the trust in, reliability and uniformity of the dispute resolution forum, and its effect on the sports investment are not the only elements jeopardized as a result of such pluralism. Within such sports legal pluralism, the sovereignty of the state as a sole legislator, the protection of public values through state courts, the right to practice sport as a human right recognized by the Olympic charter[20] and national constitutions, the rule of law in a tensed relationship between the state and the market, achieving sports justice[21] and the protection of different stakeholders in the field of sports, especially financially weaker stakeholders, are all at stake.
Since there is no possibility of having a monolithic legal sports regime, especially in the field of settling sports disputes, due to the apparent claim of jurisdiction of both systems, the hybridity of the pluralistic situation shall consequently continue.[22] This requires a thorough examination, especially of the aspects that a sports dispute resolution forum should respect, to be performed in order to weigh the validity and effectiveness of the approaches taken by national legislators. This shall eventually lead to setting a clearer path of solving the dilemma of the overlapping jurisdictions while settling sports disputes.

Considering the restrictive mode[23] of the pluralistic globalization of sports, the paper eventually aims to examine the qualitative potentials of the Egyptian sports dispute resolution forums. On the one hand, it examines the newly established nonjudicial sports dispute resolution mechanism, in light of the leading model of the Court of Arbitration for Sport, to understand whether such approach has been established on solid grounds and whether it has achieved its intended goals. It argues that the Egyptian legislator's

[20] *See* MITTEN, *supra* note 15, at 7.
[21] See generally ROGER I. ABRAMS, SPORTS JUSTICE: THE LAW AND THE BUSINESS OF SPORTS (2010), http://ebookcentral.proquest.com/lib/aucegypt/detail.action?docID=1084929 (last visited Apr 6, 2020).
[22] None of the rivalrous regimes shall surrender its powers to the other. On the one hand, the national regime shall not drop any internal regulation of sports in favour of international substitutes because it shall be against its sovereignty. On the other hand, the international regime shall not drop its organization of the field because such conduct shall be unreasonable as the nature of sports and its activities are rather international than national. *See* LARCOM, *supra* note 6, at 206-207.
[23] Felix S. Cohen examined the restrictive mode of legal pluralism in which the involvement of less powerful systems becomes minor and the more powerful systems approval becomes the constitutive of the validity of the less powerful system legal framework within the scope of state legal pluralism. *See* TUORI, *supra* note 5, at 350.

pluralistically-affected adoption of the sports nonjudicial dispute resolution approach is a result of its interpretation of the international standards employed by the constitutional legislator that emerged from the effects of the international jurisprudence of settling sports disputes and the *lex sportiva* developed by the Court of Arbitration for Sport[24] which considered that courts are not the best forum for sports disputes.

On the other hand, the paper examines the existing judicial mechanism of settling sports disputes where it refutes the claim that most of the national judicial legacy has been structured on a public nature of sports practice and sports entities under the guardianship of the government while the new Egyptian sports law has adopted their private nature. It argues that the minimalization of the governmental guardianship over sports bodies to an unprecedented minimal level which is a result of the interpretation of the international standards shall positively affect the judicial examination of sports disputes. The judicial settlement of sports disputes in the Egyptian sports legal context, despite belonging to a civil law system, shall benefit from its applicable transjudicial influence,[25] that is a feature of common law system, to establish a jurisprudence that serves the purposes of the constitutional legislator in making the Egyptian sports legal system coherent with the international standards through an expansive application of the deferential approach adopted by several national judiciaries rather than the traditional approach to guarantee the inclusion of the Egyptian sports bodies in the developing global sports industry.

The paper eventually argues that the current two Egyptian sports dispute resolution forums relatively lack the comprehensive capacity to efficiently satisfy the aspirations of sports stakeholders after such development quest. It concludes with suggesting legislative reforms for the two forums to be adopted by the Egyptian legislator that shall lead to fitting such forums to the fuss.[26]

Chapter II of this paper examines the development of sports practice and governance and its effect on sports dispute resolution through the lens of the formal dimension of sports

[24] *See* generally James A.R. Nafziger, *Lex Sportiva*, *in* LEX SPORTIVA: WHAT IS SPORTS LAW? 53–67 (Robert C.R. Siekmann & Janwillem Soek eds., 2012), https://doi.org/10.1007/978-90-6704-829-3_3 (last visited Apr 6, 2020).

[25] *See* generally Julian Hermida, *A New Model of Application of International Law in National Courts: A Transjudicial Vision*, 11 WAIKATO L. REV. 37–58 (2003).

[26] *See* RABINOVICH-EINY, *supra* note 7, at 699.

legal pluralism where the hierarchical examination of rulemaking powers and enforcement mechanisms is performed.[27] It starts with exploring sports governance development from amateurism to professionalism and its effect on the sports rulemaking on the Egyptian national level and on the international level while examining how the existence of the dual system of governing sports as legal pluralism helped in rulemaking. Then, it examines the different approaches of settling sports disputes and its pluralistic effect through examining the national judicial approach of settling sports disputes and the international nonjudicial approach of settling sports disputes of the CAS. It continues to examine the pluralistic interactable effect of the existence of the dual system of settling sports disputes. Afterwards, it explores the global sports legal pluralism' effect on the national dispute resolution context though the legislator's approach of settling sports disputes and the jurisprudence of settling sports disputes.

Chapter III explores the legal pluralism's effect on the Egyptian sports' legal framework and its disputes resolution through the lens of the substantive dimension of sports legal pluralism by examining the centrality of sports justice in the Egyptian legal context.[28] It starts with examining the Egyptian sports legal organization and its development. Then, it examines the Egyptian sports judicial dispute resolution framework through examining the administrative judiciary jurisdiction over sports disputes and its legislative and judicial justification. It examines the issuance of the 2017 sports law and limiting the governmental guardianship. Afterwards, it analyzes the global sports legal pluralism' effect on the Egyptian sports legal context of settling sports disputes through examining the effects on the legislator's choice of the nonjudicial approach, the Egyptian sports legal framework and the judicial resistance Eventually, it assesses the current Egyptian models of settling sports disputes through assessing the Egyptian sports arbitration and settlement center and the Egyptian judiciary jurisdiction over sports disputes. It concludes by suggesting two solutions to achieve sports justice through reforming the sports arbitration center's legal framework or establishing specialized sports judicial courts.

[27] *See* ZUMBANSEN, *supra* note 4, at 185.
[28] *Id.*

II. The development of sports practice and governance and its effect on sports dispute resolution:

The practice of sports started as an amateur activity on the national level that later evolved to an international practice aiming for the promotion of cooperation and peace. Such practice's target developed to aim for maximizing the profit. The voluntary theme that used to govern the sports practice developed into a commercially professional theme that resulted in creating an organizational framework of sports practice. The amicable framework that governed the scene developed to a formal and legal approach to coop with the recent changes in the field. This development was accompanied by the need to set firm regulations in sports practice in general and its dispute resolution in particular.

The existence of the dual systems with overlapping jurisdiction in governing sports practice constitutes legal pluralism. To elaborate, legal pluralism exists, in general, when two or more legal orders claim jurisdiction over the same venue and persons within that venue.[29] Such legal pluralism is not just a direct result of the coexistence of overlapping jurisdictions. It is rather a result of having the stakeholders addressed by such pluralistic regimes guided in their conduct by those overlapping orders.[30] Additionally, in an overlapping scene, the international institutions' decisions are generally either binding, persuasive or between the two in their relation to the national counterparts.[31] This is applicable in the sports field as the sports stakeholders are guided by the coexisting national and international systems due to the nature of the sports field that require participating in the international sports competitions. A sports stakeholder, who has different national and international capacities, does not generally want to adhere to one capacity over the other or favor one legal system over the other in order to maintain the bonds with the other system.[32] Acting otherwise would be against the nature of the sports field that considers that national and international aspects of sports practice of relatively similar importance.

[29] *See* LARCOM, *supra* note 6, at 194.
[30] *See* Ido Shahar, *State, Society and the Relations between Them: Implications for the Study of Legal Pluralism Legal Pluralism, Privatization of Law and Multiculturalism*, 9 THEORETICAL INQ. L. 417–442 (2008) at 421.
[31] *See* Paul Schiff Berman, *Conflict of Laws, Globalization, and Cosmopolitan Pluralism Symposium*, 51 WAYNE L. REV. 1105–1146 (2005) at 1105.
[32] *Id.* at 1113.

The sports field indeed has several norm creating venues, national and international. However, the classic version of the conflict of laws that assumes that the conflicting regimes has equal coercive powers to apply their norms and regulations upon the addressees in not valid due to the special nature of the sports field. This is because the superiority of the international sports legal system and the coercive powers of the international sports organizations makes the situation much more complex. Consequently, the collision of such normative systems requires an approach that is broader than the ordinary approach of the mere conflict of laws in order to better understand and analyze it.[33] Such conflict of laws that is generally based on jurisdiction, choice of law, sovereignty and territoriality is insufficient in addressing the situation in the sports field because the very principles of conflict of laws are in constant change in response to the evolvement of the social perspectives in addition to its dramatic effect on disavowing sports stakeholders from one or more of his or her capacities in favor of the other.[34]

Since the main issue in the sports field is not a mere conflict of jurisdictions, the enforcement mechanism plays an important role in demonstrates the plurality of the situation.[35] The general idea that the dispute resolution forum seeks to persuade or make arrangements with the entities that enjoy the more coercive powers in the field in order to guarantee the applicability of the dispute resolution decisions is problematic in the sports field.[36] This is because on the international level, the international dispute resolution forums are created by the very international sports organizations that enjoy the coercive powers. Nonetheless, such organizations are subject to the decisions of the dispute resolution forum to guarantee the continuity of the sports industry. While on the national level, the national judiciaries are reluctant in settling sports disputes in such complex legal framework in order not to jeopardize the respect and the applicability of their decisions, especially in case of not being in accord with the international standards. The existence of coercive international sports law under the umbrella of an international organizations, forces the state to adhere to such multilayered pluralistic legal context.[37] Consequently, the

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[33] *Id.* at 1105.
[34] *Id.* at 1106 - 1116.
[35] *Id.* at 1110.
[36] *Id.* at 1124.
[37] *See* GEBEYE, *supra* note 13, at 235.

powers enjoyed by the International Olympic Committee and the international federations and the methodology they followed in their established sports dispute resolution forums at such multilayered scene illustrates the plurality of the legal orders that has constituted a persuasive force upon national systems to abide by such pluralistically produced rules and mechanisms. This makes legal pluralism of significant importance in the sports field.

Such sports legal pluralism affects the policy of sports lawmaking and sports dispute resolution in a way that affects the right to practice sport as one of the human rights recognized by the Olympic Charter,[38] the achievement of justice and fairness through a uniform methodology of settling sports disputes, and the predictability of sports disputes outcome as a core element of supporting investment in the field.

This chapter addresses the evolution of sports from amateurism to professionalism, and how the shift from sports government to sports governance occurred. Then, it illustrates how this dual governance of sports constitutes a special type of legal pluralism. Such pluralism is reflected through two major elements that this chapter examines: the rulemaking powers and the enforcement mechanism followed in sports dispute resolution.

A. Sports Governance Development from Amateurism to Professionalism and Its Effect on The Sports Rulemaking

It is believed that sports arose as a social conduct to provide recreation, relaxation, amusement, but it has recently become a source of profit.[39] Still, the sports' social value began to have economic aspect. The sports field developed on both the national and international levels in an increasing manner that both systems have existed together, affected one another and created a relatively complex legal framework that has consequently affected the sports rulemaking arena.

Since the beginning of sports professionalism[40] there has been a dual system governing the scene of sports administration that interchangeably influenced the sports disputes

[38] *See* MITTEN, *supra* note 15, at 7.
[39] *See* Stephen Nelson, *Introduction: Bringing Sports under Legal Control Special Section on Sports and the Law: Introduction*, 10 Conn. L. Rev. 251–258 (1977) at 255.
[40] This beginning is related to the emerge of the international sports practice through international sports entities after numerous demands of having international sports contests, *See* generally JEFFERY BORLAND & ROBERT MACDONALD, *DEMAND FOR SPORT*, 19 OXFORD REVIEW OF ECONOMIC POLICY 478–502 (2003).

resolution. On the one hand, there has been a domestic system governing the administrative aspects of sports based on claims of sovereignty. On the other hand, there has been a rising international system that has enjoyed monopolistic powers in the field of organizing sports activities. The regulatory powers of this international system are binding to all sports entities, whether they are sports federations or sports clubs, regardless of the domestic regulation. Both systems worked parallelly without apparent conflict; however, there has been an interchangeable influence of both systems on the other.[41]

This dualistic system, when further explored, interfered in the very organizational structure of sports practice. International sports governing bodies set rules and regulations and issue decisions that are binding to all practitioners from all over the world. In addition, national sports governing bodies in many countries, like Egypt, have almost never opt for violating rules and decisions taken by the international bodies governing the sport without a valid legal obligation to act in such manner. National systems implicitly abided by the international regulation without clearly stating the source of such commitment in its legal context depending on the international treaties, contracts and obligations.

The coexistence of the two systems in an activity, or rather a growing industry, that is worth hundreds of billions is worthy of exploring.[42] Neither did the international system intervene directly in the domestic organization of sports, nor refrained from setting its own regulation to govern the aspects of sports practice regardless of any national approaches. This conduct clearly illustrates the situation adopted by the international system towards its right to regulate sports without any apparent opposition from the national systems.[43]

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[41] This phenomenon is called legal pluralism where, generally speaking, two legal normative systems govern the same issue and both work independently, *See* generally Brian Z. Tamanaha, *Understanding Legal Pluralism: Past to Present, Local to Global*, 30 SYDNEY L. REV. 375–411 (2008).

[42] The sports field has been an attraction of much capital and has transformed to become a commercial institutional business that endures gigantic amounts of money. *See* generally John Forster, *Global sports organisations and their governance*, CORPORATE GOVERNANCE: THE INTERNATIONAL JOURNAL OF BUSINESS IN SOCIETY (2013), https://www.emeraldinsight.com/doi/abs/10.1108/14720700610649481 (last visited May 15, 2018).

[43] International sports entities and federations set the regulation of sports practice, modify them, and carry out international events without interference from national system. In fact, those national systems aspire to join such international events and their application to join is decided through decisions of the board of international sports entities.

1. On the National Level "The Egyptian Model"

Sports practice has been the center of attention of many societies due to its role in the physical and cultural building of the youth that are the future of any society. The sports field in the Egyptian society has a unique nature as it evolved over an extended period of time and was affected by multiple civilizations and cultures. This led to developing a forum of sports practice and sports organization where competing and consecutive regulatory systems coexisted.[44]

Sports practice in Egypt started since the pharaonic era. It was merely a practice of physical competitiveness among Egyptians and a way of leisure and calmness.[45] Collective contests were carried out in the name of the Pharaoh in special occasions. However, such practice was rather a social activity than a contest of legal interest. It further evolved under the Greek and Roman colonial eras but remained of social concern rather than a legal one.

The Islamic civilization gave a very particular interest to the field of sports as it was encouraged by the Prophet Muhammed himself. He urged Muslims to instruct their children practice certain sports of great value which helped enhancing the spread of sports practice. It also gave the field of sports more importance in the Islamic countries as a field of importance for the state itself.[46] Egypt as a leading country in the Islamic world was influenced by such concern about sports. Consequently, sports practice in Egypt combined its old traditional interest about sport practice with its then-new Islamic identity. Yet, it remained a mere practice without firm legal boundaries.

The rise of sports professionalism in the Egyptian context as we know it nowadays is quite interesting as it was established through Italian and Greek immigrants on the same model of European sports entities by establishing the Egyptian sports federation and the Egyptian Olympic committee.[47] Since their establishment, sports practice changed from a social

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[44] *See* TUORI, *supra* note 5, at 343.
[45] See generally JOYCE A. TYLDESLEY, EGYPTIAN GAMES AND SPORTS (2007).
[46] See generally Uriya Shavit & Ofir Winter, *Sports in Contemporary Islamic Law*, 18 ISLAMIC LAW AND SOCIETY 250–280 (2011).
[47] See generally Christian Wacker, *Egypt goes Olympic : 1914 to 1932*, 39 SOUTH AFRICAN JOURNAL FOR RESEARCH IN SPORT, PHYSICAL EDUCATION AND RECREATION 155–170 (2017).

activity that was done individually to an institutional practice with national aims that had to meet the international organization of sports practice in one way or the other.

Egypt as an African state was affected by the sports practice evolvement of the neighboring countries of the continent.[48] The emerge of sports practice in Africa is quite a significantly peculiar field as it flourished in the post-colonial period when politics had much interference with sports practice.[49] During that period, regional sports entities like the Pan-Africanist sports bodies were established and numerous African athletes participated in international competitions and became the center of attention of foreign sports entities.[50] Egypt was influenced by the establishment of such entities and the interchangeable practice affected the Egyptian field of sports.

2. On the International Level

The independent existence of the international system of sports governance finds its justification in the fact that sports practitioners, whether they are amateurs or professionals, aspire to participate in international sports activities and competitions. Such events have been organized by the International Olympic Committee, which was established in 1894, and the increasing and developing international sports bodies. The will to participate in such international events is what drives such athletes, willingly or forcibly, to abide by the regulation set by those international sports bodies and organizations. Such regulations that are created by the international sports organizations are being constantly developed as a consequence of the amicable approaches adopted by those international sports entities in settling the sports disputes. Those regulations also are affected by the interactions that occur between the national and international systems.

The rise of sports as a social, economic and media business on the international level began in the 1960s.[51] The sports rising social and commercial importance have been subject to

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[48] African states, in general, are weaker on the international legal level than the domestic national level where they enjoy the coercive powers to enforce the respect and applicability of their legal rules. *See* GEBEYE, *supra* note 13, at 234.
[49] *See* generally Hikabwa D. Chipande & Davies Banda, *Sports and Politics in Postcolonial Africa*, *in* THE PALGRAVE HANDBOOK OF AFRICAN COLONIAL AND POSTCOLONIAL HISTORY 1263–1283 (2018), https://link.springer.com/chapter/10.1057/978-1-137-59426-6_50 (last visited May 19, 2018).
[50] *Id.*
[51] *See* NELSON, *supra* note 39, at 251.

examination of national systems, but eventually, the rising importance prevailed, and the sports practice proved itself as an independent framework. On the one hand, several national systems were reluctant is recognizing its commercial nature at first. For instance, the American legal system was slow to adopt and recognize such nature as the professional sports industry was not considered a business compared to commercial enterprises.[52] During such reluctance period, the field of sports fell under several national laws; i.e. the antitrust law, the labor law, the contract law, the tort law, the consumer protection law, etc. However, the international sports industry was not affected by such legal complexity due to the apathy of the national governmental authorities' approach of handling the organizational aspects of such field.[53] On the other hand, the importance of sports in delivering social values was not expected to take such an increasingly important role. However, since increasing number of states are becoming members of the International Olympic Movement, the sports practice has been gaining an increasingly significant role in teaching the audience social values.[54]

During the transition period between the establishment of the organized framework of sports more than a century ago and the thorough sports organization that we know, there has been a strong monopoly powers exercised by the national and international sports institutions.[55] Such monopoly is what justified the power to regulate the sports practice and events by the international sports organizations. Although such monopoly was of economic nature and focused mostly on access to tickets and similar activities, it had been rising in an increasing rate to include other elements.[56] The monopoly extended to setting the rules and regulation of the sports practice itself affecting the different stakeholders and bringing them under the application of the monopolistic regulations set by such organizations.

3. The Existence of the Dual System of Governing Sports as Legal Pluralism in Rulemaking

In general, the state and the nonstate groups may affect one another within a pluralistic organization; however, these effects are expressed through a more horizontal than vertical

[52] *Id.*
[53] *Id.*
[54] *See* MITTEN, *supra* note 3, at 309-310.
[55] *See* NELSON, *supra* note 39, at 254.
[56] *See* NELSON, *supra* note 39, at 255.

relationship.[57] Although this serves towards the existence of the horizontal type of relation between the international regime of sports governance and its national counterpart, the sports legal reality shows otherwise. The rising international nonstate sports regime influenced and got influenced by the national state system; however, such influence has not been horizontal in nature. The international sports organizations' bylaws, rules and regulations were being systemically adopted, or at least being respected, by the national systems. The sports organizations ethical rules and regulations have been considered by some scholars as a global private law.[58]

The Olympic Charter has been recognized as the constitution of the Olympic world that has the power to set the rules and regulation of sports practice. This power is derived from the binding requirement imposed upon all the Olympic movement members.[59] The International Olympic Committee consists of collaborative national Olympic committees. There is neither an apparent governmental intervention nor a veto power for any of its members and consequently submission to its rules is essential.[60] Not only did this global constitution affect the sports practice but also became an important cornerstone of any domestic legal regulation of sports. The national legislators emphasized its importance in the consecutive sports laws. The increasing domestic sports practice that is combined with extensive media coverage and strong public interest in sports practice, either as participants or audience, provides the sports, whose regulations are mostly set internationally through the international organizations, with the power to affect the development of general national laws and public policy.[61]

It is noticeable that the national system did not systematically try to condemn the international sports regime's regulatory powers or attempt to eradicate such powers.[62] Consequently, the international sports regime has not needed reforming its substantive rules to make them consistent with the national system. However, whenever there has been a conduct of the national system to confront the international sports regime, the later used

[57] *See* LARCOM, *supra* note 6, at 194.
[58] *See* MITTEN, *supra* note 3, at 293.
[59] *See* MITTEN, *supra* note 15, at 5.
[60] *Id.* at 3.
[61] *See* MITTEN, *supra* note 3, at 311.
[62] *See* LARCOM, *supra* note 6, at 195.

its monopolistic power to reduce the enforcement of the national laws and promote its own instead. Such power was derived from the increasing commercial nature of sport.

The commercialization and corporatism of sports played an important role in the sports field. On the one hand, they forced the national courts to apply several areas of national law and reassess their views about external regulation of the sports industry.[63] For instance, the Australian supreme court ruled in *R v Judges of the Federal Court of Australia; Ex Parte Western Australian National Football League, Inc.* that although two sports leagues and a sports club were formed as a not-for-profit organizations, the fact that their practices in professional sports made them organizations of commercial nature, especially when the issue is related to ticket sale, media right, etc. On the other hand, since corporations enjoyed rulemaking capacities and mechanisms of enforcement within the national state's system that have interchangeably influenced the state's legal system,[64] the international sports organizations' rulemaking powers have been expressed in creating international rules to be nationally adopted and creating and supporting human rights as follows.

a. Creating International Rules to Be Adopted by National Legal Context

The international sports competitions enjoy, due to the global media coverage, an increasing capacity in creating and spreading legal norms.[65] A good example of the consequences of the establishment of international organization on the field of sports is the establishment of the World Anti-Doping Agency (WADA). The WADA was established as a private international organization aiming to promote and coordinate against doping.[66] The WADA code became adopted by the international sports institutions as a result of its international establishment.[67] Gradually, it became a binding reference to the respective national organizations and the athletes due to their participation in international sports events and the internal need to fight against an issue of general concern, doping.[68] The

[63] *See* MITTEN, *supra* note 3, at 311.
[64] *See* GEBEYE, *supra* note 13, at 231.
[65] *See* MITTEN, *supra* note 3, at 315.
[66] *Id.* at 274-277.
[67] *Id.* at 275.
[68] Article 33 of the 2017 Egyptian sports law asserts that violation of the WADA rules is forbidden and different stakeholders in the Egyptian sports field are prohibited from consuming any material that violates such rules.

WADA was a globally obvious result of cooperation between the IOC[69] and the national governments that willingly entered the organization as the doping related issues had become of increasing concern to such governments, especially after the global doping-related incidents' effect on the public regarding international sports events and the national sports events afterwards.[70] Such emerging nature of sports to act as a catalyst of legal reform and public policy due to its social rule and media impact shall keep the legal context of sports developing on the national levels to match the international standards accordingly.[71]

b. Creating and guaranteeing the respect of rights

As it was mentioned earlier that the right to practice support has been recognized as a human right by the Olympic Charter.[72] The continuous effect of the international sports practice on the national legal context in the field of human rights has been founded on the fundamental principles of Olympism embodied in the Olympic charter that declares the incompatibility of belonging to the Olympic movement in case of violation of human rights, discrimination for example.[73]

The international sports organizations themselves, especially the International Olympic Committee and the International Federations, seek an improved national legal context in the states where international sports events take place in order to secure some of those organizations' rights, especially in the fields of intellectual property and media rights.[74] The normal legal protection of those national laws may not be regarded as sufficient enough to the international organizations. Consequently, different states shall be encouraged to develop their legal context in a way that attracts the international organizations to hold the international events at their territories as a way of attracting the gigantic revenue that accompanies such events.[75] The contractual obligation of states that

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[69] Although not all sports activities are of Olympic nature which affected the quest of the IOC to combat doping by making the process relatively slower, it cannot be denied that the stewardship of fighting doping through an international mechanism goes to the IOC. *See* MITTEN, *supra* note 3, at 278.
[70] *Id.* at 275.
[71] *Id.* at 313.
[72] *See* MITTEN, *supra* note 15, at 7.
[73] *See* MITTEN, *supra* note 3, at 320.
[74] *Id.* at 317.
[75] *Id.* at 317.

are members of the IOC and the IFs shall create an obligation to perform reforms towards complying with the international standards set by the international jurisprudence in the field of sports in the respective fields. The states willingly adhering to the international principles in carrying out legal reforms or their contractual obligation to respect them shall lead to the same results of improving the national legal context to meet the international standards.

Consequently, the dual existence of the national and international regimes in governing the sports field has been concluded by the recognition of the international sports legal regime as the supreme legislator in the field of sports through a pluralistic examination of the hierarchical rulemaking powers and their effect on the policy of legislation. Nonetheless, the existence of overlapping governing regimes constitutes half of the formal dimension of the sports legal pluralism.[76] Such dimension extends to how such regimes affected each other in the enforcement venue. Consequently, the full examination of the legal pluralism in the field of sports requires examining the enforcement mechanism followed by the two regimes as which shall be evidenced through the sports dispute resolution in the following points.

B. The Different Approaches of Settling Sports Disputes and Its Pluralistic Effect

The settling of sports disputes has taken different approaches that ranged from judicial to nonjudicial dispute resolution mechanisms. The majority of national systems followed the judicial approach in the field of settling sports disputes which they considered as the most effective.[77] The international system followed the nonjudicial approach, especially arbitration.[78] This conduct finds its justification in the policy of privatizing public services in pursuance of efficiency and cost reduction[79] that has inspired the pluralistic sports field

[76] *See* ZUMBANSEN, *supra* note 4, at 185.
[77] This approach is derived from the constitutional organization of settling disputes in general, such approach requires all disputes to be settled through the judicial mechanism and rarely recognize the nonjudicial mechanism, especially in disputes of domestic nature. *See* RABINOVICH-EINY, *supra* note 7, at 701. Additionally, in several of those jurisdictions, i.e. Egypt, the governmental guardianship over the sports field and the alleged public nature of sports practice and sports entities made the situation relatively hard for the recognition of nonjudicial disputes resolution mechanism.
[78] Sports arbitration has been gaining importance due to its functionality in the last two decades. Increasing sports disputes are being solved through arbitration, See generally James A. R. Nafziger, *Arbitration of Rights and Obligations in the International Sports Arena*, 35 VAL. U. L. REV. 357 (2000).
[79] *See* ZUMBANSEN, *supra* note 4, at 175.

to produce a recommendation derived from the international superiority towards adopting a nonjudicial approach. The two dispute resolution systems have existed together and affected each other quite significantly. It is also noticeable that some national legislators have taken a silent approach in allocating the settling of sports disputes to judicial or nonjudicial entities.[80]

1. The National Judicial Approach of Settling Sports Disputes

There has been an obvious inconsistency among the national courts verdicts in settling sports disputes in similar matters, especially those of similar international nature. The reasons behind such inconsistency are the differences of the governing legal system; civil law or common law, the possible different biases; nationalism or ethnocentrism, the strength of the judicial independence from the political influence, the rule of law in sports related disputes and the cultural difference, especially in the field of the social sense of the importance of law and legal settlement of disputes.[81] The judicial dichotomy between internationalism and nationalism in the legal context in general and the sports legal context in particular has created a dilemma that affects the predictability and coherence of the sports disputes resolution and consequently the sports practice and industry themselves.[82] For instance, within the anti-doping movement, the inconsistent judicial approaches of settling sports disputes related to the doping accusations, especially in the fields determining the length of the substance stay in the blood, led to making the international quest of combating doping through a clear, consistent and undisputed legal framework quite complex.[83]

The national judiciaries were reluctant to hear sports disputes of international nature and refrained from intervening in disputes that had been examined by national or international

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[80] For instance, the Egyptian legislator, whether the constitutional or the parliament, did not interfere in allocating the jurisdiction of settling sports disputes in a direct way before the 2014 constitution and the new sports law in 2017. The general principle of the constitutional and legal context is that any dispute shall be solved through judiciary; however, since Egypt recognized the dualistic judicial system, it was not clear which judicial body should have jurisdiction over sports disputes. This allowed the Egyptian judiciary to create its own jurisprudence regarding the competent judicial body entitled with settling such disputes which shall be further explored in the paper.
[81] *See* MITTEN, *supra* note 3, at 284.
[82] *Id.* at 285.
[83] *Id.* at 279.

sports organizations' appeals body.[84] The reason behind such attitude was that judges of those national courts considered the appeals body of national and international sports organizations as more experienced and knowledgeable experts in the specialized field of sports law.[85] Consequently, the potential unexperienced interference could lead to an exhaustion of the internal remedies in vain due to the lack of specialized experience.[86] The judges of the national courts frequently emphasized that they might lack the proper knowledge of the sports' contractual language, its nature or its dilemmas.[87] This approach asserted the rising trend that litigation, especially before domestic courts, is rarely the best venue of settling sports disputes.

2. The International Nonjudicial Approach Of Settling Sports Disputes

The expansion of the sports practice on the international level created several elements of legal concern regarding settling sports disputes on the international level. The International Olympic Committee has witnessed a significant increase in its role globally as a result of the spread of sports practice as mentioned earlier.[88] Such increasing role resulted in the rise of international sports disputes that created reluctance between the national judicial approach of settling such disputes and the need of an international mechanism to settle such disputes on the international level.

There has been a rising international trend towards settling sports disputes through nonjudicial dispute resolution mechanisms.[89] The supporters of this trend structured their opinion on two major justifications due to the special nature of the sports field. The first of them is emphasizing the importance of sports autonomy.[90] Such autonomy has been jeopardized by the national governmental interference in the field of sports which was argued to be minimalized to guarantee the workability of the sports field.[91] The second of

[84] *See* James A. R. Nafziger, *Globalizing Sports Law Symposium: Sports Law in the 21st Century*, 9 Marq. Sports L. J. 225–238 (1998) at 231.
[85] *Id.* at 231.
[86] *Id.* at 228.
[87] *Id.*
[88] *See* MITTEN, *supra* note 15, at 3-5.
[89] *See* RABINOVICH-EINY, *supra* note 7, at 696.
[90] *See* generally Louise Reilly, *An Introduction to the Court of Arbitration for Sport (CAS) & the Role of National Courts in International Sports Disputes Symposium*, 2012 J. Disp. Resol. 63–82 (2012) at 77.
[91] *Id.*

them was the need for a quick and uniform dispute resolution system. It was argued that the possible inconsistency of the national courts in settling sports disputes of international nature would have a dramatic effect on the sports disputes in particular and the sports practice in its modern form in general. It was argued[92] that such need prevails over the athlete's right to have his/her case adjudicated by ordinary courts as long as the requirement of due process are fulfilled.[93]

Several nonjudicial sports disputes resolution bodies existed in the majority of the international federations of sports.[94] Those federation created appeals bodies internally to solve disputes related to the practice of the sport subject to jurisdiction of the international federation according to the federation's bylaws, rules and regulations. Those appeals' bodies settled the disputes and the parties had to enforce the awards through national judiciaries if the willingly application under the power of the international federation was not possible. However, the trend towards having a coherent and consistent umbrella for settling different sports disputes that can guarantee the fairness and the functionality of the resolution continued. Such trend has been arguing that the International Olympic Committee as an international legislator in the field of sports with the power to set rules and regulation ought to have its own means of settling sports disputes through the nonjudicial mechanism.

a. The Establishment of The CAS and Its Advantages

The trend arguing for the need of an international nonjudicial sports disputes resolution forum and the powers of the International Olympic Committee led to the establishment the Court of Arbitration for Sport (CAS) to unify the inconsistency of the national judicial verdicts and replace the incoherent role that is played by national courts in the sports field while settling sports disputes of international nature in addition to unifying the international nonjudicial appeals bodies of the International Federations. The ultimate aim of the establishment of the CAS has been to generate a special law *lex specialis* that shall constitute guidelines for other sports disputes resolution forums, judicial and nonjudicial

[92] This argument was consistently supported by the Swiss Federal tribunal. *Id.*
[93] *Id.*
[94] *See* NAFZIGER, *supra* note 84, at 231.

as well.[95] The CAS has been established to settle sports disputes of first instance, disputes of appeals against the decisions of the International Olympic Committee and the International Federations.[96] In addition to its on-site dispute resolution, it provides nonbinding advisory opinions in the field of sports disputes.[97] The CAS is now operating under the management and finance of the International Council of Arbitration for Sport (ICAS).[98]

The CAS provided several advantages regarding the timing of settling disputes, the costs of such settlement in addition to the validity, stability and enforceability of the award or decision. One the on hand, the CAS code established for strict regulations regarding the time limits to ensure that disputes are settled in the shortest time whether before the Ad Hoc division or the appeal division. For instance, the Ad Hoc division tribunals of the CAS are required to settle disputes in a twenty-four-hour period. [99] Such timing regulations may even be reduced by the parties upon their request. The award should be issued in principle within three months of the filed case being transferred to the panel. Regarding the costs, the president of the International Council of Arbitration for Sport (ICAS) may allow free resort to the CAS for those who cannot afford the standard cost.[100]

On the other hand, regarding the stability of the decisions of the CAS, it was established that the CAS awards can only be challenged before the Swiss Federal Tribunal unlike other arbitration institutions where the award might be challenged before different venues.[101] The main reason behind that is that the seat of all CAS awards is Lausanne, Switzerland regardless of where the proceedings take place.[102] This organizational framework guarantees the uniform procedural rules and the coherent legal context while providing an easy access or resort to a competent resolution forum close to the athletes and the athletic

[95] *Id.* at 232.
[96] The CAS can be divided into two primary divisions: the ordinary arbitration division and the appeals division. See generally Maureen A. Weston, *Simply a Dress Rehearsal - U.S. Olympic Sports Arbitration and De Novo Review at the Court of Arbitration for Sport International Commercial Arbitration: Fifty Years after the New York Convention*, 38 GA. J. INT'L & COMP. L. 97–130 (2009) at 108.
[97] *See* MITTEN, *supra* note 3, at 285.
[98] *See* WESTON, *supra* note 96, at 109.
[99] *See* REILLY, *supra* note 90, at 70-72.
[100] *Id*. at 73.
[101] *Id.* at 75.
[102] *See* MITTEN, *supra* note 3, at 287. *See* also WESTON, *supra* note 96, at 108.

events.[103] Additionally, the CAS panels are required to reason their awards.[104] Regarding the enforceability of the awards, the CAS awards are enforceable under the New York convention.[105] The enforcement applications of the CAS awards can be made before the Swiss Federal Tribunal or other national courts of the signatory countries. In appeal cases against the international sports organizations, there is internal procedures within the international sports organizations to ensure the compliance with the awards of the CAS.

Consequently, the CAS became a promising competent forum for disputes involving appeals against decisions taken by sports federations, associations or generally any sports related body. However, the supporters of the CAS had the fear that such international sports dispute resolution forum would not find a ground for jurisdiction to make different national systems abide by its jurisdiction.

b. The Expansion of The CAS Jurisdiction and Its Sources of Law

The monopolistic powers exercised by the international sports bodies in the rulemaking venue[106] returned to the scene to eradicate such fear and play an important role in promoting its dispute resolution mechanism and giving it the required jurisdiction to be a global forum for settling sports disputes. The administrative and economic links between the then newly established CAS and the International Olympic Committee, the IOC, helped much in this regard.

The strongest method that was followed to give the CAS the jurisdiction over sports disputes making it the on the top of world sports disputes in relatively a short period is that any sportsperson is obliged to sign a form before participating in any sports event governed by the international organizations.[107] Such form includes a provision giving a consent of the signer to the jurisdiction of the CAS.[108] Although, this consent has been criticized as the other option for the sportsperson would be to refrain from signing the form and

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[103] *See* MITTEN, *supra* note 3, at 287.
[104] *See* REILLY, *supra* note 90*,* at 69.
[105] *See* MITTEN, *supra* note 3, at 301.
[106] *See* NELSON, *supra* note 39, at 255.
[107] *See* REILLY, *supra* note 90*,* at 67.
[108] The IOC set the requirement to abide by the CAS jurisdiction as a precondition to participate in the Olympic competitions. *See* MITTEN, *supra* note 15, at 8.

consequently sacrifice the possibility to participate in the sports event, the current situation gave the CAS competence over disputes related to such events and eventually it became the competent forum for the majority of sports disputes.[109] This led to a prevailing fact that all "Olympic International Federations and several non-Olympic federations recognize CAS as the final instance of appeal for international disputes, to the exclusion of national courts."[110]

In addition to the advantages provided by the CAS, it provides a clear legal framework with unambiguous sources of law. The CAS founded its sources of law as the Swiss Act, the substantive law, the relevant regulation of the sports entity subject to the dispute and the law of the country of the sports entity.[111] The CAS code provides the substantive law to be applied by a CAS panel. On the one hand, in the CAS ad hoc division, the substantive law is the Olympic charter, the applicable regulation, the principles of law and the rule of law where appropriate. On the other hand, in the CAS appeals' proceedings, the substantive law is the absent agreement of the parties which empowers the law of the country in which the sports entity issued the challenged decision.[112]

3. The Pluralistic Coexistence of The Dual System of Settling Sports Disputes

When a dispute of international or multinational nature occurs, it becomes problematic to decide how it shall be settled and according to which standards. This problematic situation occurs due to the fact the that National Olympic Committees supervise and promote Olympic and international sports events in which they must abide by the rules of the International Olympic Committee and its bylaws in addition to the laws of their respective countries.[113] It is also a result of the fact that the National Governing Bodies adhere to the rules of their respective International Federations.[114] The dilemma is that a certain issue can be subject to two different legal contexts on the national and the international levels.

[109] *See* REILLY, *supra* note 90*,* at 67.
[110] *Id.*
[111] *Id.* at 69.
[112] *See* MITTEN, *supra* note 3, at 298.
[113] *Id*. at 283.
[114] *Id.* at 283.

It is quite interesting that the two systems of sports disputes resolution have been working simultaneously. Although it might seem that their coexistence has been without affecting one another, the two systems affected each other quite significantly. Indeed, at first, both systems did not see that any type of obligation to abide by each other methodology or approach towards dispute resolution. In other words, the national system, whether it was legal in general or judicial in particular, did not seem obliged to abide by the principles adopted by the international system and *vise versa*. However, the reciprocal effect of the dual system has led to the need to abide by the internationally stronger rules to guarantee the access to participation in and benefits of the sports events. Eventually, the international nonjudicial sports disputes resolution approach, supported by the monopolistic powers of the international sports bodies, relatively succeeded in having the greater effect.

This has created dichotomy that affected the legal scene. In order to decode such dichotomy, the paper shall further explore the effects of both systems on the other regarding the settling of sports disputes and whether one of them achieved the superiority in such pluralistic arena.

a. The International Nonjudicial Sports Disputes Resolution Effect on The National Systems (Asserting The International Superiority)

The international nonjudicial approach of settling sports disputes has created a jurisprudence that has been developing by the CAS, as the crown jewel of the international nonjudicial sports disputes resolution. It is noticeable that in practice the CAS rarely depend on any national law other than the Swiss law to invalidate agreements and regulations of Olympic and international sports governing bodies, regardless of examining the violation in light of the national law of the athlete or organization subject to dispute.[115] For instance, the CAS refused to consider that international doping rules and sanctions as a violation of an athlete's national laws.[116] It also refused to apply any other national law than the domestic law of an international sports organization's state.[117] This is not

[115] *Id.* at 299.
[116] *Id.* at 300.
[117] *Id.*

problematic for the CAS since the majority of the international sports organizations are domiciled in Switzerland.[118]

It cannot be denied that the international system sometimes bans its members from accessing the national judiciary to settle sports disputes of international nature.[119] It cannot also be denied that even in cases where such national courts render verdicts in such disputes, the international sports organizations might not apply them[120] which is justified under the pluralistic expression of powers by the international regime.[121] For instance, The obligatory arbitration agreement to join the Olympic competitions bars the athlete from litigating the merits of the CAS award in a domestic judicial forum.[122] The justification behind such attitude is that the CAS as an international sports disputes resolution venue is accessible for all parties while those national courts are only accessible for the claiming party which means less equality in treatment.[123]

Eventually, the superiority of the international sports regime guarantees the respect and enforcement of the international nonjudicial sports awards. The states and their national sports governing bodies have been rather enforced to apply the international sports awards regardless of their national laws, either case by case or by reforming its entire legal framework to be in accordance with the international standards. To elaborate, if states relied on the national laws to avoid enforcing CAS awards that protect the infringed right of an athlete or a sports stakeholder, the NGB may be subject to sanctions by the IFs that may reach suspension of the membership rights or authorization to enter athletes in international sports competitions. Such sanctions constitute a strong enforcement mechanism that may be practically more powerful than the judicial enforcement.[124] For instance, if an athlete is awarded a favorable award by the CAS and for a certain reason the athlete did not want to enforce the award judicially, the athlete has the alternative of filing a complaint against the sports entity in the respective IF which may be empowered, through

[118] *Id.*
[119] *See* REILLY, *supra* note 90*,* at 80.
[120] *Id.*
[121] *See* LARCOM, *supra* note 6*,* at 195.
[122] *See* MITTEN, *supra* note 15, at 9.
[123] *See* REILLY, *supra* note 90*, at* 80.
[124] *See* MITTEN, *supra* note 3, at 321.

its internal rules and regulations, to impose sanctions on the sports entity due to its failure to comply with the ruling of the CAS.[125] Consequently, the aim of avoiding the sanctions can be considered as a more powerful incentive than the judicial enforcement for national sports entities to comply with the *lex sportiva* of the CAS creating an efficient and prompt enforcement system.

The CAS has been eventually regarded as a successful model of international dispute resolution because it is claimed to be a superior forum than the other alternatives is settling sports disputes, nationally and internationally. This superiority is evidenced by the global respect and enforceability of its awards if required.[126]

b. The National Judicial Sports Dispute Resolution Effect on The International System

National judiciaries do have an influence on the relatively new international nonjudicial sports dispute resolution mechanism. The national system can be of benefit to the international system, especially in the field of cases with criminal nature such as fixing games.[127] The national policing system has a more practical power to investigate and gather evidence than the international sports dispute resolution venues.[128] The positive role played by the national courts helps in aiding the arbitration procedures and the CAS settlement of sports disputes, as a role model of settling international sports disputes. Yet, the extent of the national courts' role in such aid and its effect on the sports autonomy shall remain related to the ability of the sports international organizations to internally organize themselves to respect the different and complex legal norms while drafting and applying their regulations and rules.[129]

(1) The Judicial Application of The National Laws and International Regulations of The Sports Organizations

The judicial treatment of sports disputes that involve international sports rules has been inconsistent in taking a traditional approach or a deferential approach. The traditional

[125] *Id.*
[126] *Id.* at 288.
[127] *See* REILLY, *supra* note 90, at 77.
[128] *Id.*
[129] *See* generally MITTEN, *supra* note 3.

approach asserted that the national courts apply the substantive national law on such disputes unless there is contradiction with valid and applicable choice of law.[130] Some national courts have followed this approach and ruled in sports disputes that involve international regulations based on the national law if the international agreement was in accordance with the national law. Nonetheless, other courts took the deferential approach and refused to apply the national law on such disputes.[131] The deferential approach depended on the idea that courts should be wary to apply national laws to alter the content of the Olympic and international sports games.[132] These inconsistent approaches created vagueness regarding the judicial approach towards sports disputes of international nature.

A clear example of the traditional approach in which the national courts applied the national domestic law regardless of the alleged international obligation was the case of *Barnard v Australian Soccer Federation.*[133] A clear example of the traditional approach in a multinational context in which the European court of justice asserted that international agreements must abide by the transnational rules of the Union was the case of *Union Royale Belge des Sociétés de Football Association ASBL v Bosman.*[134]

On the other hand, the deferential approach depended on the fact that the international sports events are subject to the supreme powers of the International Federations and the International Olympic Committee rather than the powers of the host city of country which only enjoy a minimal power over the sports event itself. Consequently, this approach asserted that the international rules are to be applied rather than the national law as such international legal context is what govern the scene, especially that even the decisions taken by the international organizations in those events are not subject to the agreement of the host city or country.[135] A clear example of this approach are the cases of *Martin v*

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[130] *Id.* at 294-295

[131] *Id.*

[132] *Id.*

[133] *See* generally Matthew J. Mitten & Hayden Opie, *"Sports Law": Implications for the Development of International, Comparative, and National Law and Global Dispute Resolution*, *in* LEX SPORTIVA: WHAT IS SPORTS LAW? 173–222 (Robert C.R. Siekmann & Janwillem Soek eds., 2012) at 195, https://doi.org/10.1007/978-90-6704-829-3_9 (last visited Apr 6, 2020).

[134] RodrÍguez Iglesias, *Union Royale Belge des Societes de Football Association (Asbl) and Others v. Jean-Marc Bosman (Case C-415/93)* 139.

[135] *See* MITTEN, *supra* note 3, at 298.

International Olympic Committee[136] and *Sagen v Vancouver Organizing Committee for the 2010 Olympic &Paralympic Games.*[137] Examining the deferential approach shows that the national courts applied the international rules rather than the national laws as they are more thorough in the special sports field and more applicable by the international organizations which are considered as a supreme legislator in the sports field.

(2) National Judicial Review of The CAS Awards

Although the CAS award is final and binding, it may be subject to limited judicial review by the Swiss Federal Tribunal. Other than that, the CAS award is globally respected, validated and enforced by the majority of the national courts.[138]

On the one hand, the national judicial review of the CAS awards in its seat is founded upon the Swiss federal code on private international law. Such review focuses on the general rights of the parties to a dispute, the proceedings, the constitution of the CAS panel subject to review, the violation of the fair trial standards, the equal treatment and the compatibility with the Swiss public policy.[139] The debatable issue regarding the Swiss public policy was settled by the SFT as it argued that such policy should be understood in as an international concept rather than a national one. Consequently, it would be regarded as a violation of the general legal and moral standard of civilized nations.[140] It is to be noted that the Swiss Federal Tribunal refused all challenges on the merits of the CAS awards.[141]

On the other hand, the boundaries of the national courts' refusal of enforcing arbitral awards, including the CAS awards, are examined in light of the violation of national public policy according to the New York convention article V (2)(b).[142] For instance, the US courts enforce the awards if there is a written agreement to be bound by or in case the

[136] United States Court of Appeals & Ninth Circuit, *740 F2d 670 Martin v. International Olympic Committee*, F2d 670 (1984).
[137] Supreme Court of Canada, *Supreme Court of Canada - SCC Case Information - Summary - 33439* (2001), https://www.scc-csc.ca/case-dossier/info/sum-som-eng.aspx?cas=33439 (last visited Apr 6, 2020). The court's ruling is further examined from the perspective of protecting human rights, see generally Margot Young, *The IOC Made Me Do it: Women's Ski Jumping, VANOC, and the 2010 Winter Olympics*, 18 CONSTITUTIONAL FORUM 95–107 (2010).
[138] *See* MITTEN, *supra* note 3, at 288.
[139] *Id.* at 300.
[140] *Id.* at 301.
[141] *Id.*
[142] *Id.* at 302.

parties attended the proceedings before the arbitral panel.[143] Consequently, the CAS supported with such a minimal judicial review by the Swiss Federal Tribunal has been able to create its jurisprudence with a strongly established stability. Yet, the boundaries of such national judicial outside its seat in Switzerland under the realm of public policy requires further examination.

(3) The Boundaries of The National Judicial Review of Nonjudicial Sports Awards

The absence of a universally accepted rules and dispute resolution mechanism creates vagueness regarding the potential judicial review of the merits of the CAS awards jeopardizing the stability of the entire sports dispute resolution system. The boundaries of the national judicial review of the CAS awards can be drawn from examining the two leading national systems of the US and the European Court of justice that are being cited in the majority of legal examination of the field.

A clear example of the boundaries of the US national courts judicial review of the arbitral awards of the CAS tribunals can be elaborated through the case of *Gatlin v United States Anti-Doping Agency Inc.*[144] Although the national court disagreed with the award of the CAS tribunal, it considered that its interpretation of the 'wrongful' ruling of the CAS tribunal does not constitute a violation of the public policy that is the ground for refusing the enforceability of the award. In the verdict, the national court expressed its dissatisfaction with being unable to protect a citizen subject to the national law, and clearly stated that the athlete's only legal resort was the Swiss Federal Tribunal.[145]

On the other hand, a clear example of the boundaries of the European courts judicial review of the arbitral awards of the CAS tribunals can be elaborated through the case of *Meca-Medina* **&** *Majcen v Commission of European Communities*[146] where the European Court of Justice asserted that the European Union Law applied because the regulations of the sports organization have the requisite effect on the economic activity by regulating

[143] *Id.*
[144] *Gatlin v. U.S. Anti-Doping Agency, Inc.*, Case No. 3:08-cv-241/LAC/EMT (N.D. Fla. Jun. 24, 2008)
[145] *See* MITTEN, *supra* note 3, at 304.
[146] *See* generally David Meca-Medina & Igor Majcen, *APPEAL under Article 56 of the Statute of the Court of Justice lodged on 22 December 2004,* 23 (2006).

professional sport. The court did not refer to any previous examination of the EU law by the CAS tribunal or an examination of the written agreement of the parties to be bound by the award.[147] The court would have relitigated the merits of the case if the parties provided the required evidence. This established a judicial precedent that allows future judicial challenges of the merits of the CAS awards based on the European Union Law.

These cases crystalize that public policy as a means of avoiding the enforcement of the nonjudicial sports awards should be regarded in light of the international standards regardless of the national court's agreement with the award. This standard has been even supported by CAS's seat judicial forum the Swiss Federal Tribunal.[148]

The pluralistically governed sports field has proven the superiority of the international regime in rulemaking and enforcement mechanisms. The question that arises is how the international regime's superiority affect its national counterpart in setting the national dispute resolution context.

C. Global Sports Legal Pluralism' Effect on The National Dispute Resolution Context

The *lex sportiva* established by the CAS awards during settling the Olympic and international sports disputes between private parties, constitutes an important example of global legal pluralism without states.[149] This legal pluralism in the field of sports rises from the overlapping between the private Olympic and international sports rules with the public national laws. The state supports its national laws and expresses its powers through its national sports bodies; however, it cannot ignore the rising international sports bodies and their regulations which are being adhered to, willingly or forcibly. This overlap creates a confusion among the addressees by such complex legal context as they are obliged to comply with both the public national laws and the private international sports rules. Consequently, to settle such dichotomy either a strict separation must be made, or a harmonization of such conflicting legal context is required.[150] Since there is no black and white answers in such a pluralistic arena, the idea that the stronger and largely accepted

[147] *See* MITTEN, *supra* note 3, at 305.
[148] *Id.* at 301.
[149] *Id.* at 289.
[150] *Id.* at 294.

venue shall, one way or the other, overpower the competition of the opposing system that shall be forced to abide by the stronger rules is relatively problematic.

It is noted that the CAS, as the top of international nonjudicial sports dispute resolution, whose establishment's role has been to lead and guide other sports disputes resolution venues, including national courts, shall affect the jurisprudence of the national courts themselves through generating a special law *lex specialis*.[151] However, this *lex sportiva* is not often considered as an illustrative example of the legal pluralism, even by the adopters of the private adjudication of disputes.[152] Since the globalization of sports which resulted in its legal pluralism has been structured upon commercialization and corporatism,[153] the development of the CAS's model *lex sportiva* is following the footsteps of the *lex mercatoria*[154] which eventually governed the scene of corporatization that led the rise of the international commercial field in the form we know it nowadays.

The previous understanding find its justification in the frame that the legal pluralism in the sports field constitutes a rich example of interaction between the need of the state and the need of the market.[155] On the one hand, the need of the state is to protect the rights of its citizens through settling disputes by national courts of law. On the other hand, the need of the market is to apply the best private dispute resolution mechanisms to guarantee the predictability of disputes without the contradiction and vagueness created by the different interpretation of the national systems and their applications of the international standards. However, when the situation became more complex due to the turn away from the state and to the market in the commercial field,[156] the trend towards the market's needs of a private dispute resolution prevailed. Comparatively, in the sports arena, the market's need of a private dispute resolution forum resulted in establishing the CAS and giving its developing *lex sportiva* several advantages over the national counterparts.

[151] *See* NAFZIGER, *supra* note 84, at 232-233.
[152] *See* MITTEN, *supra* note 3, at 289-290.
[153] *Id.* at 311.
[154] *See* ZUMBANSEN, *supra* note 4, at 159.
[155] *See* ZUMBANSEN, *supra* note 4, at 174.
[156] *Id.*

The proved international superiority in the field of settling sports disputes combined with being the supreme legislator in the sports field and supported with the monopolistic powers of the international sports organizations do affect the national judicial framework in the field of sports. The *lex sportiva* developed by the CAS affected the national judicial approach of settling sports disputes through affecting the policy that is followed by the national legislator in regulating matters of special concern in the field of sports and even the legislator's approach of choosing the sports disputes resolution mechanism itself. It also affected national jurisprudence of settling sports disputes directly though affecting the national courts examination of cases and setting a role model for national nonjudicial dispute resolution forum.

1. The Effect on The National Legislator's Approaches

It is noticeable that the role played by sports disputes resolution institutions, especially in the field of setting globally accepted sports-related concepts and standards,[157] has exceeded to contribute significantly in the legislative policy adopted by the national legislators resulting in possibly altering the entire approach of the state towards the issue.[158] For instance, the international arbitral awards in the fields of antidoping where the CAS's *lex sportiva* established that the WADA code in an advanced global system of justice[159] resulted in adopting a legislative policy that resulted in issuing binding regulations on the national level that are promoting the antidoping approach as well.[160] This also resulted as the national sports organizations, on the one hand, are bound by the international regulation that adopts a certain perspective towards doping that is evidenced by the established jurisprudence of the international sports dispute resolution umbrella, the CAS. On the other hand, those very national sports organizations are bound by their respective national laws which protect the national sports stakeholders.[161] This drives national

[157] The institutional modes of norm creation on the international level provide that such norms are exercised through the institutional dispute resolution forums. *Id.* at 169.
[158] Sports disputes resolution affects both international and national lawmaking. This effect is based on policies that can be derived from how sports disputes resolution fora decide on such disputes. *See* generally MITTEN, *supra* note 3.
[159] *Id.* at 282.
[160] *See* generally MCARDLE, *supra* note 8. This is applicable in the Egyptian context as Article 33 of the 2017 Egyptian sports law asserts that violation of the WADA rules is forbidden.
[161] *See* MITTEN, *supra* note 3, at 281-283.

legislators to reform their national legislations accordingly to avoid the possible dilemmatic situation.

The application of such influence on the dispute resolution field can have an extended effect on the different stakeholders in the field on the national level, whether they are athletes, player agents, etc. Those stakeholders shall be affected by the jurisprudential dichotomy that shall govern the scene in case of changing the dispute resolution mechanism from judicial to nonjudicial, especially in the field of interpreting the international standards.

It is noticeable that the national regimes did not take a restricting approach towards settling sports disputes through nonjudicial dispute resolution mechanisms, especially arbitration. Consequently, there has been a trend towards willingly resort to nonjudicial approaches of settling sports disputes, especially arbitration. However, in the latest reforms, resorting to nonjudicial mechanisms became an obligatory path, in numerous jurisdictions, as the judicial dispute resolution mechanism was dropped by the national legislator in favor of a nonjudicial approach towards settling such disputes.

The reason behind this change in the approach taken by the national legislators is that the traditional approaches of judicial dispute settlement in the field of sport were regarded as ineffective in achieving prompt justice when compared to nonjudicial mechanism. For instance, the US legislator resorted to a nonjudicial mechanism for settling sports disputes through arbitration which has been regarded as a swift venue for settling such disputes at a less costly process.[162] This meets the same international approach regarding the issue because it has been argued that giving the jurisdiction of sports dispute settlement to nonjudicial mechanisms, especially arbitration, instead of judicial mechanisms is because "they are not the best forum for resolving such disputes."[163] This approach relies on the functionality and promptness of those nonjudicial approaches when compared to the judicial approaches in addition to the effectiveness of arbitral awards.

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[162] *See* WESTON, *supra* note 96, at 107.
[163] *See* generally MCARDLE, *supra* note 8.

Consequently, the sports pluralistic effect on the national legislator's approach of settling sports disputes leads to an adoption of a nonjudicial mechanism. However, such pluralistic effect extends to the jurisprudence of the national sports dispute resolution forums.

2. The Effect on The National Jurisprudence of Settling Sports Disputes

This national trend towards adopting a nonjudicial approach of settling sports disputes can be noticeable through the recent expression of national legislators of different jurisdictions in their domestic legal reforms regarding the mechanism of sports dispute resolution. Through such reforms, the national system adopts the nonjudicial path as an efficient role model on the international level. Nonetheless, such adoption and change in the national system provokes the question regarding the jurisprudence to be followed by the developing national sports dispute resolution forums.

The CAS is stabilizing its developing jurisprudence through claiming jurisdiction and developing the sports law. The monopolistic authority possessed by the International Federations required the consent to the CAS jurisdiction to allow the International Olympic Committee to recognize a national Olympic committee or the athlete's eligibility to participate in International and Olympic events.[164] This consent gives the CAS the competence to settle sports disputes and apply its jurisprudence *lex sportiva* regardless of the national legal organization of the matter on the internal national level. For instance, it is obligatory to sign a waiver that involves agreeing to abide by the CAS final review of any appealed claim in order to be allowed to compete in the Olympic Games.[165] This shall gradually lead to replacing the national laws that contradicts with the stably developing international jurisprudence of the CAS in the field of sports disputes.[166]

Additionally, the framework of the CAS appeals division establishes its sources of law on the regulations of the sports governing body and the laws of the country where it is domiciled. However, the CAS panel may settle the dispute according to the "rules of law" which constitutes another advantage to the international system and a point of power for the CAS *lex sportiva* in case of contradiction between the international standards with the

[164] *See* WESTON, *supra* note 96, at 108.
[165] *Id.* at 107.
[166] *See* MITTEN, *supra* note 3, at 302.

national laws.[167] This approach shall drive the national legislators to reform their domestic laws in light of such interpretation of the "rules of law" in order to avoid directly contradicting with the international sports legal framework.

The CAS's jurisprudence is affecting the different national dispute resolution forums. On the one hand, the CAS's *lex sportiva* has been establishing rights in its jurisprudence which constitute guidelines for nonjudicial forums. For instance, it establish that in the field of international sports, a sports entity cannot bring an action against an athlete or a stakeholder without a clear consent of him or her or a general agreement between a national sports entity that the player represent and the international sports entity.[168] This can be interpreted that "the regulatory regime of the International Olympic Committee and the International Federations is improving and the CAS is developing an interpretive jurisprudence to settle its regime."[169] Another example of such jurisprudence is that the CAS provide a procedural right to the athlete which is the *de novo* review of international sports governing body. This right is quite different from the national scope in which a domestic court would be precluded from examining the facts of the case examined by the internal dispute resolution bodies.[170]

It might be quite surprising that although the majority of the CAS arbitrators come from civil law background, the CAS jurisprudence does not recognize the principle of binding precedents or *stare decisis*.[171] However, a CAS panel shall try to reach the same conclusion of a former CAS panel to build a stable consistency in the CAS jurisprudence. This is also a familiar attitude of common law appellate judges.[172] This shall lead to stabilizing the jurisprudence developed by the CAS and its panels and developing its *lex sprotiva* in a steady manner.

On the other hand, *lex sportiva* developed by the CAS is affecting the national judicial dispute resolution jurisprudence. It shall continue to influence the judicial resolution of

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[167] *See* MITTEN, *supra* note 15, at 12.
[168] *See* NAFZIGER, *supra* note 84, at 233.
[169] *Id.*
[170] *See* MITTEN, *supra* note 3, at 302.
[171] *Id.* at 287.
[172] *Id.*

pure domestic sports disputes and the development of the national sports law through the transjudicial influence.[173] This is because rising numbers of state are opting for adhering to the standards set by the CAS to guarantee the involvement in the international sports competitions. Their adherence affects the way their national judiciaries interact with sports disputes and creating judicial principles, in accord with the international standards that are latterly adopted by other national judiciaries. This transjudicial influence is better known in common law countries by allowing a national court to consider the jurisprudence followed by foreign courts in settling similar disputes as well as the international conventions and practice.[174] It is believed that national courts shall be required to consider, compare and/or adopt the CAS jurisprudence in settling purely domestic sports disputes.[175] Such national Courts shall also be required to consider the international standards developed by the CAS while judicially reviewing the CAS awards themselves.

The CAS's developing *lex sportiva* has exceeded such influence to being able to displace national laws before the national courts. An example of such conduct can be illustrated through the case of *Raguz v Sullivan.* The national court did not rely on the New York Convention or a federal legislation but rather relied on a nationally uniform arbitration law enacted by Australian State legislatures, the uniform state arbitration laws, to recognize an arbitration conducted in another country, Switzerland in this case, and considered that the state arbitration law precluded the national court from considering the merits of the case.[176]

Eventually, this chapter has examined the international regime's pursuance of being the supreme legislator in the field of sport which has achieved its goal through the enforcement mechanism it provided for its dispute resolution forum, the Court of Arbitration for Sport (CAS). The international sports jurisprudence and the *lex sportiva* developed by the CAS that has been supported with the monopolistic powers exercised by the international sports organizations, that could even lead to excluding the participation of national sports stakeholders in international sports events in case of violation of the international

[173] *Id.* at 315.
[174] *Id.*
[175] *Id.*
[176] *Id.* at 306.

regulations,[177] overpowered the national counterparts in a way that even drove the national legislators to apprehend the international standards. Consequently, increasing national legislators have been referring to international regulations like the Olympic Charter as a source of law before national venues in addition to making the choice to abandon the judicial approach of settling sports. The next chapter examines such pluralism in the Egyptian legal context and examines the Egyptian dispute resolution forums considering the findings of the pluralistic sports globalization.

[177] The increasing acceptance of the CAS jurisdiction has been a result of an obligatory precondition to participate in international sports competitions *See* WESTON, *supra* note 96, at 107.

III. The Egyptian Sports' Legal And Dispute Resolution Framework Within Sports Legal Pluralism

As has been shown, the global sports legal pluralism affected national systems and influenced the national legislators to change their approach of settling sports disputes. The Egyptian sports legal framework has been quite inconsistent in organizing the sports practice and sports bodies from a legal perspective at its earliest interference. Then the Egyptian legislator, constitutional and ordinary, intervened to organize the sports legal context in a better structured framework. The ordinary legislative attempts were relatively more advance, from a chronical perspective, in organizing the legal aspects of sport. However, the global sports pluralism provoked the constitutional legislator's interference in the field of sports which has had a significant effect in giving the ordinary legislator the power to reorganize the entire face of sports practice and sports dispute resolution adopting a nonjudicial mechanism.

Aiming to examine the pursuance of sports justice as the substantive dimension of the global sports legal pluralism's effect on the Egyptian context, this chapter begins with examining the Egyptian sports legal organization and its development followed by examining the Egyptian sports judicial dispute resolution framework. It then examines the global sports legal pluralism' effect on the Egyptian sports legal context of settling sports disputes and concludes with the assessment of the current Egyptian models of settling sports disputes.

A. The Egyptian Sports Legal Organization and Its Development

While the Olympic Charter, which has been considered the constitution of sports as mentioned earlier, was published around 1908, the first Egyptian sports law was issued in 1949. The Egyptian legislator, constitutional and ordinary, tried to neglect the superiority of the international sports regime in rulemaking through an extended period following the methodology that the two systems shall coexist without creating problematic interaction.[178] Nonetheless, the Egyptian legislator eventually recognized the international superiority in

[178] This is one of the methods followed by national regimes in their response to the rise of international normative regimes. *See* LARCOM, *supra* note 6*,* at 195.

rulemaking through adhering to the international standards and listing some of the international regulation as sources of law.

1. The Egyptian Constitutional Organization of The Field Of Sports

The Egyptian sports regulation has not been of a constitutional concern till the issuance of the 2012 Constitution. The Egyptian constitutional legislator has mentioned the right to sports for the first time in the 2012 constitution in article 69 where it asserted the right to practicing sports and illustrated that the state's and community's entities should discover the gifted in sports, sponsor them and take the necessary measures to encourage the practice of sports.[179] This constitutional right was further developed in the 2014 constitution where it was clearly stated in article 84 that practicing sports is a public right and the state guarantees its practice.[180] It also delegated the ordinary legislator to regulate the field of sports considering the international standards and allowed it to organize its disputes resolution mechanisms accordingly. Eventually, although this constitutional article created much debate, especially through judicial resistance, as will be examined afterwards, it has been regarded as a cornerstone for developing the sports legal context according to the international standards and establishing a sports arbitration and settlement center to meet those international standards.

2. The Egyptian Legal Context of Sports

The legal organization of sports evolved from a depending on shredded legal context covered in different laws with numerous modifications and reforms to a thorough legal organization that govern all the aspects of sports practice.[181] However, the Egyptian legislator's attempts for the development of the legal context of sports over twenty-five years from 1949 till 1975 till the issuance of a comprehensive sports law express a relative ignorance, or more resistance, to the international superiority in the pluralistic field of

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[179] This right is inspired by the approach taken by the Olympic charter that recognized the right to practice sport as human right. *See* MITTEN, *supra* note 15, at 7.

[180] This right is inspired by the approach taken by the Olympic charter that recognized the right to practice sport as human right. *Id.*

[181] This shredded framework is related to the comparative shredded national legal context regarding regulating the sports field where several legal contexts governed the field and the conduct of its stakeholders. *See* NELSON, *supra* note 39, at 251.

sports through insisting on a strict governmental administrative guardianship over sports bodies. Eventually, a new sports law was issued that recognized such pluralistic superiority.

a. The Situation Before Issuing the Latest Sports Law in 2017

The first Egyptian legal organization of sports was in the law no. 152 for the year 1949 about clubs. This law drew the legal framework of sports practice and sports entities. It was followed by the law no. 129 for the year 1963 about the Olympic committee and the sports federations. Then, the law no. 26 for the year 1965 about private entities working in the field of care of young persons was issued to compile the different provisions regulating sports practice and entities in a thorough legal framework. The final legal organization before the issuance of the new sports law no. 71 for the year 2017 was in the law no. 77 for the year 1975 about private entities for youth and sport. For the purpose of this paper, the development of sports practice and entities through the different consecutive laws shall be explored in depth while examining its approach of settling sports disputes afterwards.

It is noticeable that during such extended period, the Egyptian national system only employed three of its four applicable approaches towards the rising international normative sports regime.[182] The Egyptian national system started by ignoring the rising international sports regime based on the idea that the state can enforce its laws or assert its powers anywhere in its territory if it wants to[183] which enabled the international sports regime's influence of the Egyptian context to grow stronger. Such increasing strength forced the Egyptian national system to make concessions where it recognized the international sports regime and became inferior to its regulatory powers that was exercised in a monopolistic way. Eventually, the Egyptian national system has been forced to incorporate some of the international sports regime into its own national laws which shall be examined in the following points.

b. The Issuance of The New Sports Law

Eventually, the new sports law no. 71 for the year 2017 was issued to set a new vision of sports practice in Egypt. The law covered the nature of sports practice and sports entities.

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[182] *See* LARCOM, *supra* note 6, at 195.
[183] *See* GEBEYE, *supra* note 13, at 231.

It applied the parliament's interpretation of the constitutional legislator's vision of applying the international standards and resorted to a nonjudicial approach of settling sports disputes. It established a sports arbitration and settlement center in the Olympic Committee and delegated the Olympic Committee the power to issue the center's statute through which it shall set the boundaries of the principles to be applied by the center is settling sports dispute through mediation, conciliation and arbitration. The issuance of the charter in addition to the provisions of the sports law created the dichotomy to be explored afterwards

According to the preparatory works of the law, the main features of the law have been to eliminate the contradictions between the old sports law and the Olympic charter and the statutes of the international federations as international sources of law[184] through guaranteeing the independence of the sports bodies that fall under the Olympic charter and ensuring the application of the international standards by the Egyptian Olympic Committee and its national federations and clubs.[185] Additionally, one of the focuses of the law was to settle sports disputes through a sports arbitration center that shall settle sports disputes according to the international standards.[186]

To conclude, the Egyptian constitutional legislator delegated in article 84 of the 2014 constitution the ordinary legislator to organize the field of sports according to the international standards. The sports 2017 law accordingly stated in article 3 that all the general assemblies of the Egyptian Olympic Committee, the Egyptian Paralympic Committee, the sports clubs, the sports federations set their charters and statutes in accordance with the Olympic Charter and the respective international standards.[187] It also requires that the respective international governing bodies and the Egyptian Olympic Committee must approve such charters and statutes before being published and applied. This crystalizes the effect of the global legal pluralism on the Egyptian rulemaking that

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[184] *See* MITTEN, *supra* note 15, at 3.

[185] Page 44 of the record of the forty-ninth session of the parliament held on April 26th, 2017.

[186] Page 44 of the record of the forty-ninth session of the parliament held on April 26th, 2017.

[187] The Egyptian legislator's attitude is based on the pluralistic effect of the international superiority in rulemaking and the CAS's *lex sportiva* which considered such regulations as global sources of law. *See* MITTEN, *supra* note 3, at 320.

resulted in a new policy and theme of law that was adopted by the Egyptian legislator while issuing the new sports law.

The sports disputes resolution, accordingly, witnessed a similarly relevant evolvement within the judicial resolution mechanism under the jurisdiction of the administrative judiciary till the issuance of the new law through which allowed such disputes to be entrusted to the Egyptian sports arbitration and settlement center regardless of the judicial acceptance and interaction with such attitude.

B. The Egyptian Sports Judicial Dispute Resolution Framework

The Egyptian legislator has followed the judicial approach of settling sports disputes as a sole venue before the issuance of the 2017 sports law. Since Egypt follows the dualistic judicial system,[188] the Egyptian administrative judiciary has been the competent jurisdiction of settling sports disputes rather than the ordinary judiciary over the extended period of the legal organization of sports. The justification of the administrative judiciary's jurisdiction can be illustrated through what has been examined that the settling of disputes through the natural judge is a principle of justice that is supported with a constitutional value in the Egyptian context. This right is constitutionally organized where article 97 of the 2014 constitution states that litigation is a safeguarded right guaranteed to all. It established that state shall work towards speedy judgment in cases while emphasizing that it is forbidden to grant any act or administrative decision immunity from judicial review in addition to asserting that individuals may only be tried before their natural judge and declaring that extraordinary courts are forbidden. Article 98 of the constitution provides the right of defense is guaranteed, and for those who are financially incapable, the law guarantees the means to resort to justice and defend their rights. Article 184 of the constitution asserts that the judiciary is independent. It emphasizes that the judiciary is vested in the courts of justice of different types and degrees, which issue their judgments in accordance with the law.

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[188] *See* generally Adel Omar Sherif, *An Overview of the Egyptian Judicial System, and Its History*, 5 Y.B. ISLAMIC & MIDDLE E. L. 3–28 (1998).

The jurisdiction of the Council of State was even supported by the ordinary judiciary itself which shall be explored afterwards. Consequently, the judicial legacy of settling sports disputes has been created by the administrative courts of the Egyptian Council of State. However, through the issuance of the 2017 sports law, the legislator abandoned such approach and favored the nonjudicial approach through establishing a sports arbitration and settlement center. In the following points, the legislative and judicial justification of the administrative judiciary jurisdiction shall be explored in depth.

1. **The Legislative Justification of The Administrative Judiciary Jurisdiction Over Sports Disputes**

Settling sports disputes has fallen under the jurisdiction of the Egyptian Council of State as all disputes have been required to be settled through the judicial mechanism. The judicial approach of settling Egyptian sports disputes through the administrative judiciary has been argued to be established on the nature of sports bodies that was claimed to be a public nature. However, the author argues that it has been rather the governmental guardianship over sports entities that gave jurisdiction to the administrative judiciary over such disputes. This claim shall be legislatively examined through the extended Egyptian legal framework which shall refute the claim. It shall also be evidenced by the verdicts of the court of cassation and the supreme administrative court.

a. **The Nature of Sports Practice And Sports Bodies In The Egyptian Legal Context**

Article 7 of the law no. 152 for the year 1949 about clubs stated that the administration board is responsible before the club members about its financial and administrative decisions. It can be noticed that the legislator did not address in clear provisions the nature of sports clubs in any of its articles. However, this article indicates the private nature of sports club as it made the board responsibility subject to the examination of the club members.

Article 1 of the law no. 384 for the year 1956 about private societies and organizations stated that an entity according to this law is a continuous organization of natural or legal persons that does not aim for making profits. Article 41 of the law stated that an entity of public benefit according to this law is an entity that aims to achieve public interest and a

presidential decree identifies such entities. Accordingly, the presidential decree no. 1773 for the year 1959 about the Egyptian Olympic Committee was issued to regulate sports entities. It considered, in article 1, the Olympic committee from the private association of public benefit and recognized its legal personality according to its statute that must be affirmed by the minister of social affairs.

The sports practice needed a detailed legal organization to coop with its development. Consequently, the law no. 129 for the year 1963 about the Olympic committee and the sports federations was issued to establish a special framework for the field of sports. The law reorganized, in article 1, the Olympic committee and emphasized that it is one of the associations of public benefit. Article 6 of the law stated that sports federations and their member sports clubs are associations of public benefits. The articles recognized the legal personality of those sports entities according to their statutes that must be affirmed by the state's minister of youth. Those entities enjoyed some of the privileges of public authorities.

Then, the evolvement of sports required issuing a law to govern the legal context of sports and to compile the different aspects of sports practice mentioned in the different laws. Article 1 of the law no. 26 for the year 1965 about private entities working in the field of care of young persons stated that such entities aim to provide sports, national and military services to the youth without seeking profit. Article 2 of the law considered such entities as private entities of public benefit and recognized its legal personality. It also stated that such entities enjoy some of the privileges of public authority.

Afterwards, article 15 the law no. 77 for the year 1975 about private entities for youth and sport considered the nongovernmental organizations in the field of youth and sports as private entities of public benefit. The previous examination illustrates that the sports bodies have never been recognized as public bodies and the sports practice has not been considered of administrative nature.

Eventually, after the issuance of the 2014 constitution, the new sports law no. 71 for the year 2017 has been issued to organize the sports practice and the sports bodies. It stated in article 9 that the sports entities registered according to the provisions of this law are private

entities of public interest. They enjoy mostly financial privileges, in the aspects where there is no special text.

The pervious exploration clearly refutes the claim that there has been a change in the nature of sports entities in the new sports law. The Egyptian legislator has not changed the nature of sports entities in the legal context. Such entities have been considered as private entities of public interest since the very first legal organization till the latest one. Having proved that the jurisdiction of Egyptian administrative judiciary was not a consequence of a public nature of sports practice or sports entities, the recognition of the governmental guardianship over sports disputes as a reason for the jurisdiction of the Egyptian council of State requires examining it through the Egyptian sports legal context.

b. The Governmental Guardianship Over Sports Bodies

Article 1 of the law no. 152 for the year 1949 about clubs required the approval of the governor or the police director before opening or moving any club. Article 6 of the law gave the governor or the police director the right to object the opening or moving of any club if its statute violates the law, public order or public decency. Article 19 of the law stated in its second paragraph that the ministry of social affairs had the right of financial supervision over clubs to guarantee that the clubs' monies are spent in accordance with the purposes that those clubs were established for. These articles recognized the governmental right of financial supervision over sports clubs. Such governmental financial guardianship minimized the club's power to act freely.

Then, article 43 of the law no. 384 for the year 1956 about private societies and organizations stated that a presidential decree identifies what an entity of public benefit enjoys of the privileges of the public authority. Article 44 stated that the entities of public benefit fall under the surveillance of the administrative authority to ensure abiding by the laws and regulations. Article 5 of the presidential decree no. 1773 for the year 1959 about the Egyptian Olympic Committee, issued in light of the law no. 384 for the year 1956 about private societies and organizations mentioned earlier, gave independence to the Olympic committee under the boundaries of the public policy of the state and the standards set by the supreme council of youth, which is in fact an administrative authority. Article 6 gave

the committee some of the jurisdiction of public authority regarding immunity for its monies.

Afterwards, article 9 of the law no. 26 for the year 1965 about private entities working in the field of care of young persons stated that such entities were subject to the supervision of the ministry of youth in all the administrative, technical, financial, organizational and health aspects. Article 25 of the law stated that the competent administrative authority has the right to render void the meeting of the general assembly and its consequences if the meeting was held in violation of the law of the statute of the sports entity. It also stated that the administrative authority has the right to render void any decision taken by the general assembly that is legally defected without rendering void the meeting. Article 35 of the law stated that the minister of youth has the right to render void the administrative board's meeting and its consequences if the meeting was held in violation of the law of the statute of the sports entity. It also stated that the minister has the right to render void any decision taken by the board that is legally defected without rendering void the meeting.

Article 25 of the law no. 77 for the year 1975 about private entities for youth and sport recognized that the nongovernmental organizations in the field of youth and sports were subject to the supervision of the competent administrative authority financially, administratively and technically. It also emphasized that such competent administrative authority, to ensure its role, had the right to ensure that there was no contravention of the law and the statute of the sports entities and the decisions of the general assemblies. The limits of this supervision were elaborated in articles 39 and 49 of the law.

Article 39 of the law[189] recognized that the head of the competent administrative authority has the right to render void any decision taken by the general assembly that violates the provisions of the law or the related decisions or the entity's statute. The entity has the right to appeal against the decision before the competent minister within fifteen days of notification. The entity has the right to appeal against the decision of the minister before the administrative judiciary without expenses within sixty days. Article 49 of the law[190] recognized that the head of the competent administrative authority has the right to render

[189] The law no. 77 for the year 1975 about private entities for youth and sport.
[190] *Id.*

void any decision taken by the administrative board of the sports entity that violates the provisions of the law or the related decisions or the entity's statute or any of its bylaws. The boards' appeal against such decision follows the same provisions mentioned in article 39 of the law. Those two articles clearly draw the governmental guardianship over sports entities. They both clearly gave the competent administrative authority the right to render void any decision taken by the general assembly or the administrative board of the entity. Even though, article 15 the law[191] granted the sports bodies certain privileges of the public authority and considered their money as public money, the three privileges that were in fact related to a sort of immunity for their monies.

Additionally, article 65 of the Law[192] elaborated that sports federations exercise their jurisdiction under the boundaries of public policy set by the administrative authority. In article 72, it stated that sports clubs operate according to the plan set by the central administrative authority. In article 73, the law obliged sports entities and clubs to follow the public policy and regulation set by the competent sports federation. Those articles confirmed that sports entities, whether sports federations or sports clubs, work according to the state's public policy and under its guardianship.

During the extended legal organization of sports before the issuance of the latest sports law no. 71 for the year 2017 explored above, the competent administrative authority's power to render void a meeting or a decision taken by the sports entity's governing authority, the administrative board or the general assembly constituted an administrative guardianship over sports bodies. Such thorough administrative guardianship created an administrative shell over the sports entities and their conduct under the applicable legal framework.

To conclude, it has been legislatively proved that the sports practice and entities enjoyed the private nature not the public one. What gave the Council of State the jurisdiction to settle sports disputes was rather the administrative guardianship over sports bodies. This conclusion shall be even evidenced through the judicial verdicts issued by the supreme courts of the dualistic judicial system.

[191] *Id.*
[192] *Id.*

2. **The Judicial Justification of the Administrative Judiciary Jurisdiction Over Sports Disputes**

The Egyptian court of cassation explained in its judgment[193] that according to the law no. 77 for the year 1975 about private entities for youth and sport the sports clubs are entities created by groups of people to serve in creating the personality of the youth. Accordingly, they are subjects of private law and their decisions are not subject to the jurisdiction of the administrative judiciary. However, the legislator has given it some of the powers of public authority to enable them achieve their goals in accordance with the public policy of the state and therefore the legislator has granted the competent administrative authority the supervisory power over those clubs in the financial, organizational, health and administrative aspects to ensure that the decisions taken by such clubs are not in violation of the laws, bylaws, or related decisions and that those clubs have not deviated from the public policy set by the competent authority. Consequently, the guardianship of such authority over sports entities is obligatory and its refusal to act accordingly constitutes a negative decision that falls under the jurisdiction of the administrative judiciary.

The supreme administrative court explained in its judgment[194] that sports clubs are private social entities created democratically by individuals. It elaborated that the decisions of sports clubs are not administrative decisions and are not subject to the jurisdiction of the administrative judiciary. However, the competent administrative authority has the right to supervise and control sports clubs to ensure the public interest. Consequently, the administrative authority's refrainment from intervention and correction of any violations is considered a negative decision that falls under the jurisdiction of the administrative judiciary. The court emphasized that saying otherwise would make the administrative guardianship and the right to supervise sports clubs stated in the law without purpose and would make the powers of those clubs without limitation.

The supreme administrative court explained also in its judgment[195] that sports clubs are entities with independent legal personality that aim to contribute to the creation of the

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[193] The verdict of court of cassation in the case no. 1530 for the judicial year 68 dated February 10th, 1999.
[194] The verdict of the supreme administrative court in the case no. 3658 for the judicial year 40 dated January 1st, 1995.
[195] The verdict of the supreme administrative court in the case no. 15530 for the judicial year 55 dated February 23rd, 2013.

personality of the youth. It continued that the legislator has enabled the head of the competent administrative authority to render void any decision taken by the administrative board of the club that violates the law of sports entities or related decisions or bylaws. It elaborated that the administrative authority plays that role as the regulatory authority over the decisions of the administrative boards of sports entities. Consequently, stakeholders of interest can appeal against the administrative authority decisions before the administrative judiciary.

Those three judgments clearly draw the boundaries of the administrative judiciary over sports disputes. The jurisdiction of the administrative judiciary has not been based on the nature of sports entities in the first place. It has been rather based on the governmental guardianship over sports entities. The right of the competent administrative authority to intervene, correct or render void any decision taken by sports entities, whether the general assembly or the administrative board, is what has given the jurisdiction to the administrative judiciary.

However, it might be argued that the administrative judiciary was rather hesitant to recognize the governmental guardianship over sports entities by claiming that it took the jurisprudential approach of limiting the governmental guardianship over sports entities through the supreme administrative court verdicts in the late eighties. This claim relies on the court's verdict[196] that clarified that the legislator organized the intervention of the administrative authority when there is a violation of the laws, related decisions or bylaws, and that the legislator did not impose the intervention whenever there is a violation. This means that the administrative authority's refrainment of intervention when there is a violation of the law does not constitute an administrative decision that falls within the jurisdiction of the administrative judiciary. It also means that the court interpreted article 49 of the law no. 77 for the year 1975 about private entities for youth and sport that the legislator intended to allow the head of the administrative authority a discretionary power to intervene in the situations when there is a violation of the law according to the authority's assessment of the gravity of the violation and the appropriation of intervention.

[196] The verdict of the supreme administrative court in the case no. 866 for the judicial year 33 dated February 13th, 1988.

The author disagrees with such claim as article 49 of the law no. 77 for the year 1975 about private entities for youth and sport should not have been interpreted as a discretionary power to look away from a violation of the law by the sports entity, and the legislator would have not intended to grant a discretionary power to the head of the administrative authority in such situation. The author's point of view is evidenced that the supreme administrative court itself regressed from its previous approach and ensured in its verdicts since the early nineties[197] that although the apparent meaning of the text might be interpreted that the legislator did not impose on the administrative authority to intervene in situations where there is a violation of the law, the right interpretation of the text is that the head of the competent administrative authority has a discretionary power to examine the legality of the conduct so that if it was legal, the authority's refrainment from intervention cannot constitute a negative decision. This means, by contrary, that if the decision is not the legal, the authority is obliged to intervene, or its refrainment would constitute a negative decision that falls within the jurisdiction of the administrative judiciary. The author's point of view is further evidenced by the stable jurisprudence of the administrative judiciary that can be interpreted from the supreme administrative court's verdicts that were issued afterwards.[198]

To conclude, this compound organizational legal framework was interpreted by the Egyptian judiciary, whether ordinary or administrative, as a justification of the administrative judiciary jurisdiction over sports disputes due to the governmental guardianship over sports entities that, in fact, eliminated any independence of such entities despite its private nature. Consequently, it gave such courts the required justification to have jurisdiction over disputes related to this particular field. The administrative judiciary courts of the Egyptian Council of State set a firm legacy of jurisprudential interpretations in the field of sports that lasted for several decades since the establishment of the Council till the issuance of the 2017 sports law.

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[197] The verdict of the supreme administrative court in the case no. 2180 for the judicial year 36 dated July 27th, 1991.

[198] Such jurisprudence has been stable for over twenty years since the issuance of the verdict of the supreme administrative court in the case no. 3658 for the judicial year 40 dated January 1st, 1995 till the issuance of the verdict of the supreme administrative court in the case no. 15530 for the judicial year 55 dated February 23rd, 2013.

3. **The Issuance of The 2017 Sports Law and Limiting the Governmental Guardianship**

Eventually, the 2017 sports law[199] has taken a much different approach while setting the limits of the governmental guardianship over sports entities. Article 13 of the law states that a sports entity is subject to the supervision and monitoring of the competent administrative authority and the central administrative authority in its financial actions for all its monies. The article allows the financial bylaw to identify the necessary procedures in this regard. This article clearly limits the governmental guardianship over sports entities to the financial actions taken by such entities and gives the sports bodies administrative and technical freedoms that have not recognized in the previous legal context.[200] This limitation to only the financial aspects of the entities' conduct increases the entities freedom to act. Such freedom is only limited by the non-violation of the law, the bylaws and the related decisions.

Article 20 of the law[201] states that the competent administrative authority and other stakeholders have the right to resort to the sports arbitration and settlement center to seek the annulment of any decision taken by the general assembly of the entity if it violates the provisions of this law or the related decisions. Article 23 of the law[202] states that the competent administrative authority and other stakeholders have the right to resort to the sports arbitration and settlement center to seek the nullification of any decision taken by the administrative board of the entity if it violates the provisions of this law, the related decisions, the entity's statue or any of its bylaws.

Those two articles clearly limit the governmental guardianship over sports entities. The articles emphasize that the decisions of the general assembly or the administrative board are valid and effective without the need for the approval of the competent administrative authority.[203] It also eliminates the powers of the head of such authority to render void any

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[199] The sports law no. 71 for the year 2017.
[200] This is related to the international trend of limiting the governmental interference in the field of sport in order to no jeopardise the sports autonomy. *See* REILLY, *supra* note 90, at 77.
[201] The sports law no. 71 for the year 2017
[202] *Id.*
[203] This is the exact opposite of the previously adopted theme of the Egyptian sports laws where such approval was crucial. This is also a consequence of the adoption of the international standards which encourage

decision taken by the sports entity.[204] The only way left to nullify such decision for the administrative authority is to resort to adjudicational mechanism through the competent sports dispute resolution forum, the sports arbitration center.

To conclude, the judicial settlement of sports disputes relied on the general constitutional principle of settling disputes through national courts of law. The excessive governmental guardianship over sports entities gave the jurisdiction to settle such disputes to the administrative judiciary courts in the Egyptian Council of State as one of the dualistic competent judicial bodies. However, the 2017 sports law limited such governmental guardianship over sports entities and established a nonjudicial sports arbitration center as a result of being influenced by the global pluralism in the field of sports which shall be explored afterwards.

C. The Global Sports Legal Pluralism' Effect on the Egyptian Sports Legal Context of Settling Sports Disputes

As it has been examined in Part II, the sports legal pluralism and the superiority of the international sports regime in both the rulemaking process and the enforcement mechanism through dispute resolution has affected national legislators. The international pursuance of being the supreme legislator in the pluralistic field of sports achieved its goals in the Egyptian context. The constitutional legislator recognized the international standards and opted for delegating the ordinary legislator to legal organize the field according to such standards. Consequently, the ordinary legislator interpreted the international standards and set some international regulations as sources of law to govern the Egyptian sports practice in addition to limiting the governmental guardianship over sports entities to an unprecedented level in the 2017 sports law. In addition, the international call for an increasing use of alternative dispute resolution mechanism instead of litigation, in general and in the sports field in particular, has been justified by efficiency, convenience, flexibility, party satisfaction, community empowerment and reduced costs.[205] Consequently, the pluralistic effect extended to the dispute resolution mechanism and the

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limiting the governmental interference to guarantee the autonomy of sport. *See* REILLY, *supra* note 90, at 77.

[204] The powers of the heads of the administrative authority has been a cornerstone in the administrative shell that surrounded the sports bodies' conducts and provoked the jurisprudence of the administrative judiciary.

[205] *See* RABINOVICH-EINY, *supra* note 7, at 698.

Egyptian legislator adopted the international nonjudicial approach of settling sports disputes and resorted to a nonjudicial mechanism through establishing a sports arbitration and settlement center which shall be explored in the following points.

1. The Effects on the Legislator's Choice of the Nonjudicial Approach

The constitutional order is being generally overpowered by the normative order created by process-oriented principles such as accountability and transparency.[206] The national constitutions claim that they are the supreme legal rules of the state; however, this claim faces the fact that the international sports regulations overpower any national state constitutional or legal organization. Additionally, the state is required to respect its international obligations stated in the international conventions, treaties or other international sources. Since the constitutions of any African Country contains a supremacy clause which nullifies any legal or normative order if it violates the constitution,[207] a national supreme court or a specialized constitutional court enjoys the power of the constitutional review to keep the supremacy of the constitution over the legal system intact both in spirit and context.[208] Consequently, the Egyptian constitutional legislator has been obliged to establish a constitutional leeway to the required development of the sports field. Nonetheless, this did not eliminate the unconstitutionality claim in the approach taken by the ordinary legislator in adopting a nonjudicial sports dispute resolution mechanism which shall be explored afterwards.

The Egyptian constitutional legislator's recognition of the international standards and the consequent interpretation of the ordinary legislator of such standards affected several aspects of governing the Egyptian field of sports. For the purpose of this paper, the examination of such effects shall be limited to the sources of law related to the sports dispute resolution and the newly established nonjudicial mechanism followed to settle sports disputes.

[206] *See* ZUMBANSEN, *supra* note 4, at 184.
[207] *See* GEBEYE, *supra* note 13, at 241.
[208] *Id.*

a. The Constitutional Interpretation of The International Standards

Article 84 of the Egyptian 2014 constitution mentioned above delegated the legislator to set the framework of sports practice and sports bodies according to the international standards. As it has been also mentioned above that the international standards of sports can be derived from several sources according to the largest internationally accepted forum of standards in the field of creating and developing law and jurisprudence in the field of sports, the CAS and its *lex sportiva*. Those sources may range from the Olympic Charter and the rules and regulations of the sports bodies to the principles of justice.[209] Article 84 of the Egyptian 2014 constitution has consequently, created much debate regarding the limits of the international standards and its delegation to the ordinary legislator to organize the sports disputes resolution mechanism. On the one hand, the international standards mentioned in the article gives an indication that there has been an embedded intention towards developing the sports practice to be in accord with the international organizational system.

On the other hand, the constitutional choice of words regarding delegating the legislator to organize the sports dispute resolution mechanisms has not been considered very strict. Although it has been the cornerstone of establishing the sports arbitration and settlement system, such article has been subject to criticism by several judicial bodies that shall be examined afterwards.

b. The Legislator Choice of The Nonjudicial Approach of Settling Sports Disputes

The 2017 sports law has been aimed to be in accord with the international standards of sports governance to encourage investment in the field of sports to enable this promising sector to be an internationally open industry. Accordingly, the legislator ought to give sports entities a larger range of independence to act in order to be able to reach the best practices of the entity and achieve the highest possible investment goals and benefits. It had to limit the governmental guardianship over those sports entities to enhance their independence. This limitation had to be accompanied by a change in the jurisdiction over disputes that shall rise from the sports entities' exercise of their independent powers as a

[209] *See* MITTEN, *supra* note 3, at 298.

need of the market.[210] Consequently, the legislator established a sports arbitration and settlement center to be a convenient forum of settling sports disputes.

The 2017 Egyptian sports law established, in Article 66, a new mechanism of dispute settlement through an independent Egyptian Sports Arbitration Centre in the Egyptian Olympic Committee. This center shall have jurisdiction over disputes where one party is an entity, a person, or an organization governed by the Sports Law. The center shall apply the mechanisms of mediation, conciliation, and arbitration. These mechanisms are regarded by the legislator as much prompter and more effective compared to the traditional judicial approach. In addition, they are considered more convenient with the new vision of sports entities that were adopted in the newly issued law.

Examining the preparatory works of the 2017 sports law illustrates the parliamentary interpretation and debate regarding the international standards. It can be noticed that the parliamentary discussion in general recognized the willingly abdication of the minister of youth and sports of the power to resolve the administrative boards of sports entities in order to give such boards freedom to act in light of the international standards.[211]

The discussions also recognized the contradiction between establishing a sports arbitration center and article 190 of the Egyptian 2014 constitution that sets the boundaries of the jurisdiction of the Egyptian Council of State.[212] Eventually, it was agreed that the establishment of a sports arbitration center does not contradict with the jurisdiction of the competent judicial body, the Council of State, to settle sports disputes. The head of the parliament clarified in the discussion that the right to resort to arbitration is optional for different stakeholders based on an arbitration clause in a contract or a sports body bylaw, etc.; however, if a stakeholder resorts to arbitration, he or she is precluded from seeking judicial remedy.[213]

It is also to be noted in that regard that the minister of youth and sports and the parliamentary discussions did not oppose to allowing the competent administrative

[210] *See* ZUMBANSEN, *supra* note 4, at 174.
[211] Page 48 of the record of the forty-ninth session of the parliament held on April 26th, 2017.
[212] Page 49 of the record of the forty-ninth session of the parliament held on April 26th, 2017.
[213] Page 100 of the record of the fiftieth session of the parliament held on April 27th, 2017 regarding article 67 of the law.

authority and the stakeholders to resort directly to the arbitration center. The idea behind that was to allow the administrative authority to resort to arbitration without the approval of the competent minister[214] to facilitate its interaction with different sports bodies without governmental delay.[215]

It has also been suggested to establish a sports dispute resolution forum totally independent from the Olympic committee to guarantee its independence and impartiality, especially in disputes with the Olympic Committee itself.[216] The discussion also indicated the disagreement that the head of Olympic Committee becomes the head of the board of the sports arbitration center which shall jeopardize the independence and impartiality of the center. There has been an argument for having the head of the center elected from the members of the board. However, it was eventually agreed that the head of the Olympic committee as a head of the board of the center represents only one vote compared to the remaining votes of the board's members. In addition, the board enjoys only administrative and financial powers and it does not intervene totally in the arbitration process.[217]

Article 69 has also been debated regarding the securing of funds for the arbitration center. There has been an argument to have it stated in the law that sources of such funds. However, it was eventually agreed that the funds shall be regulated through the center's statute to be issued by the Olympic committee that has funds from the state itself, the committee consists of private law persons and it has the right to distribute its funds according to its will.[218]

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[214] There were concerns that this might be against the general principles stated in the Article 1 of the Egyptian civil and commercial law no. 27 for the year 1994 that requires the approval of the competent minister before resorting to arbitration, and that such power cannot be delegated.
[215] Page 75 of the record of the fiftieth session of the parliament held on April 27th, 2017 regarding article 23 of the law.
[216] Page 49 of the record of the forty-ninth session of the parliament held on April 26th, 2017.
[217] Page 105 of the record of the fiftieth session of the parliament held on April 27th, 2017 regarding article 68 of the law.
[218] Page 23 of the record of the fifty-fourth session of the parliament held on April 27th, 2017 regarding article 69 of the law

2. The Effects on the Dispute Resolution Jurisprudence and the Judicial Resistance

Article 23 of the 2017 sports law[219] gives the right to the administrative sports entities and those who are affected to resort to the center to settle disputes that rise from the misapplication or the violation of the law and the regulations set by the administrative board of a sport entity. However, it does not set a clear path for what the tribunals of the center should take into consideration in this particular field. The concepts adopted by the parliament in the new sports law deepened jurisprudential dichotomy regarding the legal context in which the center's tribunal shall perform in light of the limited governmental guardianship over sports entities and its effect on the jurisprudence established by the Egyptian administrative judiciary through the Egyptian sports legal history. Before the issuance of the 2017 sports law, the courts of the Egyptian Council of State rendered numerous verdicts while settling sports disputes that took into consideration the governmental guardianship over sports entities which was exercised through the competent administrative authorities. The administrative judiciary jurisprudence was established on the fact that such sports entities act in accordance with public policy to achieve the public interest.

These tribunals' adoption of previous judicial verdicts in the same field is quite vague. The policy that shall be followed by the center's panels remains debatable. This affects the expectations of the outcomes of any sports dispute which shall jeopardize the rising industry because this expectation is mostly derived from a policy that can be interpreted from the jurisprudence of sports disputes resolution fora. [220] In addition, the issuance of the statute of the center created much debate regarding the attempt towards a monopolistic jurisdiction of the center over sports disputes.

[219] The sports law no. 71 for the year 2017.

[220] The field of sports, as a rising field for investment, is affected by how its disputes resolutions can be expected. This does not necessarily mean knowing the outcomes of a particular case. It rather means understanding a coherent jurisprudential approach in the field in order to decide whether or not to enter such market. *See* e.g. James R. Zink, James F. Spriggs & John T. Scott, *Courting the Public: The Influence of Decision Attributes on Individuals' Views of Court Opinions*, 71 THE JOURNAL OF POLITICS 909–925 (2009).

a. The Issuance of the Sports Arbitration Center's Statute

The Egyptian Olympic committee, supported by a legislative delegation to organize the principles of settling of the sports disputes through mediation, conciliation and arbitration, tried to give the sports arbitration center a monopolistic jurisdiction over sports disputes in the Egyptian legal context through depending on international standards. The committee's trial was exercised through the issuance of the statute of the center by the decision of the president of the Olympic Committee no. 88 for the year 2017. Some of the statute's provisions explained the center jurisdiction while others explained the principles to be followed in settling sports disputes. The statute and its legislative grounds have been subject to debate. On the one hand, the jurisdiction of the center according to its statute has been subject to legal criticism, especially from the judiciary. On the other, the application of the principals of settling sports disputes remains quite vague.

Article 2 of the statute states that in accordance of article 70 of the sports law no. 71 for the year 2017, the statute's provision applies to every sports dispute, and such dispute shall be settled according to the statute's provisions. It also states that the resort of the arbitrating parties to the center is considered an agreement to the application of the provisions of the statute to the arbitrated dispute, its appeal and what might rise of annulment claim.

The sources of law for the center's panels mentioned in article 3 of the statute. considered what has been mentioned in article 70 of the 2017 sports law.[221] However, the power of the Egyptian public policy in the sports field can be elaborated through article 92 bis B of the statute which states that a request for the annulment of the sports arbitral award can be filed if:

…

(F) the arbitral award has any of the annulment aspect or the arbitral procedures were totally void in a manner that affects the award.

The arbitral tribunal that examines the annulment request shall *ex officio* render void the award if it involved a violation of the Egyptian Public Policy.

[221] The sports law no. 71 for the year 2017.

The conduct of the parliament to adopt a nonjudicial approach of settling sports disputes by the interpretation of the constitutional legislator's tendency towards applying the international standards in the field of sport has been considered as a greenlight to adopt nonjudicial jurisprudence while settling such disputes through the sports arbitration center's panels which has been a subject for debate that has even provoked the judicial resistance. Additionally, the issuance of the sports arbitration center's statute by the Olympic Committee dramatically affected the judicial attitude towards the situation making it much more complex.

Additionally, the newly established sports arbitration center appointed mostly judges, especially administrative judges, as part-time arbitrators to settle sports disputes. This conduct found its justification in the fact that the Egyptian Council of State, especially the administrative judiciary court, has had an undisputed jurisdiction over sports disputes, especially those regarding the conduct of the boards of the sports bodies, since the Council's establishment in 1946 and the first sports legal organization in 1949 till the issuance of the new law in 2017. During such extended period, the judicial verdicts has established a stable jurisprudence in the field of settling sports disputes. This stable jurisprudence has significantly supported the predictability of the outcome of sports disputes which had a positive impact on the rising investment trend in the field. Consequently, those judges were, mostly, regarded as the most capable legal experts with evidenced practical experience to settle such disputes under the flagship of the newly established sports arbitration center. The complexity of the jurisprudential dilemma in addition to the critical situation of the administrative judges who got appointed as arbitrators in the center shall be subject to a judicial criticism to be explored in the following points.

b. The Judicial Disagreement with the Legislator's Nonjudicial Approach

The Egyptian judiciary has not been in accord with the legislator's resort to nonjudicial approach in a complete manner. This disagreement can be better understood through understanding professor Owen Fiss's advocacy of the idea that courts as public bodies endowed with the responsibility to settle disputes should not waive their function which he justified through asserting that the dispute is the avenue where courts declare public values

and interpret them to address the inequalities between the disputing parties.[222] Such disagreement can be expressed through objecting to the legislator's interpretation of the international standards mentioned in article 84 of the constitution[223] as a reason for the establishment of the sports arbitration center in addition to the objection to the issuance of the 2017 sports law and the center's statute which has drawn the framework of such interpretation.

On the one hand, the Egyptian Council of State' general assembly of Fatwa and legislation departments, which is the highest body of the advisory department of the Council, objected the legislator's interpretation of the international standards mentioned in article 84 of the Constitution as it allowed the removal of settling sports disputes from the natural judge of settling sports disputes of administrative nature.[224] The assembly refused the claim that the international standards require necessarily the settling of sports disputes through nonjudicial mechanism. It even asserted that even if the interpretation of the legislator that such international standards require the nonjudicial approach, those international standards themselves are inferior to the constitution that has clearly established the judicial authorities and their jurisdiction.[225] This meant from the assembly's point of view that the establishment of a sports arbitration center as an entity of judicial competence is invalid from the constitutional and legal perspective.

On the other hand, the court of cassation crystalizes the judicial attitude towards the problematic issue of the limits of jurisdiction of the newly established sports arbitration center. In its verdict,[226] the court challenged the constitutionality of the controversial articles of the new sports law and the statute of the sports arbitration center issued by the decision of the president of the Olympic committee. The commercial and economic circuit

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[222] *See* RABINOVICH-EINY, *supra* note 7, at 701.
[223] The 2014 Egyptian Constitution.
[224] See generally the fatwa of the general assembly of the fatwa and legislation departments of the Egyptian Council of State no. 204 for the year 2016 dated 14/3/2016.
[225] The general assembly here is relatively neglecting the concept of the new legal pluralism which considers the regional and international laws and standards as an equal part of the state legislative system, constitutional and legal. *See* GEBEYE, *supra* note 13, at 228.
[226] The verdict of court of cassation in the case no. 1458 for the judicial year 89 issued on December 24th, 2019.

of the court referred the dispute to the Supreme Constitutional Court[227] for several reasons.[228] First, it challenged the jurisdiction of the Olympic committee board to issue the statute of the of the sports arbitration center on the grounds of jeopardizing the independence of the center's tribunals. Second, the court challenged articles 2, 81, 92 bis B and 92 bis C of the center's statute on the grounds of exceeding the legislative delegation stated in articles 69 and 70 of the 2017 sports law and not being in accord with the international standards. The court asserted that those statute's articles gave immunity to the center's tribunals' awards against the judicial review and did not respect the equality principles regarding the annulment of the tribunal's award before the state courts.

The court established its verdict on arguing that article 66 of the sports law[229] made the center dependent on and a follower of the Olympic committee because it gave the president of the Egyptian Olympic Committee the jurisdiction to issue the statute of the sports arbitration center in addition to presiding the center's board. It also criticized that the center's board is chosen by the Olympic Committee itself which might be a party to several disputes before the center's tribunals. The court went beyond that and criticized the center's board financial and administrative supervision over the center stated in its statute as it contradicts and jeopardizes the center's tribunals' independence. The court established that such bonds provoke the extent to which a center's tribunal might enjoy independence, especially in disputes where the Olympic committee is party. It considered that such hierarchical organization does not give confidence to the party regarding the supposed independence.

In the court's examination of articles 2 and 81 of the center's statute, it clarified that those articles exceeded the boundaries of the legislative delegation established in article 69 of the sports law through which the Olympic committee's board was delegated the power to issue a decision to organize the rules and procedures of mediation, conciliation and

[227] The constitutional Court plays an increasing role of measuring the validity of the legislator's conducts considering the constitutional legislator's aims. *See* generally Mohammad H. Fadel, *The sounds of silence: The Supreme Constitutional Court of Egypt, constitutional crisis, and constitutional silence*, 16 INT J CONST LAW 936–951 (2018).
[228] This is related to the idea of having a constitutional body to ensure the conformity of normative regulations with the state's national constitution as a sign of supremacy and sovereignty *See* GEBEYE, *supra* note 13, at 241.
[229] The Egyptian sports law no. 71 for the year 2017.

arbitration according to the international standards. It also stated that such articles exceed the due diligence of the center stated in article 70 of the sports law to respect the Olympic Charter, the international standards, the articles of the sports law, the guarantees and the general principles of litigation in the procedural law in addition to abiding by the arbitration law no. 27 for the year 1994 as the general principle of law in the country.

The court emphasized that the law tried to follow the international standards of limiting the governmental interference in the affairs of the sports bodies through establishing a private authority to be competent in settling sports disputes through flexible, prompt and reasonable procedures through the center,[230] which the court agrees to in principle. However, it stated that the center's statute did not follow the international standards regarding the annulment of the center's arbitral awards. The court explained that the center's statute's articles organized the annulment of the awards in a way that creates doubts about giving some sort of immunity to the sports arbitral awards against the judicial review which is a violation of the constitution. It argued that the articles of the statute also banned the possibility to resort the Egyptian arbitration law although it is the general reference of the arbitration in the country.

It is significantly noticeable that the court gave the CAS awards as an example of a leading global role model in the field of sports arbitration. It also asserted that the developing *lex sportiva* constitute a valuable reference for sports laws. The court also stated that the CAS is not competent to examine the annulment of the arbitral awards of its tribunals. The annulment of such awards falls under the jurisdiction of the Swiss Federal Tribunal (SFT) because the seat of the arbitration is in Lausanne. The court emphasized that being in accordance with the international standards requires primarily that the annulment of the center's arbitral awards should not be examined within the center according to what is stated in the sports law, especially in light of the expressed legal doubts about the independence of the center from the Olympic Committee.

[230] This conduct results from the pluralistic effect of respecting the market's needs of a private dispute resolution. *See* ZUMBANSEN, *supra* note 4, at 174.

The court also clarified that article 92 bis C of the statute allows the center the power to render void and nullify sports arbitral awards even if they were issued outside Egypt. The court considered this a direct violation of the New York Convention.[231] The article allowed the annulment circuit of the center such power although it belongs to an arbitration center in the first place. The court expressed its total criticism as such power is not even possessed by the state courts which are bound by the New York convention. The court also stated that such article violates the Egyptian arbitration law as it neglects the idea of the arbitration seat and allow the 'annulment circuit of the sports arbitration center' to encroach the role of the competent court in the state which was chosen by the parties as a seat for the arbitration. Such encroachment would create a positive conflict of jurisdiction unnecessarily. Consequently, these texts have been referred to the Supreme Constitutional Court to examine their constitutionality.

To conclude, considering the legally pluralistic organization of sports, the Egyptian legislator, influenced by the superiority of the international sports regime in rulemaking, has tried to modify its domestic approach of settling sports disputes in way that matches the superiority and efficiency of the international nonjudicial sports dispute resolution role model, the CAS. Nonetheless, the legislator's exercise of the power considering the interpretation of the constitutional legislator's intention of organizing sports practice and sports disputes according to the international standards, that resulted indeed from the international pluralistic effect, has been expressed through the issuance of the 2017 sports law, the establishment of the arbitration center and issuing its statute which has created and is still creating much debate and increasing the judicial resistance.

D. The Assessment of the Current Egyptian Models of Settling Sports Disputes

It is crucial that sports disputes resolution mechanisms whether they are judicial or nonjudicial achieve procedural fairness and substantive justice.[232] The procedural fairness generally seeks to provide the adequate possibility of different stakeholders to present their case to an unbiased forum that has a generally clear rules in reaching the remedy while the

[231] Such right is not even stated in the role model's regulation, the CAS code. *See* MITTEN, *supra* note 3, at 301.
[232] *See* MITTEN, *supra* note 15, at 18.

substantive justice provides a faithful and rational resolution of the disputed matter based on information provided by parties and clear sources of law.

It might be argued that the Egyptian legislator's conduct regarding settling sports disputes in the new sports law is a mere attempt to change of the jurisdictional forum from judiciary to the newly established arbitration center without any effect on the jurisprudential approach of settling such disputes. This argument might be based on the claim explored earlier that sports entities were private entities and their practice was private since their establishment in the Egyptian legal context. Such argument is only correct in its approach regarding the private nature of sports entities before and after the issuance of the new law. However, the limitation of the governmental guardianship over sports entities and the pursuance of applying the international standards in the sports field, the principles and sources of law mentioned in the 2017 sports law do affect the jurisprudential approach of settling sports disputes through the available sports dispute resolution venues. Consequently, as assessment of the such forums is required to see whether the legislator's approach has achieved the goals and aspirations of sports stakeholders in achieving sports justice.

1. Assessing the Egyptian Sports Arbitration and Settlement Center

The establishment of a private domestic nonjudicial sports disputes resolution forum has been intended to seek achieving the same milestones of its "gold standard"[233] pluralistic model on the international level, the CAS, in order to gain the legal validity that such international model enjoys which has been explored above. This shall allow it to achieve the sports justice through "objective, impartial, unbiased, fair, and dispassionate" decisions.[234] The Egyptian legislator established the sports arbitration center and intended that such center becomes as efficient in the domestic venue as the CAS in the international venue. Since the legal pluralist analysis targets examining the qualitative rather than the quantitative boundaries between the state and the market as the focus is protecting what is at stake rather than examining the need for more or less state or market,[235] an examination of the Egyptian sports arbitration center through a test were its international aspired model

[233] *Id.* at 40.
[234] This is the interpretation of sports justice provided by Prof. Roger Abrams. *Id.* at 19.
[235] *See* ZUMBANSEN, *supra* note 4, at 179.

has been assessed is required.[236] Since the role model that has been followed by the Egyptian legislator, the CAS, has been comprehensively assessed through Prof. James Nafziger's[237] conclusions about the requirements of a private sports dispute resolution forum,[238] the criteria he followed shall be beneficial in examining the Egyptian sports arbitration center. The five requirements of such forum according to him are open accessibility to all parties, independence and impartiality, full and fair opportunity for all parties to be heard, timely, reasoned and final decisions and a clearly articulated uniform of law that leads to an equal and unbiased treatment of parties in similar situations. In addition, the author adds another significant parameter to the equation which lies in the suitability of the location of the dispute resolution venue. Assessing the Egyptian sports arbitration center considering the Nafziger requirements shall be examined in the following points.

a. Open Accessibility to All Parties

On the one hand, the legal aid fund provided by the ICAS makes the CAS accessible for those who cannot afford it.[239] In addition, the arbitration costs and the arbitrators' fees are borne administratively by the CAS.[240]

On the other hand, articles 93-105 of the Egyptian sports arbitration center's statute set the costs and the fees of the arbitration before the center while articles 106-108 lies its burden on the parties to the sports disputes. The center's statute did not include any article or provision establishing a legal aid for those who cannot afford the arbitration cost or the arbitrators fees. The 2017 sports law did not include such provisions as well. Although the filing fees are relatively of small amount[241] and affordable by the majority of stakeholders,

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[236] This is because the optimum value of legal pluralism is about weighing the different approaches of tackling different approaches and answers to the same problem in different jurisdictions and venues to examine a current solution according to the most accepted standards and advantages.
[237] The reason behind choosing Prof. Nafziger test is that he is a globally renowned sports legal scholar whose test meets the standards that has been aimed to by the Egyptian legislator. *See* generally James A. R. Nafziger, *The Future of International Sports Law*, *in* LEX SPORTIVA: WHAT IS SPORTS LAW? 109–122 (Robert C.R. Siekmann & Janwillem Soek eds., 2012), https://doi.org/10.1007/978-90-6704-829-3_6 (last visited Apr 6, 2020).
[238] *See* MITTEN, *supra* note 15, at 20.
[239] *See* REILLY, *supra* note 90, at 73.
[240] *See* MITTEN, *supra* note 15, at 21.
[241] The filing fees are 4000 EGP, the administrative fees are around 5000 EGP according to article 93 of the statute and its related fee tables.

it remains relatively hard for other stakeholders, especially while being added to the lawyers' fees and the arbitrator's fees. This makes the center as sports dispute resolution forum inaccessible to all sports stakeholder, especially those with limited financial abilities.

b. Independence and Impartiality

On the one hand, the ICAS choses the CAS arbitrators based on their knowledge and experience.[242] The names of those arbitrators are brought to the ICAS attention by the International Olympic Committee, the International federations and the National Olympic committees.[243]

On the other hand, although the sports arbitration center's arbitrators are required to be impartial, the powers enjoyed by the center's board, that is appointed by the Olympic committee and presided by the head of the Olympic committee himself or herself, are relatively excessive. In addition, the establishment of the sports arbitration and settlement center in the Egyptian Olympic Committee and the legal framework that allows the president of the Olympic committee to preside the board of the center makes the situation more complex.

Articles 12 & 13 of the sports arbitration center statute sets the boundaries of the powers of the center's board which includes preparing the list of arbitrators and forming the tribunals that examine the filed disputes. Preparing the list of arbitrators is approved by the Egyptian Olympic Committee. Article 33 of the statute identifies the qualifications required in the arbitrators of the center, including knowledge and experience in addition to passing the test set by the center, and allows the center to appoint current and former judges as arbitrators after the approval of their supreme councils. According to article 36 of the statute,[244] the party to the dispute has the right to choose one of the arbitrators already listed on the center's list of arbitrators that is prepared by the center's board as previously explained. However, it must be noted that article 75 bis of the statute establishes that there is a possibility of removing an arbitrator during the proceedings of the tribunal if the list of

[242] *See* REILLY, *supra* note 90, at 65.
[243] *See* MITTEN, *supra* note 15, at 23.
[244] The statute of the sports arbitration and settlement center issued by the decision of the head of the Egyptian Olympic Committee no. 88 for the year 2017.

arbitrators has been modified through a decision taken by the center's board whether the case is in proceeding or deliberations.

This framework clearly crystalizes the power of the center's board over the tribunals and the arbitrators. Such powers might be misused to influence the outcomes of the arbitration. Although it might be eventually argued that such criticism is seeking an idealistic vision of impartiality, which may be evidenced by the Swiss Federal Tribunal conclusion that pure impartiality is an idea that can be rarely met in reality,[245] it must be noted that according to empirical research the parties become more willing to accept the outcomes of a certain dispute resolution forum if it seems apparently fair.[246] Consequently, the examination of the current framework of the sports arbitration center jeopardizes the apparent fairness that diminishes the trust in its competence in settling sports disputes.

c. Full and Fair Opportunity For All Parties To Be Heard

On the one hand, the *de novo* nature of a CAS arbitration panel guarantees the coverage of any procedural flow that occurred during the examination of the issue by the internal dispute resolution mechanism.[247] On the other hand, the statute of the center establishes in articles 51-75 a detailed framework that allows the thorough examination of the dispute to cover any possible flow although it did not clearly state a *de novo* nature of the panels. Consequently, the center does indeed provide a full and fair opportunity for all parties to be heard.

d. Timely, Reasoned and Final Decisions

Examining the timing and reasoning, on the one hand, regarding the timely process and the reasoning, the CAS tribunals are set to examine disputes and issue the awards in twenty-four hours and three months as explored above.[248] Its awards are also obliged to be reasoned as explored earlier.[249] On the Other hand, the Egyptian sports arbitration center's statute provide that all the disputes should be settled in a timely manner. Article 53 of the statute

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[245] In its examination of *Alejandro Valverde Belmonte v. Comitato Olimpico Nazionale Italiano (Belmonte See* MITTEN, *supra* note 15, at 24.
[246] *Id.* at 20.
[247] *See* MITTEN, *supra* note 3, at 302.
[248] *See* REILLY, *supra* note 90, at 70-72.
[249] *Id.* at 69.

allows the tribunal to set an arbitration timeline; however, it allows it to extend or shorten any time cap set in the statute as long as the settling of the dispute is concluded within six months of filing the case at maximum. It also requires all arbitral tribunals to reason their awards according to article 78 of the statute.

Examining the finality of decisions, on the one hand, the CAS has adopted the doctrine of *res judicata* to preclude a CAS panel from examining an appeal against its own decision from a party to such decision.[250] The only possibility to challenge a CAS award is through the Swiss Federal Tribunal which provides an extremely limited review on the merits of awards based on the Swiss Public Policy examined earlier.[251] On the other hand, Article 81 of the center's statute[252] states that the arbitral awards and decision issued according to the statute shall be deemed *res judicata* and cannot be challenged except only through an appeal according to the provisions of the statute or a request for annulment before the circuit stated in article 92 bis C of the statute.

However, article 92 of the statute[253] establishes that all the awards of the center are subject to appeal unless the parties to the arbitration previously agreed to consider the award final and unappealable. Article 92 bis C of the statute[254] establishes one or more circuits within the sports arbitration center itself to examine the request for the annulment of the center's awards. It clarifies that such circuit/circuits compose of arbitrators of the center of certain experience providing that they have not been members of the tribunal that issued the award in any of the dispute instances. It established that the formation of such circuits is through a decision of the center's board. The article also states that the circuit shall have jurisdiction over the request to render void or nullify any sports arbitral award awarded by any sports arbitral tribunal outside Egypt.[255]

Although the center's statute followed the same doctrine of *res judicata* in examining sports disputes, the center's jurisdiction to examine the appeals against its own tribunals'

[250] *See* MITTEN, *supra* note 15, at 27.
[251] *See* MITTEN, *supra* note 3, at 301.
[252] This article has been modified by the Olympic committee decree no. 2 for the year 2018.
[253] This article has been modified by the Olympic committee decree no. 2 for the year 2018.
[254] This article has been added by the Olympic committee decree no. 7 for the year 2018.
[255] This article has been considered by the Egyptian Court of Cassation as a clear violation of the New York Convention.

decisions makes the finality of its decision relatively questionable. It also triggers an alarm regarding the independence of the appellate circuits and creates doubts about the entire framework.[256]

Consequently, the center's framework does provide a compulsory reasoning of the awards which meets the international standard of the CAS. However, the center's framework provides a time cap of six months for settling a filed dispute, which is double the time cap set for the CAS appeals division in addition to lacking to set a cap for urgent matter which significantly diminishes the center's efficiency regarding the time of the arbitration process.

e. A Clearly Articulated Uniform of Law That Leads to an Equal and Unbiased Treatment of Parties in Similar Situations

On the one hand, it has been examined earlier that the CAS awards are frequently cited and relied upon by later panels while addressing the same or similar issues although there is no legal ground for the recognition of binding precedents, *stare decisis*.[257] Nonetheless, it is sometimes found that the CAS panels took conflicting approaches which creates inconsistency.[258] This is overcome through the current framework which allows, the CAS board, the ICAS, to intervene to guarantee the consistency of the CAS awards through enabling the president of the CAS ad hoc Division and the CAS Secretary General to review an ad hoc Division awards and appeals arbitration awards respectively to draw the attention of the arbitrators, without affecting their freedom of decision to substantive points that shall lead to a more conform outcome.[259]

On the other hand, the limitation of the governmental guardianship over sports disputes, the interpretation of the international standards of sports governance and sports disputes resolution fora, the interpretation of Egyptian public policy in the sports context all create vagueness regarding the predictability of the center's awards while examining sports disputes. The principles that should be followed by the new sports arbitration center

[256] This has also been subject to judicial criticism by the Egyptian Cassation Court explored above. *See* generally the verdicts of the court of cassation in the case no. 1458 for the judicial year 89 issued on December 24th, 2019.
[257] *See* MITTEN, *supra* note 3, at 287.
[258] *See* MITTEN, *supra* note 15, at 28.
[259] *Id.* at 44.

mentioned in Article 70 of the sports law no. 71 for the year 2017 stated that the Egyptian sports arbitration and settlement center takes into consideration the provisions of the Olympic Charter, the international standards and the statutes of the sports entities subject to this law. The article emphasized that the center shall abide by the provisions of the law and all the decisions and bylaws issued accordingly. It elaborated that the center also abides by the guarantees and adjudication principles mentioned in the procedural law. Additionally, it stated that the provisions of the arbitration law no. 27 for the year 1994 applies when there are no governing provisions in the current law or the bylaws of the center. Article 3 of the center statute[260] establishes the sources of law that a center's arbitral tribunal should follow while settling the sports disputes filed before it. It clearly states that those sources are the sports law and its related decisions, the regulations and bylaws of the sports bodies subject to the sports law and the laws related to the dispute. In case where such framework is missing, the tribunal should rule according to the principles of the International Olympic charter and the respective international standards. In case where such framework is missing, the tribunal would follow the justice and equity principles. Article 51 of the statute establishes that a center's tribunal should follow the principles and stable rules of litigation, justice and antagonism.

There is no way in the current center's legal context to guarantee the consistency of the center's awards of different panels. Additionally, the establishment of appellate circuits does not necessarily guarantee such consistency as well regardless of its diminishing of the finality of the center's awards, especially that those appellate circuits awards themselves may contradict with each other.

Consequently, the relatively new sources of law to the Egyptian sports context shall create dichotomy between the center's panels in the interpretation of the international standards intended to be applied by the center. In addition, the current regulatory framework of the center's panels and the absence of a firm process of guaranteeing the consistency of the center's award, of first instance and appeals, shall increases such dichotomy, especially in

[260] The statute of the sports arbitration and settlement centre issued by the decision of the president of the Egyptian Olympic Committee no. 88 for the year 2017

the absence of clear adoption of precedents. This diminishes the center's claimed ability to fairly settle disputes according to a clearly articulated uniform of law.

f. The Suitability of Location of the Dispute Resolution Venue

The author adds this point to the assessment module as it is regarded as one of the significant advantages of sports arbitration. On the one hand, as it has been examined that the CAS seat is in Lausanne regardless of the place the hearings.[261] The CAS's established on-site panels provide easily accessed forum for settling sports disputes.[262]

On the other hand, the Egyptian sports arbitration center's statute establishes in article 52 that all the arbitration proceedings and the meetings of the panel occur in the center's headquarters in Cairo unless the center's board decide otherwise. This creates a weak point as delegating the matter to the board shall lie an extra burden on the parties with a time-consuming process of applying to the board to get such approval, if it was indeed approved eventually. The absence of previously formed on-site panels critically diminishes one of the key advantages of sports arbitration in the Egyptian context.

To conclude, the sports arbitration center and its current legal context meets minor requirements of a private sports dispute resolution forum set by Prof. Nafziger, in comparison to the CAS as a role model for sports arbitration. It does provide full and fair opportunity for all parties to be heard and reasoned decisions in a relatively timed manner. However, it lacks providing an open access to all parties, apparent independence and impartiality of arbitrators, final decisions, a timely process for urgent matters, a clearly articulated uniform of law, suitability of location of the dispute resolution venue. Consequently, the center and its application of the current legal context proves that it is not capable of achieving legislative intention of being a match for the CAS in the domestic venue.

The examination eventually shows that the sports arbitration center relatively achieves sports justice[263] through providing access for the majority of different sports stakeholders,

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[261] *See* MITTEN, *supra* note 3, at 287. *See* also WESTON, *supra* note 96, at 108.
[262] *See* MITTEN, *supra* note 3, at 285.
[263] *See* MITTEN, *supra* note 15, at 7.

except financially feeble ones, protecting the right to practice sport as a human right recognized by the Olympic Charter, enhancing the rule of law according to the international standards. However, it fails to guarantee a clear predictability of sports disputes which dramatically affects the sports investment.

2. Assessing the Egyptian Judiciary Jurisdiction Over Sports Disputes

It is beyond doubt that the citation of the Egyptian Cassation court of the CAS in its verdict[264] as a role model in the field of settling international sports disputes illustrates the respect, or at least the significant consideration, of the CAS awards and its jurisprudence, *lex sportiva*, in the Egyptian judicial examination of sports disputes. Additionally, the Egyptian administrative judiciary has not been refraining from examining sports disputes based on the capability given through the current and applied legal framework under the Egyptian 2017 sports law,[265] which is currently being subject to the constitutional review by the Supreme constitutional Court as examined earlier.

The administrative judiciary's intervention has been established on the grounds of the challenge of the negative decision of the competent administrative authority to intervene in the matter. Such competent administrative authority drives its power from article 32 of the sports law[266] which entitles it with taking the required measures, procedures and decision to guarantee the development, encouragement and improvement of the quality of sports practice in Egypt. The administrative judiciary court expanded its interpretation of the powers of the competent administrative authority and the provisions of the Egyptian Sports law to justify its jurisdiction as a natural judge over sports disputes, especially in light of the criticism directed towards the independence of the sports arbitration center. Till the Supreme Constitutional court decides on the case of the sports arbitration center's jurisdiction over sports disputes, the conflict of jurisdiction between the sports arbitration center and the administrative judiciary shall govern the scene.

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[264] The verdict of the court of cassation in the case no. 1458 for the judicial year 89 issued on December 24th, 2019.
[265] The Egyptian sports law no. 71 for the year 2017
[266] *Id.*

The administrative judiciary competence in settling sports disputes needs to be examined to assess it capability in settling sports disputes. The litigation process, in general, has been accused of failing to meet the market's needs in the sports field which justified the resort to nonjudicial approach. The main reasons behind such accusation has been the high cost of seeking a judicial remedy through a slow, complex and overburdened litigation system and the inconsistency of the national courts in addressing matters of similar position. This requires examining the consistency of the administrative judiciary verdicts with the international standards and the cost of seeking the judicial remedy in such context.

a. The Functionality of Seeking Sports Judicial Remedy Through the Administrative Judiciary

It is noticeable that discontent with the courts that has been generally established on the high cost of seeking a judicial remedy through a slow, complex and overburdened litigation system.[267] The economic burden upon the seeker of the judicial remedy, i.e. the filing fees, the lawyers' fees and costs in addition to the time and energy consumed through the litigation process which include missing work, attending court sessions and meeting with lawyers constitutes major disadvantages of litigation.[268] Such disadvantages drove the Egyptian legislator to resort to the nonjudicial approach of settling such disputes with the aspiration to follow the CAS as a role model. Consequently, the five requirements provided by Prof. James Nafziger's of a competent sports dispute resolution forum might prove effectiveness in examining such disadvantages and assessing the role played by the Council of State courts in settling sports disputes.[269] Even though those requirements were introduced to assess a private sports dispute resolution forum, the author argues that since they meet the Egyptian legislator's intentions of settling sports disputes, they shall constitute an indicator regarding how beneficial the public mechanism of the administrative court is in settling sports disputes.

Regarding open accessibility to all parties, the Council's law allows an exemption of the judicial fees to the party if case of inability to afford such fees. Article 27 of the Council

[267] *See* RABINOVICH-EINY, *supra* note 7, at 698.
[268] *Id.* at 705.
[269] The reason behind choosing Prof. Nafziger test is that he is a globally renowned sports legal scholar whose test meets the standards that has been aimed to by the Egyptian legislator. *See* MITTEN, *supra* note 15, at 20.

of State Law no. 47 for the year 1972 allows the resort to an exemption of the fees which are examined through the competent state commissioners' authority member. In addition, the fees themselves are relatively much less when compared to the arbitration center's fees.[270] This makes them much more accessible for financially feeble stakeholders.

Regarding independence and impartiality, article 94 of the 2014 constitution states that the independence of judiciary, its immunity and impartiality are essential guarantees for the protection of rights and freedoms. Additionally, article 184 of the constitution clarifies that the judiciary is independent and the interference in judicial affairs or in proceedings is a crime to which no statute of limitations may be applied. Moreover, according to article 186 of the 2014 constitution the Egyptian judges, ordinary and administrative, are immune and irremovable. They are only bound by the law. Consequently, the Council's judges are irremovable and immune which gives their apparent independence and impartially which constitutes a significant advantage when compared to other alternatives.

Regarding the full and fair opportunity for all parties to be heard, the Council of State's law and the procedural law no. 13 for the year 1968 provide a through organization that protect the right of defense and allows the parties full and fair opportunity to be heard.

Regarding the timely, reasoned and final decisions, the Council's verdict, like all judicial verdicts, are required to be fully reasoned according to article 175 of the procedural law.[271] This reasoning is subject to the judicial review of the second instance court. Nonetheless, the council's verdicts are enforceable upon their issuance, and such enforceability does not require waiting for the second instance's verdict to be rendered according to article 54 of the Council's law. This indeed provides a reasoning parameter but diminishes the finality of the Council's courts.

In addition, the laws organizing litigation before the Council's courts do not provide any time cap for the rendering of verdicts.[272] Moreover, approximately half of the Council's judicial department judges work in the state commissioners' authority to prepare judicial

[270] They normally do not exceed one thousand EGP while the arbitration centre's fees are several thousands.
[271] The law no. 13 for the year 1968.
[272] The Courts are obliged to settle disputes in a timely manner according to the constitutional obligation of guaranteeing prompt justice.

reports of the cases before the beginning of the trail procedures. The aim of this double workload in each of the instances of litigation is to guarantee the quality of the verdicts to be rendered. This makes achieving a timely decision a devastating disadvantage and weakness of the judicial mechanism through the Council courts.

Regarding a clearly articulated uniform of law that leads to an equal and unbiased treatment of parties in similar situations, the council's courts respect the principles of the supreme administrative court to a significantly large extent as it was explained above. Although Egypt is a civil law country, the special nature of sports field and its required experience to examine cases obliged the Council of State judges to depend on the principles set by the supreme administrative court while examining such cases.[273] Since the administrative judiciary is recognized for its role in establishing principles in absence or firm regulation of the subject matter to dispute, it is not strictly bound a certain interpretation of the law. It, consequently, has the capacity to examine the case in light of an expandatory interpretation of the judicial principles of settling sports disputes. Accordingly, the courts of the Egyptian Council of State have so much followed its French counterpart in stating the boundaries of validity and the legitimacy of the administrative decisions taken by the state administrative authority and its agencies.[274] Considering that, the Council's is familiar with the transjudicial influences played by foreign leading disputes resolution forums.[275]

However, the new sports legal context, the international standards application set by the constitutional legislator to be followed while governing the sports field and settling its disputes and the limitation of the governmental guardianship over sports bodies shall possibly create a jurisprudential dichotomy among the council's judges, especially in light of different application of the transjudicial influence during interpretation of the international standards. However, this dichotomy shall be settled once the supreme

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[273] The Council of State has been increasingly depending on the principles interpreted through the legal context by the supreme administrative court and the general assembly of the two departments of Fatwa and legislation in order to assess the validity and the legality of the administrative decision taken by the administrative authority. *See* generally ʻABD AL-NĀṢIR ʻABD ALLĀH ABŪ SAMHADĀNAH, MABDAʼ AL-MASHRŪʻĪYAH WA-AL-RAQĀBAH ʻALÁ AʻMĀL AL-IDĀRAH: DIRĀSAH TAḤLĪLĪYAH TAṬBĪQĪYAH FĪ ḌAWʼ AḤDATH AḤKĀM AL-MAḤĀKIM WA-FATĀWÁ MAJLIS AL-DAWLAH (al-Ṭabʻah al-ūlá ed. 2014).

[274] This conduct has been established in many verdicts of the supreme administrative court. See for example the verdict of the supreme administrative court in the appeal no. 4752 issued on March 14th, 2015.

[275] *See* generally HERMIDA, *supra* note 25.

administrative court sets firm principles of the disputed matters. Even if there has been a need for changing a set principle by the supreme administrative court due to significant justification, the court has its own circuit that is entitled with unifying the judicial principles and changing established principles according to article 54 bis of the Council's law. Such organization constitutes a beneficial advantage of the judicial mechanism.

Regarding the suitability of the location of the dispute resolution venue parameter suggested by the author, the Council has around twenty two branches in almost each Egyptian governorate; however, its courts exist in only one headquarters per each governorate, mostly its capital city or town, This makes access to the Council courts relatively easier.

Consequently, according to Prof. Nafziger's requirements, the Council of State administrative judiciary courts provide an open access to all parties, apparent independence and impartiality, full and fair opportunity for all parties to be heard, reasoned decisions and a clearly articulated uniform of law in addition to satisfying the author's parameter of the suitability of location of the dispute resolution venue. However, they lack the very important parameter of a timely process to reach a final decision which constitute one of the most important goals and aspiration of any dispute resolution fora.

b. The Consistency of the Administrative Judiciary Verdicts with the International Standards

On the one hand, since the Council has been considered the protector of rights and liberties of individuals against the wrongful decisions taken by the administrative authority or any of its agencies, it has established that the application of the national laws rises above any other normative rules unless such rules are clearly stated in another applicable law or in the state's international obligations. Since not all the norms being developed by the *lex sportiva* has been stated in an international treaty or convention, the Council's approach has been of rather traditional than deferential nature following the same model of the European Court of justice.[276] Additionally, the Council, due to its protectoral nature, has been in regular examination of the public policy and its application through different fields,

[276] *See* MITTEN, *supra* note 3, at 294-295

including the sports field. However, it can be noticed that the Council's courts have followed the European model of enforcing the awards under the national public policy rather than the approach taken by the US courts in this regard.[277] They examined the cases considering the specificity of the Egyptian society without putting much weight on the most internationally accepted standards.

One the other hand, Since litigation as a process is generally criticized for its adversary and rule-orientated nature instead of addressing the parties' needs, interests and feelings,[278] the Egyptian administrative judiciary has been applying the principle that an administrative judge rules but does not administrate as an application of the constitutional principle of separation of powers.[279] Such application makes the administrative courts refrain from examining the dispute if it does not constitute a clearly stated legal obligation upon the administration. It sometimes even exceeds to abstractly nullify a decision unlawful and allow the competent administrative authority to issue another decision to govern the situation again. This rule-oriented role rather than addressing the needs of the parties makes the Council's examination of sports disputes incompetent in achieving its goal in the field.

To conclude, the Council's courts have not been able to benefit from the applied transjudicial influence in the sports field due to the excessive governmental guardianship over sports entities which resulted in a rather public approach of the Council's courts while addressing sports disputes. Moreover, the lack of firm sports legal context that would allow resorting to international sources of law and transplanting the international standards into the Egyptian legal context, the Council's court employed followed the traditional approach of applying the national laws rather than the international regulations and followed its general restrictive vision of public policy. Consequently, its competence to settle sports disputes under the limited governmental guardianship established in the 2017 sports law through the expansion of the transjudicial influence remains vague.

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[277] *Id.* at 302-304. More elaborations regarding the US and European approaches of enforcing arbitral awards according to the public policy are examined in detail that proves that the Egyptian Council of state's courts' approach is similar to the European approach.
[278] *See* RABINOVICH-EINY, *supra* note 7, at 700.
[279] The verdicts of the supreme administrative courts in the appeals no. 9896 for the supreme administrative judicial year 48 and the appeal no. 9847 for the supreme administrative judicial year 48 rendered on April 2nd, 2008.

The examination eventually shows that the Council has not been able to meet the market's needs and the aspirations of sports stakeholders. However, the Council's courts have the apparent potential to successfully provide sports justice for different sports stakeholders in the field of sports, including financially feeble ones, through protecting the right to practice sport as a human right recognized by the Olympic Charter while respecting the sovereignty of the state and thee protection of public values through state courts. The new sports legal framework, enables the Council's court to ensure the rule of law according to the international standards while providing a relatively clearer predictability of sports disputes which significantly affects sports investment.

Nevertheless, the current model of settling sports disputes through the sports arbitration center without excluding the jurisdiction of the Egyptian Council of State over such disputes shall even lead to a judicial dichotomy between the administrative judiciary and the ordinary judiciary. Such judicial dichotomy shall result from the contradiction between the jurisprudential approach followed by the ordinary judiciary through the appellate court review of the center's award for enforcement and the jurisprudential approach followed by the administrative court of the Egyptian Council of State while examining sports disputes. In addition, the jurisprudential dichotomy between the center's panels themselves and between the center and the Council of State shall make the settlement of sports disputes critically problematic.

3. The Suggested Solutions to Achieve Sports Justice

The author suggests that the Egyptian legislator should intervene to reform the current sports dispute resolution framework. This shall even become compulsory in case of the supreme constitutional court annulment of some of the articles of the sports law and the sports arbitration center statute as examined above. The author believes that the legislator should either cover the drawbacks of the current nonjudicial approach through the sports arbitration center or opt for specialized sports judicial courts. This suggestion is supported with Professor Frank Sander's vision of a multidoor courthouse that has been developed into an advocacy of "fitting the forum to the fuss" which basically focus on the need to tailor dispute resolution process to the characteristics of the dispute and the parties, which

have been examined earlier.[280] In the following points, the author suggests the reforms needed for the current two forums of sports dispute resolution considering the above assessment.

a. Reforming the Sports Arbitration Center's Legal Framework

The author argues that reforming the legal framework of the sports arbitration center to be a successful model in light of the assessment made and the examination of sports legal pluralism requires nine reforms. These reforms shall enable the center to overcome its current disadvantages of not providing an open access to all parties, apparent independence and impartiality of arbitrators, final decisions, a timely process for urgent matters, a clearly articulated uniform of law, suitability of location of the dispute resolution venue. Covering Such disadvantages shall enable the center to achieve the missing goals of providing access for all different sports stakeholders and guaranteeing a clear predictability of sports disputes which dramatically affects the sports investment. The reforms are all of legislative nature which can be adopted by the legislator upon its discretion.

The author's suggestion are: first, removing the administrative and financial link between the Olympic Committee and the center through guaranteeing its financial independence; second, reforming the requirement that the president of the Olympic committee presides the center's board to guarantee its apparent independence which shall be reflected on providing credibility to the way of choosing the arbitrators by the center's board; third, allowing the Olympic committee to suggest the names of arbitrators that are selected through vote by the newly independent board of the center instead of the current way of preparing the list and referring it the Olympic committee for adoption that is believed to be procedural rather than objective; fourth, providing legal aid through enabling the board to allow an exemption of the fees, especially the filing and administrative fees, to enable those who cannot afford such fees to access the arbitration process; fifth, providing the pre-establishment of on-site panels to keep the dispute resolution venues close to the sports events and sports stakeholders; sixth, removing the framework through which the center's panel are competent to nullify arbitral awards issued outside Egypt to be in accord with the

[280] *See* RABINOVICH-EINY, *supra* note 7, at 699.

principles of the New York convention as long as such awards do not violate the public policy; seventh, setting an appropriate time cap for urgent matters which is suggested to be left to the discretion of the panel itself as long as it does not exceed twenty-four hours to settle the urgent matter or declare its triviality in addition to reducing the currently set six-month time cap for concluding the arbitration; and eighth, cancelling the appellate circuits in the center and depend of the finality of awards.

Although the previous reforms shall probably lead to a more procedural sports fairness through the center, the substantive justice remains far from achieving as there is no guarantee that the panel's jurisprudence will be based on similar ground or lead to similar results in the absence of recognition of precedents and the ambiguity created by the center's panels. Consequently, the author suggest a ninth reform to create a board of experienced arbitrators that shall be elected by the majority of the center's arbitrators to examine the certain legal points of disputed matters referred to the suggested board by any tribunal while examining a dispute.[281] The board shall assign some of its members to review the center's awards before being signed and draw the attention of the arbitrators, without affecting the panel's freedom of decision, to certain elements of substance to guarantee the consistence of the center's awards.[282]

In addition to the benefits this solution provides, it shall have also a significant effect on the judicial resistance. Since the struggle of jurisdiction is not a mere claim of power to settle such disputes but rather a pursuance of providing procedural fairness and substantive justice,[283] and in light of the transjudicial influence[284] that is adopted by the administrative judiciary courts, the reformed framework of the sports arbitration center and its consequent competence and independence shall lead to a restrictive approach to examine sports disputes by the Egyptian administrative judiciary considering the conduct of the Swiss Federal tribunal.[285] This is evidenced as the minimalized governmental guardianship shall allow the administrative judiciary to adhere to the deferential approach than a traditional

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[281] This is inspired by the CAS's grand chamber. *See* MITTEN, *supra* note 15, at 44.
[282] This is inspired from the role played by the ICAS members to guarantee the consistency of the CAS awards. *See* MITTEN, *supra* note 15, at 44.
[283] *See* generally REILLY, *supra* note 90.
[284] *See* generally HERMIDA, *supra* note 25.
[285] *See* generally REILLY, *supra* note 90*,*

approach[286] which shall enable it to follow the SFT in a judicially acceptable way. It would also draw a clear line regarding the extent of its judicial review of the arbitral awards in the field of sports through examining the public policy through a global lens, which the author argues to be relatively matching the limits of the Swiss judicial review of the CAS awards as a source of law in the international sports field.[287] Such approach shall be also be in consistent with the international standards mentioned in the Egyptian 2014 constitution.

Although these reforms might seem bright in reforming the sports dispute resolution in an easily applicable method, they do not cover the constitutional pitfall of the ordinary legislator's exceeding of the constitutional delegation to settle disputes through a nonjudicial mechanism. In addition, the fact that arbitration is optional by nature shall not preclude the jurisdiction of the administrative judiciary over sports disputes. Even if the national sports governing bodies tried to exercise monopolistic powers to guarantee the stakeholders' resort to the center,[288] the Council of State may be summoned by the very stakeholders to invalidate such conditions based on the protection of the right to litigation as one of the public rights and the violation of the Egyptian public policy.[289] Eventually, the judicial jurisdiction over settling sports disputes might not be totally precluded which invokes another suggestion that involves the judiciary.

b. Establishing Specialized Sports Judicial Courts

The Egyptian legislator aimed[290] for an independent forum to settle sports disputes. Considering the constitutional pitfall that the resorting to a nonjudicial approach creates and the inevitable jurisdiction of the Council of State exercised upon the expandatory

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[286] *See* MITTEN, *supra* note 3, at 295-298.
[287] *Id.* at 300-301. More elaborations regarding the limits of Swiss judicial review of the CAS awards are examined.
[288] This has been the same manner followed by the international sports organizations and the IOC to guarantee the jurisdiction of the CAS. *See* MITTEN, *supra* note 3, at 321.
[289] This is different from the international arena due to the absence of a universal judicial system to invalidate such condition in addition to the fact that the majority of the international sports governing bodies which exercise such powers on the international level, are domiciled in Switzerland where such condition is not a violation of the public policy.
[290] This can be interpreted from the preparatory works of the 2017 sports law.

interpretation of the governmental guardianship over sports disputes, the other suggestion that this paper provides is establishing specialized sports judicial courts.

Considering the dualistic judicial system followed in Egypt, the author's argues that such courts should be established under the flagship of the Egyptian council of state, the competent natural judge in the field of sports, in a form relatively related to the newly established specialized tax administrative courts.[291] However, it might be claimed that in light of the new legal organization of sports and the limited governmental guardianship over sports bodies it would be better to establish such courts under the flagship of the ordinary courts in a form similar to the economic courts[292] rather than the Council of State. Still, the author's asserts that the administrative judiciary has a more open capacity to apply the transjuducual influence while dealing with insufficient legal context according to the principles set by the supreme administrative court itself, in settling all disputes including sports ones, which is not applicable before the ordinary judiciary on a similar scale. This gives an advantage to the Council of State to better accommodate such courts in such a special field.

It might be also claimed that the limitation of the governmental guardianship shall affect the Council ability and the Council's judges' competence to settle sports disputes. However, the author argues that application of the transjudicial influence that is already applied in the Council's courts in addition to the expandatory interpretation of the government guardianship that is being currently used by the Council to extend its jurisdiction over sports disputes in the currently applicable legal context shall actually lead to an improved competence of the administrative judiciary.

This author's argument is based on the fact that the 2017 sports law which governs the legal framework of field of sports in Egypt recognized a minimal governmental guardianship over sports bodies while assuring the respect of the sports governing bodies bylaws and the international standards. The same standards are applied in other common law systems judiciaries that have been of relatively longer experience in the field of private

[291] The Council has been establishing tax circuits in each of its branches based on consecutive decisions the Council's president.
[292] Such courts are organized under the economic courts law no. 120 for the year 2008.

governance of sports. Those systems did not experience the administrative guardianship over sports bodies that created the jurisprudence of the administrative judiciary over sports disputes in Egypt before the issuance of the new law. Consequently, the jurisprudence of such courts and their application of the international standards and the sports bodies' rules and regulations shall be of supporting effect to the Egyptian administrative judiciary in developing its jurisprudence while guaranteeing the applicability of its verdicts by the sports entities without subjecting them to violating the international regulation and jurisprudence that could result in sanctions over those national bodies.

The suggestion is based on six legislative reforms which shall enable the Council of State courts to overcome their current major disadvantage of not providing a timely process to reach a final decision which is comprehensively against goals and aspiration of any dispute resolution fora. The author's suggestion are: first, reforming the council of state law regarding settling sports disputes and introducing a strict time cap for settling sports disputes which is suggested to be left to the discretion of the court itself as long as it does not exceed twenty-four hours to settle the urgent matter or declare its triviality; second, setting a maximum binding time cap for any sports dispute to be settled within which is suggested to be three months including the process of referring the case to the state commissioners' authority to prepare the required judicial report to enrich the jurisprudential examination of the case; third, reforming the Council of state bylaw to allow the judges remain in their sports specialty in the sports courts, despite the three-year rule stated in the Council's bylaw, while allowing the possibility to be transferred to other cities to give stability, conformity and experience to those judges over sports disputes; fourth, reforming the Council's law to allow the holding of on-site sessions within the court geographical jurisdiction to keep the dispute resolution venues close to the sports events and sports stakeholders; fifth, removing the framework through which the court might be competent to nullify arbitral awards issued outside Egypt to be in accord with the principles of the New York convention as long as such awards do not violate the public policy and sixth, introduce a legal context which allows the court to issue executive orders to the national sports organizations to perform the required steps according to the applicable legal framework.

This suggestion shall eventually help overriding the dichotomy that results from the exitance of the two sports dispute resolution venues in the domestic sports arena, the sports arbitration center and the Council of State, which shall lead to a more conform jurisprudence in settling sports disputes. It shall also help in building the capacity of the judges in the field of sports as they shall be totally specialized in sports disputes and build cumulative experience in the field. Moreover, it shall provide a prompt judicial process to achieve the procedural justice in addition to guaranteeing the substantive justice.

IV. Conclusion

The distinction between what is law and what is not law in the sports field has become problematic in the chaotic contextual legal plurality of sports. This is because the regulations set by the international sports organizations do constitute a law that is binding upon the addressees within the state's national jurisdiction regardless of the state's will due to the international nature of the sports practice and competitions. Consequently, the state has lost its sole monopolistic power to regulate to the international regime which became the supreme legislator in the sports field. Additionally, the international sports organizations exercise monopolistic power to enforce their regulations through expanding the jurisdiction of the international nonjudicial dispute resolution forums with the Court of Arbitration for Sport as their supreme sports court and guaranteeing the respect of its developing *lex sportiva*.

The national systems neglected the international superiority of new legal pluralism of the sports field at first and challenged it through claiming the violation of public policy which constituted a relative obstacle towards a more conform superiority to the CAS awards that has been overcome by the limited judicial review offered by the Swiss Federal Tribunal. The national systems have eventually tried to incorporate those regulations into their national legal contexts. Not only has such superiority affected the organization of sports practice but has also exceeded to influencing the national legislator to respect the need of the market and resort to a nonjudicial dispute resolution mechanism abandoning the traditional judicial one. Such influence has been aiming to achieving sports justice, protecting the different stakeholders and achieving their goals and aspiration; however, it has jeopardized the stability and predictability of sports disputes which has been affecting the entire field.

The Egyptian legislator has been influenced by such plurality and issued the 2017 sports law depending on a constitutional leeway to adhere to the international standards. The law established the Egyptian sports arbitration center under the flagship of the Olympic Committee whose board issued the center's statute and whose president presided the center's board. However, the law has not precluded the pursuance of judicial remedy through the administrative courts of the Egyptian Council of State. This conduct has been

subject to increasing judicial resistance that reached the level of referring the law's and the center statute's articles to the Supreme Constitutional Court on claim of unconstitutionality. The paper examines the judicial resistance of the legislator's approach of nonjudicial mechanisms. Although the paper agrees with judicial resistance to the extent of criticizing the current legislative framework of the sports arbitration center, it does not agree to the what the general assembly of the department of Fatwa and legislation claimed regarding the inferiority of the international standards to the constitution as it has been established that the new legal pluralism considers such standards of an equal position in the general legal context of the state.

Since the two major sports dispute resolution mechanisms of litigation and arbitration have been examined on both the international and the national level leading to understanding their core features, advantages and disadvantages, an assessment of the current sports dispute resolution forums in Egypt, the sports arbitration center and the administrative courts of the Council of State, has been performed. Although settling disputes through the sports arbitration center may seem a shiny approach of settling sports disputes in Egypt, its examination considering the current legal framework proves its problematicality. The other option of judicial settlement does not also meet the full needs of the sports market.

The paper eventually argues that both the currently available Egyptian forums lack the comprehensive features of achieving sports justice and meeting the expectations and aspirations of sports stakeholders. It suggests that the Egyptian legislator should, willingly or obligatory, resolve the current dilemma through improving the legislative framework of the sports arbitration and settlement center considering the aspiration towards following the role model, the CAS, while respecting the specificity of the Egyptian legal context. Through legislative reforms the sports arbitration center shall be a significantly better dispute resolution forum, but this might not prevent the summoning of the administrative judiciary to the scene. Consequently, an optional path to avoid the dilemma of having two competent dispute resolution forums would be to establish sports courts under the flagship of the Council of State through an enhanced legislative framework that shall enable such courts better employ the international standards in their judicial jurisprudence. This shall eventually lead to a better achievement of sports justice.