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**LABOR ASPECT OF VIOLATION
ATHLETE AND ANTI-DOPING RULES TRAINER
IN RUSSIAN FEDERATION**

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The relevance of the topic of the dissertation is determined by the emerging trends in changing anti-doping and labor laws related to the intensification of the fight against doping, which directly affect the interests of workers - athletes and trainers.

In particular, because of the doping scandal, the Russian Olympic team was completely suspended from participating in the Summer Olympics in 2016 in Rio de Janeiro, as well as the entire paralympic team. The World Anti-Doping Agency (WADA) has disqualified a number of Russian athletes for long periods for using doping, and some of them have been punished following the 2008 Olympics in Beijing and 2012 in London. As a result, Russian athletes were deprived of won medals and prize payments.

In addition, many Russian athletes were not allowed to participate in the 2018 Winter Olympics in the Republic of Korea, and team members who participated in the Games were forced to compete under the neutral flag of the International Olympic Committee.

Following the results of the proceedings in the International Sports Arbitration Court in Lausanne (Switzerland), in accordance with the Labor Code of the Russian Federation, employment contracts with some athletes and coaches were terminated in connection with their violation of the anti-doping rules.

These precedents demonstrated a low level of legal competence of specialists in the field of doping, in particular, during registration and termination of employment with athletes who have been disqualified for the use of illegal drugs.

In connection with these events and the great resonance in the world caused by the doping scandal with Russian athletes, the V Olympic Summit of the International Olympic Committee (IOC) was held, where it was decided on the need to change the world anti-doping doctrine, including changes to anti-doping legislation.

At the same time, the events that occurred revealed a number of gaps and contradictions in the current labor legislation that need to be addressed. This led to the need for a significant change in the national labor legislation on the rights and obligations of athletes and trainers in Russia regarding the use of doping, which makes it possible to conduct a dissertation research.

Despite the lack of monographic studies entirely devoted to the labor-law aspect of an athlete and trainer violating anti-doping rules, certain problems associated with the use of doping were directly or indirectly covered in the works of both domestic and Western authors.

In this regard, one can cite the work of such specialists as M.N. Aguzarova, S.V. Alekseev, V.V. Blazheev, M.P. Bondarenko, O.A. Brusnikina, M.O. Buyanova, V.P. Vaskevich, A.V. Voropaev, M.G. Vulakh, Yu.V. Glebova, G.I. Gubin, S.P. Evteev, N.A. Zhabin, Yu.V. Zaitsev, V.D. Ivanov, Yu.S. Isaev, C. Keidel (C. Keidel), V.S. Kamenkov, N. Klein, I.V. Kotsky, P.V. Krashenninikov, V.A. Makarova, Y.A. Makhinov, S.V. Nikolyyukin, N.A. Ovchinnikova, Yu.V. Onishchuk, Yu.P. Orlovsky, O.I. Paly, D. Papanikolau, A.N. Peskov, M.Yu. Prokopets, D.I. Rogachev, E.M. Ruzayev, V.V. Saraev, E.E. Staseev, E.V. Titova, A.R. Khadeeva, O.A. Shevchenko and others

The object of the study is legal relations arising as a result of violation by athletes and coaches of anti-doping rules, which, in turn, affect the employment and legal relations of these workers.

The subject of the study is the legal norms of anti-doping regulation, legal norms regulating the labor activity of athletes and coaches, their disciplinary responsibility, labor protection standards, protection of labor rights of workers, enshrined in legal acts of various levels (local regulations of the employer, norms of anti-doping organizations). Also, in this work, we consider the legal positions developed by judicial practice aimed at establishing the legal responsibility of athletes and trainers for violation of anti-doping rules.

The aim of the thesis is to study and determine the conditions for the onset of legal responsibility of athletes and coaches for violating anti-doping rules from the point of view of labor law, as well as the procedure for bringing this category of workers to legal responsibility, the possibility of protecting the labor rights of athletes and coaches; study of current international and national legislation (including labor) with a view to making proposals for its improvement.

The purpose of the study predetermined the formulation and solution of the following tasks:

- explore the history of doping and its entry into the sport;
- analyze current international anti-doping acts and the norms of the Russian legislation on combating doping and unify the definitions of “doping” and “anti-doping rules” in the conceptual apparatus and justify the need for their differentiation at the legislative level;
- determine the types of legal liability for violation of the anti-doping rules, as well as the conditions for bringing athletes and coaches to disciplinary liability for the use of doping;

- study the current labor legislation of the Russian Federation and determine the impact on it of international anti-doping standards in terms of regulating labor relations with athletes and coaches;
- analyze the anti-doping rules as an additional reason for terminating the employment contract with the athlete and trainer;
- explore ways to protect the labor rights of athletes and coaches in doping disputes, as well as identify problems encountered in the implementation of the protection of their rights;
- develop recommendations on amending the current labor legislation of the Russian Federation with regard to the labor law aspect of violation by an athlete and trainer of anti-doping rules;
- to study the norms of labor law and the norms of legislation on physical culture and sports of the Russian Federation in order to determine the influence of categories of athletes and coaches on the possibility of disciplining them for violation of anti-doping rules.
- identify signs of the composition of the doping violation.

The methodology of this dissertation research includes both general scientific: historical, system-structural, logical and dialectical, as well as special methods of scientific knowledge: formal-legal, comparative-legal, legal-dogmatic and others. The use of these methods contributed to the study of the issues identified in the work from the point of view of their relationship.

The legal framework of the study in the context of the goals and objectives was: the Constitution of the Russian Federation, the World Anti-Doping Code, the Labor Code of the Russian Federation, the Federal Law “On Physical Culture and Sports in the Russian Federation”, the All-Russian Anti-Doping Rules and a number of other regulatory and by-laws.

The scientific novelty of the dissertation research lies in the fact that for the first time the issues of the influence of international and national norms of anti-doping acts on the norms of Russian labor law governing the establishment of labor duties of athletes and coaches, as well as the conditions of the onset of labor liability in relation to these employees for anti-doping rule violation are investigated .

The following provisions are made by the author for protection:

1. The author's definition of doping as a natural or synthetic substance, or method, as well as the act (action, inaction) used by an athlete or applied to an animal with

the aim of influencing a sports result, referred to by the World Anti-Doping Code as an anti-doping rule violation, is prohibited by the World Anti-Doping organization for use in sports under threat of punishment and identified by a specialized institution.

The absence of a classical definition of doping in regulatory acts creates legal uncertainty in the qualification of acts in the field of anti-doping rule violation by athletes and coaches. To eliminate this uncertainty, it is advisable to amend the anti-doping rules regarding the inclusion of the above definition.

2. Based on the lexical and semantic analysis of the term “doping” and the phrase “violation of anti-doping rules”, a difference is found in the nature of the concepts in question and the necessity of distinguishing them at the legislative level is substantiated. The unification of the definitions “doping” and “violation of anti-doping rules” seems to be incorrect in the conceptual apparatus of international and national anti-doping legislation. Doping as a noun and violation as a verb from the point of view of legal theory cannot be identical. In legal science, the definition of these concepts is usually distinguished. To eliminate this conflict, it is proposed to amend the anti-doping rules by defining each of the definitions: “doping” is a prohibited substance or method, and “violation of anti-doping rules” is an act.

3. The thesis is substantiated that at present there is no single independent act used in Russian legislation with which the Labor Code (Articles 348.2, 348.11, 348.11-1) connects the possibility of disciplinary liability for violation in the field of counteracting doping. The concept of anti-doping rules used in Russian legislation, approved by international anti-doping organizations, must be defined as the totality of all regulatory international acts containing norms on the fight against doping in sports and establishing the obligation of athletes and coaches not to violate these standards. The absence of a specific list of anti-doping acts that are part of the anti-doping rule system is fraught with difficulties in law enforcement when considering cases of doping. The anti-doping acts are listed in the Resolution of the Plenum of the Supreme Court of the Russian Federation of November 24, 2015 No. 52 "On the application by the courts of the legislation regulating the work of athletes and coaches", which is not a source of law. It is advisable to include in the Definitions section (Appendix 1) of the World Anti-Doping Code this definition of anti-doping rules, where a list of anti-doping acts is included in this concept.

4. The inconsistency of the norms contained in Chapter 54.1 of the Labor Code, which includes the concepts of only “athlete” and “coach” and the Federal Law “On Physical Culture and Sport in the Russian Federation”, as well as provisions,

ECTS and professional standards establishing a differentiated approach to categories of athletes and trainers by class category, etc.

It is substantiated that from the point of view of the Labor Code, which contains the concepts of “athlete” and “coach”, such differentiation does not matter for bringing these workers to legal liability in connection with the violation of anti-doping rules.

5. It has been established that an athlete or a trainer who is not held accountable by decision of a competent anti-doping organization for violating all-Russian anti-doping rules and / or anti-doping rules approved by international anti-doping organizations may be held liable by the employer for violation of labor discipline, which consists in non-compliance obligations to comply with anti-doping legislation. This statement is based on the understanding that a disciplinary offense in the form of a violation by an athlete and a trainer of anti-doping rules can occur in two forms: a) in the form of a direct violation of anti-doping rules (when an employee is found guilty by an anti-doping organization of committing the acts provided for in Article. Article. 2.1 - 2.10 of the WADA Code);

b) in the form of an employee’s non-fulfillment of obligations to comply with the rules on doping (when his actions do not fall within the specified types of violations, but may be qualified by the employer as an offense for which a penalty may be applied: remark or reprimand);

Article 2.4 of the World Anti-Doping Code recognizes as a violation of anti-doping rules, failure by an athlete to report his location three times within twelve months for the purpose of doping control. For this misconduct, he may be dismissed on the basis of paragraph 2 of Art. 348.11 of the Labor Code of the Russian Federation in the presence of a decision by the anti-doping organization. However, the employer has the right to bring to disciplinary liability and declare a remark or reprimand to such an employee even after a single non-notification, without waiting for the athlete to remain silent about his location three times, since according to Art. 348.2 of the Labor Code of the Russian Federation

6. The conclusion is substantiated that the coach’s liability for a disciplinary offense in the form of failure to provide him with conditions to prevent an athlete from breaking the anti-doping rules may also occur if the athlete is disciplined for non-compliance with the anti-doping legislation, while being held accountable by decision of the anti-doping organization.

7. The position is argued that a violation by an athlete or trainer of anti-doping rules is a specific disciplinary offense, for which, along with disciplinary

responsibility on the part of the employer, sporting responsibility may be imposed, applied not by the employer, but by a specialized entity - an anti-doping organization. The decision of this organization directly affects the applicable measure of responsibility and the ability of the employee to fulfill his labor function. This specificity and, in fact, the labor-law aspect of the violation by athletes and coaches of anti-doping rules in Russia is characterized by the following:

a) an indication of Art. 348.2 of the Labor Code of the Russian Federation, which, in addition to the conditions established by Article 57 of the Labor Code of the Russian Federation, are mandatory for inclusion in an employment contract with an athlete, including the following conditions:

- the athlete's duty to comply with the all-Russian anti-doping rules and anti-doping rules approved by international anti-doping organizations, to undergo doping control;
- the obligation of the athlete to provide information about his whereabouts in accordance with the all-Russian anti-doping rules in order to conduct doping control.

Consequently, for violation of these obligations disciplinary liability may arise.

b) the absence in the Russian labor legislation of a special procedure for imposing disciplinary sanctions on athletes and coaches makes it possible to extend the general procedure for imposing disciplinary sanctions provided for in art. 193 of the Labor Code of the Russian Federation. At the same time, this kind of responsibility can only be applied to a special category of workers - athletes and coaches. At the same time, the qualifications of the athlete and trainer, the sports rank and other signs of differentiation do not affect the prosecution of these employees for violation of anti-doping rules and disciplinary liability.

In addition, violation of the anti-doping rules by the said employees constitutes a disciplinary offense for which disciplinary measures may be taken - remark, reprimand, dismissal.

c) the need for mandatory use in the procedure of disciplinary proceedings of an act of a legal entity (an anti-doping organization that is not a party to labor relations) as a special way of fixing a disciplinary offense using the termination of doping as a penalty.

It is possible to dismiss an athlete or coach on the basis of Article 348.11 of the Labor Code and 348.11-1 of the Labor Code of the Russian Federation,

respectively, for violation of the anti-doping rules recognized by the decision of the relevant anti-doping organization. In this case, a prerequisite for disciplinary action is compliance with the statutory procedure for applying disciplinary measures specified in Art. 193 of the Labor Code of the Russian Federation. At the same time, the time limits for disciplinary sanctions established by this article

When bringing an athlete and a coach to responsibility for a doping violation, the status of the organization that revealed the violation is decisive. If such a violation is detected by the employer, the dismissal of the athlete and coach on the basis of Art. 348.11 and 348.11-1 of the Labor Code of the Russian Federation is impossible.

d) the possibility of a disciplinary offense in the form of a violation of the anti-doping rules by an employee who is not at work or outside working hours.

According to the rules on doping control, an unscheduled test can be taken from the athlete at his place of residence from 6.00 to 22.00 local time. Failure to test or detection of a prohibited substance in an athlete's sample may qualify the employer as a disciplinary offense.

e) the specifics of the appeal procedure of the decision of the anti-doping organization outside the courts of the Russian Federation.

According to the anti-doping rules, appeals against this decision are submitted exclusively to the International Sports Court (CAS) in Lausanne (Switzerland) according to a special procedure.

8. The position on the insufficient timing of disciplinary sanctions - within six months from the date of the misconduct - established by Art. 193 of the Labor Code of the Russian Federation, in view of the absence of an obligation on the anti-doping organization to report an anti-doping rule violation by the athlete or trainer directly to the employer, which may lead to a six-month deadline for applying a disciplinary sanction, and it is proposed to amend the article. 193 of the Labor Code of the Russian Federation on increasing the period of application of disciplinary sanction against an athlete and a coach up to two years from the date of the offense. Otherwise, the right of the employer to hold the employee liable for violation of labor discipline is leveled.

9. It has been proved that in the event of an athlete's death or serious injury due to the use of a prohibited substance if the trainer is guilty, if the athlete did not take measures to prevent the athlete (s) from violating the Russian anti-doping rules and anti-doping rules approved by international anti-doping organizations, the coach

may be brought to disciplinary action. And in the presence of the conclusion of the commission on labor protection - dismissed in accordance with paragraphs. "D" p. 6 of article 81 of the Labor Code of the Russian Federation.

10. The author argues that the trainer, prosecuted for anti-doping rule violation and working with children and young men, can be fired in accordance with paragraph 8. p. 8, part 1 of article 81 of the Labor Code of the Russian Federation, which provides for the dismissal by an employee performing educational functions of immoral misconduct incompatible with the continuation of this work.

This provision is especially relevant in the work of trainers of children's sports schools and colleges, where beginner athletes are trained.

World Anti-Doping Code in Art. 4.3 establishes the criteria for classifying substances as prohibited in sports. One of these criteria is the potential health hazard of the prohibited substance, as well as the unlawful provision of the advantage that the athlete has used over other competitors. It follows that a trainer who is found to be in violation of the anti-doping rules commits an immoral act, because he either violated such rules or contributed to their violation by an athlete. Art. 48 of the Federal Law "On Education in the Russian Federation" dated December 29, 2012 N 273-ФЗ establishes the obligation of a pedagogical worker to comply with legal, moral and ethical standards, to follow the requirements of professional ethics. Considering that an immoral offense is an offense that infringes on the moral foundations in society, it can be argued that a trainer is such an immoral offense as a violation of anti-doping rules.

The current labor legislation does not contain a special rule for trainers working with children, therefore, they can be dismissed on general grounds.

11. It is proposed to introduce into anti-doping rules the concept of "composition of a doping violation", which distinguishes: object of encroachment, objective side, subjective side and subject.

At the same time, the object of the attack is public relations in the field of physical culture and sports, as well as in the field of protecting the health of citizens. The objective side is an action or inaction aimed at the implementation of the signs of violation described in the articles of the World Anti-Doping Code and the All-Russian Anti-Doping Rules. The subjective side is expressed in intent or negligence (slight fault or negligence). The subject of a doping violation is an athlete, trainer, athlete's personnel (manager, doctor, agent).

The following proposals on amendments and additions to the Labor Code of the Russian Federation and the current legislation are justified:

1. To supplement clause 14 of Article 2 of Federal Law No. 329 “On Physical Culture and Sport in the Russian Federation” by including the concept of “coach” in the definition of sports disqualification, since from the point of view of anti-doping rules, a coach can also be subjected to sports disqualification along with an athlete .

2. Article 193 of the Labor Code of the Russian Federation must be supplemented with a norm to increase up to two years from the date of committing the misconduct of the period for applying a disciplinary sanction against an athlete or coach who was found guilty of violating anti-doping rules by a decision of the relevant anti-doping organization.

The total period of six months established by Article 193 of the Labor Code of the Russian Federation is insufficient due to the length of the doping proceedings and the absence of the duty of the anti-doping organization to notify the athlete or trainer’s employer directly of the responsibility for doping.

n Federation must be supplemented with the norm that exists with respect to athletes and stipulating that the trainer is obligated to pay the employer the amount determined by the employment contract in the event of the dismissal of the trainer of his own free will without good reason, as well as in the case of the dismissal of the trainer on grounds related to disciplinary sanctions (including on the grounds provided for in Article 348.11-1 of the Labor Code of the Russian Federation, for violation of anti-doping rules).

4. In the Labor Code of Russia there is a competition of the norms enshrined in paragraph 2 of Art. 348.11 and 348.11-1 of the Labor Code of the Russian Federation, allowing the employer to dismiss an athlete or coach in connection with their violation of the anti-doping rules and the norm contained in Art. 261 of the Labor Code of the Russian Federation on the prohibition of the dismissal of a pregnant woman at the initiative of the employer. Since athletes and coaches may be women found to be in violation of anti-doping rules, the employer should have the opportunity to dismiss such athletes and coaches on these grounds. However, in order to exclude discrimination against pregnant women, it seems fair to dismiss a pregnant woman - an athlete (trainer), if it cannot be transferred to another job.

We believe that it is necessary to eliminate this contradiction by providing in part 1 of article 261 of the Labor Code of the Russian Federation an exception for women athletes or coaches. In connection with this author, the following version of

this exception is proposed for part 1 of article 261 of the Labor Code of the Russian Federation: “An exception to the impossibility of dismissal may be pregnant women who are athletes (trainers) if they violate the anti-doping rules approved by international anti-doping organizations by decision of the relevant anti-doping authority. Dismissal in this case is permissible if it is impossible to transfer the employee to another job in accordance with the requirements of this code. ”

5. Labor legislation does not contain rules governing the possibility and procedure for terminating an employment contract with an athlete due to violation of the anti-doping rules by the temporary transfer of this athlete to another employer in accordance with Art. 348.4 of the Labor Code of the Russian Federation. According to the current norms of the Labor Code, for one disciplinary offense, it is possible to apply only one disciplinary sanction, therefore, apply dismissal to the athlete on the basis of paragraph 2 of Art. 348.11 of the Labor Code of the Russian Federation can only be the employer to whom the athlete is temporarily transferred. However, in the event of such dismissal and in accordance with Art. 348.4 of the Labor Code of the Russian Federation, the initial employment contract at the main place of work is renewed, that is, the original employer has no right to dismiss an employee disqualified for doping.

In connection with the foregoing, it is proposed to change the wording of Part 6 of Art. 348.4 of the Labor Code of the Russian Federation and state it as follows: “In case of early termination of an employment contract concluded for the period of temporary transfer of an athlete to another employer, on any of the grounds (with the exception of those established by Article 348.11 of the Labor Code of the Russian Federation) provided for by this Code, an initially concluded labor contract acts in full ... ”.

6. To eliminate a gap in the Civil Procedure Law (Article 215 of the Code of Civil Procedure of the Russian Federation), which impedes the exercise of the right to judicial protection of labor rights dismissed by a doping worker. The essence of the issue is that the current edition of this article does not contain such a reason for the judge to suspend proceedings in the case of reinstatement during the period of consideration by the appellate body of the decision of the anti-doping organization to punish the athlete (trainer) for doping. In accordance with the anti-doping rules, only the International Sports Court in Switzerland, CAS, is authorized to consider such appeals. However, the term for consideration of appeals is more than a month, established by Art. 392 of the Labor Code of the Russian Federation for going to court with a claim for reinstatement. Until today, the possibility of suspending a

case for this reason depends solely on the discretion of the judge, which puts the employee in a position dependent on the subjective opinion of the judge considering the case.

We propose the next version of this change in Art. 215 of the Civil Procedure Code: “The court is obliged to suspend the proceedings in the event that it is impossible to consider the given case until the resolution of another case considered in civil, administrative, criminal proceedings, as well as a case of an administrative offense, or a violation of anti-doping rules, considered on appeal in accordance with anti-doping legislation. ”

The theoretical and practical significance of the dissertation lies in the fact that conclusions are formulated in the work that are relevant to the science of labor law. The theoretical provisions of the study can be used to improve labor and anti-doping legislation of the Russian Federation, as well as to improve and generalize judicial practice. The results of scientific work can also be applied in the educational process when teaching the discipline "Labor Law", in particular, its aspect such as "Features of the legal regulation of labor of athletes and coaches." In addition, the results of the study can be used by practicing lawyers in protecting the rights of both sports workers and employers.

Reliability degree and approbation of research results.

The result of this work are logically sound conclusions and recommendations that have a high degree of reliability, based on the theory and methodology of the science of labor law, on the norms of foreign law, on the analysis of legislative and other acts containing norms of labor law and law enforcement practice.

The results of the dissertation research were tested in scientific publications, reported and discussed at scientific conferences, open lessons at the Ministry of Sports of the Russian Federation, and as an expert in television and radio broadcasts. In addition, the dissident participated in courts of general jurisdiction, in the CAS International Sports Court (Lausanne) as a representative of athletes and coaches, and also participated in the work of the Anti-Doping Committee of the Russian Anti-Doping Agency (RUSADA).

The work was discussed and reviewed at the Department of Labor Law and Social Security of the Faculty of Law of the National Research University Higher School of Economics.

Changes in the labor legislation of Russia, which were introduced by the legislator during the writing of the dissertation.

As noted earlier, after the 2014 doping scandal, changes to the legislative acts of the Russian Federation were introduced swiftly. It is important to note that a number of amendments, the need for which the author justified in scientific publications during the writing of the dissertation, was taken into account by the legislator. The following changes have been made to the Labor Code.

1. Federal Law of December 29, 2017 No. 461-FZ was supplemented with part 4 of Th. 348.2 of the Labor Code of the Russian Federation, on the condition that the trainer is obligated to comply with anti-doping rules. Thus, a gap was eliminated in the current labor legislation regarding the lack of a norm that establishes as an obligatory condition of an employment contract with a trainer, provided for in part 4 of article 348.2 of the Labor Code of the Russian Federation, the obligation to personally comply with anti-doping rules. Prior to the amendment, this article provided as a trainer's duty only to take measures to prevent an athlete (s) from violating anti-doping rules. The author of the dissertation pointed out this gap in the scientific article “New in Anti-Doping Legislation: Gaps and Ways to Address Them” published in the journal Sociopolitical Sciences No. 5/2017, p.81.

2. In addition, the author also argued for the need to include in the Labor Code an article establishing, as an additional reason for terminating the employment contract with the trainer, a violation by the latter of anti-doping rules. Today it is Article 348.11-1 of the Labor Code of the Russian Federation. At one time, in the already mentioned article of 2017, the author proposed a revision of such an article, which was designated in a scientific publication as “Article 348.13 of the Labor Code of the Russian Federation”.

Prior to these changes in law enforcement, problems arose because the trainer himself, in terms of the World Anti-Doping Code and the meaning of Art. 348.11-1 of the Labor Code of the Russian Federation may be a direct violator of the anti-doping rules, but the law did not allow him to be disciplined for this violation.

The main scientific results of the work are published in eight articles (five independently and three in collaboration with a dissertation share of 50% in each article) in the following scientific journals: “Business in Law”, “Socio-Political Sciences”, “Sports: Economics, Law, Management ”, “ Law ”, Higher School of Economics, “ News of Higher Education Institutions. Jurisprudence ”, “ Bulletin of the civil process ” and are reflected in the materials of international and Russian scientific and practical conferences.

1. International Conference of the Autonomous Non-Profit Organization of Continuing Professional Education “Russian International Olympic University”, 22nd Congress of the International Association of Sports Law (IASL) “Mega-Events in Sports: Legal Environment”, Sochi, November 17-18, 2016, topic report “Permission for therapeutic use of illegal drugs. Legal and moral aspect ”;
2. V International Scientific and Practical Conference "Modern Sports Law in the Republic of Belarus and Abroad", Minsk, 04/21/2016, topic of the report "Protection of the rights of athletes in cases of anti-doping rule violation";
3. III International Scientific and Practical Conference “Modern Sports Management Strategies: Communications, Conflicts, Disputes”, Institute of Legislation and Comparative Law, Moscow, 04/05/2018, topic of the report “Doping scandal in Russia: the need to change defense tactics”;
4. II International Scientific and Educational Conference "Modern Sports Management Strategies: Economics, Law, Finance" of the Federal State Autonomous Educational Institution of Higher Education "National Research University Higher School of Economics", Moscow, 05/26/2017, topic of the report "Modern Strategies sports management. "

The structure of the dissertation. This work consists of an introduction, three chapters, divided into eleven paragraphs, conclusion and list of references.

In addition, paragraph 1.2 discloses the concept of anti-doping rules.

In particular, the author points out that attempts to define doping were made from the very beginning of the legal regulation of the Olympic movement, while the problem of doping remains one of the central issues in such a movement.

Thus, the World Anti-Doping Code (2015 edition) - hereinafter referred to as the WADA Code - in Art. 1, 2 and the All-Russian Anti-Doping Rules (2016 edition, hereinafter OAP) in Art. 2.1 define doping as the commission of one or more anti-doping rule violations given in Art. 2.1-2.10 of this code, that is, doping is also determined by law as an action - “the commission of one or more violations”.

According to these articles, anti-doping rule violations include:

- 1) Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample;
- 2) Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method;

- 3) Evading, Refusing or Failing to Submit to Sample Collection;
- 4) Whereabouts Failures;
- 5) Tampering or Attempted Tampering with any part of Doping Control;
- 6) Possession of a Prohibited Substance or a Prohibited Method;
- 7) Trafficking or Attempted Trafficking in any Prohibited Substance or Prohibited Method;
- 8) Administration or Attempted Administration to any Athlete In-Competition of any Prohibited Substance or Prohibited Method, or Administration or Attempted Administration to any Athlete Out-of-Competition of any Prohibited Substance or any Prohibited Method that is prohibited Out-of-Competition;
- 9) Complicity
- 10) Prohibited cooperation;

The Russian Anti-Doping Rules regarding the definition of doping practically copy the World Anti-Doping Code.

Based on the foregoing, the author concludes that the current international and national anti-doping legislation does not have a single comprehensive definition of doping in sport and suggests considering doping in a broad and narrow sense.

Accordingly, in the narrow sense, doping is a substance used by an athlete or administered to an animal participating in competitions of the respective sports and having specific pharmacological properties that can increase the psychophysical parameters of the body and improve the athletic performance in the competition.

In a broad sense, doping should be determined based on the requirements of the norms of the World Anti-Doping Code, where in Article 2 doping is considered not only a substance, but also methods, as well as masking of a prohibited drug by other non-doping agents.

As an example, the author cites the already mentioned “blood doping”, which consists in the fact that the athlete donates his blood during the rest period between the competitions and during the period of excellent health, which freezes, and then when the level of hemoglobin drops during intense physical exertion blood (which leads to a breakdown), his previously taken blood is transferred back to him, where the hemoglobin level is normal. This method entails an improvement in the athlete’s physical condition and is a prohibited anti-doping rule, since it gives an

athlete an advantage over other athletes and affects the improvement of his athletic performance, despite the fact that there is no foreign substance in the athlete's body.

The author proposes the definition of doping as a natural or synthetic substance, or method, as well as the act (action, inaction) used by an athlete or applied to an animal with the aim of influencing a sports result that the World Anti-Doping Code considers a violation of anti-doping rules, prohibited by the World Anti-Doping Organization to use in sports under threat of punishment and detected by a specialized institution.

It is also concluded that the anti-doping legislation in force in the world and Russia actually combines the term “doping” and “anti-doping rule violation”.

Chapter 1 explores the concept of doping, and discusses the legal regulation of the fight against it.

As for the very concept of “anti-doping rules”, it must be said that, despite the fact that regulatory legal acts of a national or international level regulating relations in the field of combating doping in sport use this concept, but not one of the acts does not define anti-doping rules per se.

In Russia, the All-Russian Anti-Doping Rules apply, approved by order of the Ministry of Sports of Russia dated 06/18/2015 (as amended on 08/08/2015). However, the World Anti-Doping Code remains the main document establishing responsibility for the use of doping in Russia. In addition, individual rules of conduct for an athlete can be established by the International Standards (for example, the International Standard for Testing and Investigations, 2015), where Article 3.1 of this standard establishes a minimum volume of athlete's urine to be supplied not less than 90 ml, sufficient for testing (i.e. this rule implies the obligation of the athlete to surrender just such an amount of biomaterial), International Standard Prohibited List, etc.

From the above, the author concludes that the definition of “anti-doping rules” does not mean a single document, as such, but a combination of international and national acts establishing certain rules of conduct for the fight against doping. At its core, the concept of “anti-doping rules” is collective, and the All-Russian Anti-Doping Rules are part of it. This point of view is confirmed in paragraph 24 of Resolution No. 52 of the Plenum of the Supreme Court of Russia dated November 24, 2015, which states that anti-doping rules are contained, in particular, in the International Convention against Doping in Sport, adopted by the UNESCO General Conference at 33 Session in Paris on October 19, 2005 and ratified by the

Federal Law of December 27, 2006 N 240-Φ3 "On Ratification of the International Convention against Doping in Sport" (hereinafter - the International Convention against Doping in Sport), in the World Anti-Doping Code adopted by the World Anti-Doping Agency on March 5, 2003 in Copenhagen and included in Appendix 1 to the said Convention, as well as in the All-Russian Anti-Doping Rules, approved by Order of the Ministry of Sports of the Russian Federation dated June 18, 2015 N 638, and in the Procedure for Doping Control approved by order of the Ministry of Sport, Tourism and Youth Policy of the Russian Federation of May 13, 2009 N 293. However, according to the author, the decision of the Supreme Court is not a source of law and therefore it is proposed to consolidate the list of acts included in the anti-doping rule system in the World Anti-Doping Code.

In paragraph 1.2, the author gives a general description of international anti-doping acts.

In particular, it is noted that the legal regulation of relations in the field of the fight against doping is carried out by the norms of international acts and national legislation. The totality of regulatory acts in this area forms the system of Russian anti-doping legislation.

As rightly notes S.V. Boshno "the system of legislation is displayed in the composition, correlation and internal structure of sources of law - laws, decrees and other regulatory legal acts."

The author further indicates that the system of international anti-doping acts includes:

The Olympic Charter (hereinafter the Charter), which is a document that sets out the fundamental principles of Olympism, the rules adopted by the International Olympic Committee.

The Olympic Charter is a constitutional document establishing the principles and values of Olympism, is the charter of the IOC, and is also a provision for the distribution of responsibilities between the International Olympic Committee, international federations, national Olympic committees and organizing committees for the Olympic Games.

Sports Charter of Europe (adopted by the Ministers of Sport of the European States, gathered at the 7th conference on May 14-15 (1992) in Rhodes).

This act consists of 13 articles, which reflect the goals and objectives of the Charter in the development of sports and providing maximum opportunities for a person to access physical education and sports without any discrimination.

Convention against the use of doping ETS No. 135 of 11.16.1989 (Mandatory for the USSR from 12.28.1990);

This act states that it was adopted “in order to reduce and ultimately eradicate doping in sport”, for which “the Parties undertake to take the necessary measures within the framework of their respective constitutional provisions to implement this Convention”.

The International Convention against Doping in Sport (2005) is included in the system of anti-doping international acts, since it was ratified by Russia in 2006.

The Convention consists of seven sections, which include forty-three articles. In addition, annexes are part of this act, one of which is the World Anti-Doping Code, as well as the International Standard Prohibited List and the International Standard for Laboratories.

The World Anti-Doping Code (WADA Code) is an act regulating the basic principles and forms of the fight against doping in the world.

The Code consists of four parts combining twenty-five articles.

The Medical Code of the International Olympic Committee (Medical Code of the Olympic Movement) - hereinafter referred to as the IOC Medical Code - (effective from 03/31/2016) consists of a preamble and four chapters.

International standards that, according to the World Anti-Doping Code, contain “various technical and procedural components”.

To date, the following international standards apply:

- International standard for laboratories;
- International Standard for Testing and Investigations;
- Prohibited list;
- International standard for therapeutic use;
- International Standard for the Protection of Privacy;

Code of Practice of the International Paralympic Committee - a document governing the conduct of competitions among persons with disabilities.

IAAF Competition Rules for 2016-2017, consists of 10 chapters, among which have rules governing international competitions, concerning the admission of athletes, the fight against doping, appeals, world records, etc.

Models of best practices and guidelines are included in the system of international anti-doping acts, should be used along with international standards and are necessary to “ensure decision-making in various areas of the fight against doping”.

Section 1.4 gives a description of Russian anti-doping acts.

It specifically notes that Russia's ratification of the International Convention against Doping in Sport was only the first step towards the implementation of an anti-doping program in Russia. The second step to be taken was to bring national legislation governing social relations in the field of physical education and sports and legislation governing the work of athletes and coaches, medical legislation in accordance with international legal standards.

The following are the regulatory acts of the Russian Federation on the fight against doping:

Federal Law of December 27, 2006 No. 240-Φ3 "On Ratification of the International Convention for the Suppression of Doping in Sport", which extended the said Convention to Russia.

A special act in the field of physical education and sports (including anti-doping relations) in Russia is FZ-329 “On Physical Education and Sport”.

The Labor Code of the Russian Federation is a regulatory act containing special rules governing the labor relations of workers - athletes and coaches.

The author notes that from the content of Art. 348.1 of the Labor Code of the Russian Federation it follows that an athlete is an employee whose labor function is to prepare for and participate in certain sports in certain sports, and a coach is an employee whose labor function is to conduct training activities with athletes and to supervise the competitive activities of athletes for achievement of sports results. Article 348.2 contains the specifics of concluding employment contracts with an athlete and a coach. In particular, it states that in addition to the conditions established by part two of Article 57 of the Labor Code of the Russian Federation, the conditions (including) on the obligation to comply with the Russian anti-doping rules and anti-doping rules approved by international anti-doping organizations and undergo doping are mandatory for inclusion in an employment contract with an athlete -control, as well as provide information about your whereabouts in accordance with the all-Russian anti-doping rules in order to conduct doping control.

In turn, it is mandatory for a trainer to be included in an employment contract with a trainer to comply with anti-doping rules and take measures to prevent athletes from violating the Russian anti-doping rules and anti-doping rules approved by international anti-doping organizations.

In addition, it is noted that paragraph 2 of article 348.11 of the Labor Code of the Russian Federation provides as an additional ground for termination of an employment contract with an athlete a violation by him, including one-time, of all-Russian anti-doping rules and (or) anti-doping rules approved by international anti-doping organizations, recognized as a violation by decision relevant anti-doping organization.

The Code of Administrative Offenses (No. 195-Φ3), where Article 6.18 establishes administrative liability for violation of the requirements for the prevention and fight against doping established by the legislation on physical education and sports.

The Criminal Code of Russia is also mentioned, where article 230.1 establishes liability for inducing an athlete to use substances and (or) methods prohibited for use in sports, and article 230.2 of the Criminal Code provides for criminal liability for the use of substances and methods against an athlete, prohibited in sports. In addition, Art. 234 of the Criminal Code provides for liability for illicit trafficking of potent or toxic substances for marketing purposes. At the same time, drugs related to doping, for example, testosterone, also belong to potent substances.

Decree of the President of the Russian Federation dated July 15, 2017 No. 321 “On Amending the Regulation on the Procedure for the Payment of Scholarships of the President of the Russian Federation to Athletes, Coaches and Other Specialists of the Sports Teams of the Russian Federation in Sports Included in the Programs of the Olympic Games, Paralympic Games and Deaflympics Games, champions of the Olympic Games, Paralympic Games and Deaflympics, approved by Decree of the President of the Russian Federation dated March 31, 2011 No. 368 ”excludes from the list of candidates for presidential Fellowship of the athletes who have been punished for violation of anti-doping rules.

The procedure for conducting doping control (approved by Order of the Ministry of Sport and Tourism of May 13, 2009 No. 293), which determines the procedure for testing athletes, the procedure for notifying athletes about doping control, as well as the responsibility for refusing the procedure for passing doping control.

Order of the Ministry of Sports and Tourism of the Russian Federation dated November 27, 2008 No. 55 “On approval of the Regulation on the conferment of honorary sports titles, which provides as a basis for refusal to confer honorary sports titles“ Honored Master of Sports of Russia ”and“ Honored Trainer of Russia ”anti-doping rule violation.

The All-Russian Anti-Doping Rules, which entered into force on August 9, 2016, are the main national act in the field of the fight against doping. However, it must be said that this document is almost completely duplicates the World Anti-Doping Code.

The rules consist of twenty-two chapters, which, like the WADA Code, include articles containing rules on general provisions, the definition of doping, a list of anti-doping rule violations, the prohibited list, testing and analysis of samples, processing results, decision making and appeals.

In chapter 2, the author explores the types of anti-doping violations and types of legal liability for their commission.

So, in paragraph 2.1, the grounds for holding athletes and coaches accountable for anti-doping rule violations are considered.

In particular, it is emphasized that liability for violation of anti-doping rules occurs, as in the case of other types of legal liability for an entity to perform certain actions (inaction) that are referred to by the relevant regulatory acts as an offense. That is, the basis for liability for violation of the anti-doping rules is the commission by a person of a doping violation.

The author concludes that the basis for holding an athlete and a trainer liable for anti-doping rule violation in Russia is the commission by these entities of the offenses provided for by the World Anti-Doping Code, the All-Russian Anti-Doping Rules, which, by analogy with the legal structure of the offense, have their own composition, including the object of the offense, the objective side, subjective side and subject. That is, for the first time it is proposed to introduce the term - the composition of the doping violation.

In particular, it is alleged that the establishment of all four elements of the doping offense structure in the actions of the subject as a result of qualification forms the composition of a doping violation (anti-doping rule violation), which serves as the basis for prosecution and application of sanctions established by anti-doping rules, as well as disciplinary measures against certain employees.

In paragraph 2, the author concludes that the following types of legal liability may apply for anti-doping rule violation:

criminal liability (Article 230.1 of the Criminal Code of the Russian Federation - Inclusion of an athlete to use substances and (or) methods prohibited for use in sports) was introduced by the Federal Law of 22.11.2016 N 392-Ф3, art. 230.2 The use of substances and (or) methods prohibited for use in sports with respect to an athlete is introduced by the Federal Law of 22.11.2016 N 392-Ф3;

administrative responsibility (Article 6.18 of the Code of Administrative Offenses of the Russian Federation - Violation of the requirements established by the legislation on physical education and sports to prevent and combat doping in sports (introduced by the Federal Law of 06.12.2011 N 413-Ф3);

sports responsibility (in accordance with the anti-doping rules and the Federal Law "On Physical Culture and Sport in the Russian Federation);

civil liability (in the form of damages in accordance with Article 15 of the Civil Code of the Russian Federation, penalties, forfeits);

labor liability (disciplinary liability of athletes and coaches - Articles 348.2, 348.11, 348.11-1 of the Labor Code of the Russian Federation), which are employees and liability);

The author also concludes that in case of termination of the employment contract with the athlete for violation of the anti-doping rules (Clause 2 of Article 348.11 of the Labor Code of the Russian Federation), a certain sum of money for such termination may be claimed from the athlete if it is indicated in the employment contract.

In paragraph 2.3, the author examines the disciplinary liability of athletes and coaches for anti-doping rule violations.

In particular, it is indicated that disciplinary action against an athlete for anti-doping rule violation may occur if the employee fails to fulfill the specified labor duties. Since article 348.2 of the Labor Code of the Russian Federation imperatively indicates the inclusion of such obligations in an employment contract, then, according to the author, if for any reason such obligations regarding compliance with anti-doping rules and reporting his whereabouts are not included in the employment contract, then in this case should be guided by part 3 of article 57 of the Labor Code of the Russian Federation. That is, not the inclusion of these conditions does not make the employment contract with the athlete invalid, and the specified information should be entered in the annex to the employment contract or

in a separate agreement of the parties, concluded in writing, which will be an integral part of this contract.

The author concludes that disciplinary liability for anti-doping rule violation can be applied to employees (athletes and coaches) in accordance with the labor legislation of Russia. As a disciplinary sanction, the remark, reprimand, dismissal referred to in Art. Art. 348.11 (Clause 2) and 348.11-1 of the Labor Code of the Russian Federation.

The procedure for disciplining both the athlete and the coach is similar to the procedure for other categories of employees, i.e. established by Article 193 of the Labor Code of the Russian Federation.

In paragraph 2.4, the author substantiates the conclusion that the use of doping in sport is a violation of labor protection rules.

The study emphasizes that occupational safety is a priority for the employer and employee. The obligation to ensure safe working conditions is assigned by law to the employer, as the party hiring the employee. In turn, the employee has an obligation to comply with established labor protection rules.

It should be noted that the problem of industrial injuries, safe working conditions, the need to ensure labor protection at enterprises is international in nature. The Convention on the Foundations Promoting Safety and Health at Work No. 187 (ratified by the Russian Federation on October 17, 2010) is devoted to the solution of this issue. The preamble of the document draws attention to the fact that the need for a convention is connected with the global scale of industrial injuries, occupational diseases and deaths at work, and the need for further measures to reduce such negative consequences. It should also be taken into account that the protection of workers in the event of general and occupational diseases and injuries at work is one of the tasks of the International Labor Organization, the charter of which determines that cases of occupational injuries, occupational diseases and deaths at work have a negative impact on productivity and process economic and social development.

The specified act of international law has a direct impact on Russian law, as it is established by Article 15 of the Constitution of the Russian Federation. Laws and other legal acts adopted in the Russian Federation shall not contradict the Constitution of the Russian Federation. Point 4 of Art. 15 of the Constitution establishes that universally recognized principles and norms of international law and international treaties of the Russian Federation are an integral part of its legal system. If other rules are established by an international treaty of the Russian

Federation than those provided by law, then the rules of the international treaty shall apply. Since Russia has ratified this convention, this act is included in the system of Russian legislation.

According to paragraph 3 of Art. 37 of the Constitution of the Russian Federation, everyone has the right to work in conditions that meet the requirements of safety and hygiene, to remuneration for work without any discrimination and not lower than the minimum wage established by federal law, as well as the right to protection against unemployment. The indicated norms of the basic law correspond with the norms of the Labor Code of the Russian Federation, where, in particular, it is emphasized that a separate chapter is devoted to the issue of labor protection. Article 209 of the Labor Code of the Russian Federation defines labor protection as a system for preserving the life and health of workers in the course of labor activity, including legal, socio-economic, organizational and technical, sanitary and hygienic, medical and preventive, rehabilitation and other measures.

A team of scientists led by Yu.P. Orlovsky rightly emphasizes that labor protection is the creation of healthy and safe working conditions by various means. This opinion seems fair, since the employer is obliged to create such working conditions, regardless of the scope of the enterprise. At the same time, measures aimed at labor protection should not be single, unitary in nature, for example, conducting briefings and only, but there should be a totality of such actions, their system, including not only activities carried out by the employer and employee, but by state control bodies, etc. d.

Regardless of the area in which the organization operates, ensuring the safety of equipment, machinery and mechanisms is of paramount importance. In relation to sports, it can be ice machines, skate sharpening machines, biathlon rifles and other equipment. These means of production must comply with safety requirements, and the specialists working for them must have the appropriate skills. That is, the employer must ensure the absence of industrial injuries. In this regard, a fair conclusion is made by Yu.P. Orlovsky, noting that "... if machine tools, equipment, tools, machines (technical component) are unsafe for life and health, then accidents, industrial injuries are possible ...". This statement is also relevant for the sports industry.

In turn, A.Ya. Petrov rightly considers labor protection in the science of labor law as a principle of labor law, in fact subjective law as an institution of labor law. As for labor protection as a principle of labor law, this conclusion follows from the norms of Art. 2 of the Labor Code of the Russian Federation, which notes that the basic principles of legal regulation of labor relations and other relations directly

related to them are recognized (including) ensuring the right of every employee to fair working conditions, including working conditions that meet safety and hygiene requirements, the right to rest, including the restriction of working hours, the provision of daily rest, weekends and non-working holidays, paid annual leave.

A quote is given that labor protection as a subjective right consists in the fact that this is understood as the right of a particular employee to safe working conditions, which is emphasized in Art. Article 21, 22 of the Labor Code of the Russian Federation, where it is determined that the employee has the right to a workplace that meets the state regulatory requirements for labor protection and the conditions provided for in the collective agreement, and the employer, in turn, is obliged to ensure safety and working conditions that comply with state regulatory requirements labor protection.

The author engages in controversy with other scientists covering the issue of labor protection in the field of doping. In particular, with M.O. Buyanova, who pointed out that the content of the labor protection of athletes under Russian labor law includes not only measures aimed at preserving the life and health of athletes in the course of their labor activity, but also the specific non-disciplinary legal responsibility of athletes for violation of labor protection standards (namely - anti-doping rules).

According to the dissertation, it is difficult to agree with this conclusion, because, firstly, not any violation of anti-doping rules can be qualified as a violation of labor protection rules. Obviously, this can only be a violation related to the use of a prohibited drug (Article 2.1. Of the WADA Code) and only of its kind that is harmful to health. The following are the criteria for classifying drugs as prohibited because of their harm to health or other characteristics (contrary to the "spirit of sport", etc.). Violation of the anti-doping rules is a failure by the athlete to inform the doping officers of their whereabouts, but, obviously, this cannot be seen as a violation of labor protection rules, in any form.

The author concludes that a violation by an employee-athlete of anti-doping rules does not automatically entail a violation of labor protection rules by him. However, given that the labor protection standards do not contain any mention of doping drugs as a form of violation of such norms, the dissertation considers it necessary to include norms on doping in a number of articles regulating labor safety. In particular, to include in the duties (established by Article 348.2 of the Labor Code of the Russian Federation) the athlete and the coach the provision on the need to notify their immediate supervisor about cases of using drugs prohibited in sports that they know.

In addition, it is noted that Art. 13 of the Federal Law “On the Special Assessment of Working Conditions” dated December 28, 2013 N 426-Ф3 determines harmful and (or) dangerous factors of the working environment and the labor process that are subject to research (testing) and measurement during a special assessment of working conditions. In particular, chemical factors are designated as hazardous, which means chemicals and mixtures measured in the air of the working area and on the skin of workers, including some substances of a biological nature (antibiotics, vitamins, hormones, enzymes, protein preparations), which obtained by chemical synthesis and (or) to control the content of which use methods of chemical analysis. At the same time, steroids and anabolic substances are not included in the number of chemicals, which are classified as doping by the legislation and adversely affect the human body not only athletes, but also other employees. The author proposes to include in the said law the norm on the inclusion of doping substances - steroids in the number of chemicals.

Section 2.5 examines the anti-doping rule violation as an additional reason for termination of employment with an athlete and trainer.

In particular, the dissertation notes that article 348.11 of the Labor Code of the Russian Federation applies to athletes, and article 348.11-1 of the Labor Code of the Russian Federation applies to coaches. These norms contain, as an additional ground for termination of the employment contract with the athlete, a violation by the athlete, including a one-time violation, of the Russian anti-doping rules and (or) anti-doping rules approved by international anti-doping organizations, recognized as a violation by decision of the relevant anti-doping organization.

The author agrees with O.A. Shevchenko, who in this connection indicated that, “despite the variety of functions carried out, the activities of a professional athlete can nevertheless be represented as work in a certain position. Thus, the athlete performs a specific labor function, and does not pass on to the employer the materialized result of his work. ”

Further, the author concludes that dismissal may be applied to athletes and coaches as a disciplinary sanction (clause Art. 348.11 of the Labor Code of the Russian Federation and Art. 348.11-1 of the Labor Code of the Russian Federation). It should be noted, despite the fact that there are such norms for athletes and coaches as workers, it should be recognized that there is a gap in the labor legislation regarding the dismissal of other persons who are assigned to the athlete’s personnel for violating the anti-doping rules.

However, in the opinion of the author, that a disciplinary offense in the form of a violation by an athlete and a coach of the rules to combat doping can occur in two forms:

a) in the form of a direct violation of the anti-doping rules (when the employee is found guilty by the anti-doping organization of committing the acts provided for in Articles 2.1 to 2.10 of the WADA Code);

b) in the form of an employee's non-fulfillment of obligations to comply with the rules on doping (when his actions do not fall within the specified types of violations, but may be qualified by the employer as an offense for which a penalty may be applied: remark or reprimand);

The dissertation cites article 2.4 of the World Anti-Doping Code, which recognizes a violation of the anti-doping rules, the athlete not reporting within twelve months three times about his whereabouts for the purpose of doping control. For this misconduct, he may be dismissed on the basis of paragraph 2 of Art. 348.11 of the Labor Code of the Russian Federation in the presence of a decision by the anti-doping organization. However, the employer has the right to bring to disciplinary liability and declare a remark or reprimand to such an employee even after a single non-notification, without waiting for the athlete to remain silent about his location three times, since according to Art. 348.2 of the Labor Code of the Russian Federation, an athlete is obliged to report his location and the Labor Code of the Russian Federation does not contain an indication of the multiplicity of such cases. In a similar situation, the trainer may be deemed by the anti-doping organization to have violated the anti-doping rules for prohibited cooperation (Article 2.10 of the World Anti-Doping Code), which means repeated communication with an unqualified athlete on professional grounds after a written warning from the anti-doping organization. By analogy with the above grounds, the employer has the right to bring the coach to disciplinary liability even after a one-time contact of the coach with a disqualified athlete.

In the situations described, the author sees the preventive focus of disciplinary liability in labor law, since the timely adoption by the employer of measures before sanctions by anti-doping organizations against the employee can prevent the employee from committing a more serious misconduct that threatens to be dismissed. The employer, not wanting to lose the employee due to his disqualification for doping, applies softer penalties to him, thereby drawing his attention to the prevention of a more serious violation of labor discipline.

In chapter 3, the author explores the issue of protecting the labor rights of athletes and trainers in disputes over anti-doping rule violations.

So in paragraph 3.1, considering ways to protect the labor rights of workers, the author notes that by virtue of Art. 45 of the Constitution of the Russian Federation, citizens of Russia are guaranteed state protection of human rights and freedoms, which include the right to work. In turn, Article 352 of the Labor Code of the Russian Federation provides for ways to protect labor rights and freedoms. Since, according to Article 348.1 of the Labor Code of the Russian Federation, athletes and coaches can be employees in accordance with the current labor legislation, they therefore have the right to protect their labor rights and freedoms in the ways established by this article.

Also, referring to the conclusions of E.S. Gerasimova, the author points out that since article 352 of the Labor Code of the Russian Federation contains a list of the main ways of protection, it seems that there are other (non-basic) ways of protecting labor rights. In particular, the author notes that in this regard, one should agree with E.S. Gerasimova, indicating that “the list of methods for protecting labor rights and freedoms specified in Article 352 of the Labor Code of the Russian Federation is not exhaustive. Other methods can be attributed to them, for example, protection of labor rights using the relatively new for Russia institutions of the Commissioner for Human Rights in the Russian Federation, human rights commissioners in the constituent entities of the Russian Federation, the Public Chamber of the Russian Federation; ... Settlement of individual labor disputes in the CCC; ... Using the mediation procedure ” .

The dissertation emphasizes that to date in FZ-329 “On Physical Culture and Sport” changes have been made that contain Chapter 5.1 “Consideration of disputes in professional sports and sports of the highest achievements”. According to Art. 36.1 of this act to resolve sports disputes (disputes involving athletes and coaches) in Russia, an Autonomous Arbitration Institution is created, the competence of which is referred to, for example, disputes regarding anti-doping rule violations (Clause 2 of Article 36.3) and individual labor disputes of athletes and trainers in professional sports and sports of the highest achievements (clause 11 of article 36.3). The attribution to the competence of the specified arbitration body of the resolution of individual labor disputes seems problematic and contrary to the current legislation, both labor and civil procedure. In accordance with Art. 391 of the Labor Code of the Russian Federation, individual labor disputes regarding reinstatement at work are considered directly in courts, regardless of the grounds for terminating the employment contract. According to Articles 24, 29 of

the Civil Procedure Code, it follows that cases arising from labor relations are considered by the district courts of the Russian Federation. This norm is specified by the Resolution of the Plenum of the Armed Forces of the Russian Federation No. 2 dated March 17, 2004 (as amended), where clause 1 establishes that by virtue of clause 1 of part 1 of article 22 of the Code of Civil Procedure of the Russian Federation and articles 382, 391 of the Labor Code of the Russian Federation, cases of disputes arising from labor relations, subordinate to the courts of general jurisdiction. By virtue of Article 5 of the Labor Code of the Russian Federation, labor law standards contained in other federal laws must comply with this Code. In the event of a conflict between this Code and another federal law containing labor law, this Code shall apply. If a newly adopted federal law containing labor law norms is contrary to this Code, then this federal law shall apply subject to the introduction of appropriate amendments to this Code. As regards the regulation of labor relations, the Labor Code will be a special norm in relation to the Federal Law “On Physical Culture and Sport” and, therefore, the norms of the law on the powers of the arbitration body to consider labor disputes involving athletes and coaches cannot be used as contradicting The Labor Code of the Russian Federation.

In this regard, the author concludes that the main body for the consideration of individual labor disputes in the field of doping is the court. In accordance with Art. 391 of the Labor Code of the Russian Federation, individual labor disputes regarding reinstatement at work are considered directly in courts, regardless of the grounds for terminating the employment contract. Therefore, in the case of dismissal of an athlete in view of the termination of an employment contract with him in accordance with clause 2 of Article 348.11 and a coach in accordance with Article 348.11-1 of the Labor Code of the Russian Federation, they can be restored to work only by a court of general jurisdiction, since it follows from the meaning of Articles 24, 29 of the Civil Procedure Code that cases arising from labor relations are considered by district courts of the Russian Federation.

The author notes that all methods of protection established by Article 352 of the Labor Code of the Russian Federation, with the exception of protecting the rights by courts of general jurisdiction, seem ineffective, since neither the issue of liability for anti-doping violation can be resolved either by self-defense of rights or by contacting the CCC, the trade union or the labor inspectorate rules athlete and coach. This conclusion follows from the fact that only anti-doping organizations that have passed the appropriate WADA accreditation are entitled to apply this sports responsibility. In Russia, such an organization, as already noted, is the Association Russian Anti-Doping Agency (RUSADA).

The author concludes that in fact, an athlete, a trainer who was punished for violating the anti-doping rules by the decision of the anti-doping organization and subsequently dismissed for these violations are not able to challenge the very essence of the decision on the punishment for doping when filing a claim for reinstatement. That is, these employees cannot refer in a court of general jurisdiction to the groundlessness of the decision of the anti-doping organization to disqualify even on the basis of the standards of evidence established by the World Anti-Doping Code.

The author notes that the peculiarity of appealing against the decision of the employer to dismiss the athlete and trainer for violating the anti-doping rules is that it is impossible to appeal the decision of the anti-doping organization about the violation of the anti-doping rules in a court of general jurisdiction that caused the dismissal. That is, currently it is possible to appeal only the dismissal procedure. At the same time, the practical problem is the long term (more than a month) of the review of the decision of the anti-doping organization to punish an employee in the International Sports Court in Switzerland, which in itself excludes the possibility of presenting a decision on the illegality of the punishment for doping in a court considering the case of reinstating an athlete and a coach dismissed under Art. Art. 348.11, 348.11-1 of the Labor Code of the Russian Federation, respectively.

Further, the author makes a conclusion based on the results of the study, which notes that:

1. For the first time, the term “doping” was used to refer to the stimulants that were used by swimmers in 1865 at swimming competitions in Amsterdam. International sports law.

The first drugs that enhance the physical and mental capabilities of athletes and animals were developed, including for therapeutic purposes, and only later they began to be used to improve athletic performance.

To date, there are several definitions of doping, but none of them are comprehensive. We propose to define doping as a natural or synthetic substance or method detected by a specialized agency and prohibited by the World Anti-Doping Organization for use in sports under threat of punishment, used by an athlete or used in relation to an animal with the aim of influencing a sports result, as well as any act (action, inaction) referred to by the World Anti-Doping Code as a violation of the anti-doping rules. It should also be noted that the anti-doping legislation in force in the world and Russia actually combines the term “doping” and “anti-doping rule violation”.

As for the very concept of “anti-doping rules”, which is used in national legislation, it must be considered from two sides: firstly, as a collective concept that combines all regulatory acts, both international and national, that regulate the fight against doping in sports, and, secondly, as directly the All-Russian anti-doping rules approved by order of the Ministry of Sports of Russia dated 06/18/2015 (as amended on 08/08/2015).

Despite the existence of these anti-doping rules in Russia, the World Anti-Doping Code, which was adopted jointly with the International Convention against Doping in Sport (2005), still has priority in relations related to doping, and the national rules completely duplicate it. Resolution No. 52 of the Plenum of the Supreme Court of Russia dated November 24, 2015 in paragraph 24 confirms this position, indicating that the anti-doping rules are contained, in particular, in the International Convention against Doping in Sport, adopted by the General Conference of UNESCO at the 33rd session of Paris on October 19, 2005 and ratified by the Federal Law of December 27, 2006 N 240-ФЗ "On ratification International Convention against Doping in Sport "(hereinafter - the International Convention against Doping in Sport), in the World Anti-Doping Code adopted by the World Anti-Doping Agency (2015, author's note) in Copenhagen and included in Appendix 1 to the said Convention as well as in the All-Russian Anti-Doping Rules approved by Order of the Ministry of Sports of the Russian Federation dated June 18, 2015 N 638, and in the Procedure for Doping Control approved by the order of the Ministry of Sports, Tourism and Youth Policy of the Russian Federation deletions of May 13, 2009 N 293, the All-Russian Anti-Doping Rules - hereinafter OAP- (approved by order of the Ministry of Sports of the Russian Federation No. 638 of 06/18/2015).

2. Legislation governing the fight against doping in sport can be divided into two groups: international and national. International acts should include acts adopted at the international level and ratified by Russia. These are the Olympic Charter, ETS Convention against the Use of Doping No. 135, the International Convention against Doping in Sports, the World Anti-Doping Code, the Medical Code of the International Olympic Committee, International Standards, the Code of Practice of the International Paralympic Committee, and the Rules of the Competitions of International Federations in Sports. The indicated acts, by virtue of Article 15 of the Constitution of Russia, are included in the system of Russian legislation and have priority over national acts, which include the Constitution of Russia, Federal Law of December 27, 2006 No. 240-FZ "On Ratification of the International Convention against Doping in Sport" , FZ-329 “On Physical Culture and Sport in the Russian Federation”, the Labor Code of the Russian Federation, the Code of

Administrative Offenses, the Criminal Code of the Russian Federation, as well as by-laws - Decrees of the President, Decisions of the Ruler Russia Twa, the order of the Ministry of Sports, All-Russian anti-doping rules. A separate group is the regulations of sports leagues and federations.

3. Responsibility for the violation of anti-doping rules occurs, as in the case of other types of legal liability for the subject to perform certain actions (inaction), which are referred to the offense by the relevant regulatory acts. That is, the basis for liability for violation of the anti-doping rules is the commission by a person of a doping violation, to which the anti-doping legislation includes the following:

- 1) Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample;
- 2) Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method;
- 3) Evading, Refusing or Failing to Submit to Sample Collection;
- 4) Whereabouts Failures;
- 5) Tampering or Attempted Tampering with any part of Doping Control;
- 6) Possession of a Prohibited Substance or a Prohibited Method;
- 7) Trafficking or Attempted Trafficking in any Prohibited Substance or Prohibited Method;
- 8) Administration or Attempted Administration to any Athlete In-Competition of any Prohibited Substance or Prohibited Method, or Administration or Attempted Administration to any Athlete Out-of-Competition of any Prohibited Substance or any Prohibited Method that is prohibited Out-of-Competition;
- 9) Complicity
- 10) Prohibited cooperation;

It seems possible to determine the composition of the doping violation, which includes four elements: the object, the objective side, the subjective side and the subject.

All compositions of anti-doping rule violations are indicated in the World Anti-Doping Code and duplicated in the All-Russian Anti-Doping Rules. This list of ten compositions of doping violations for which liability may occur in accordance with anti-doping rules is exhaustive.

At the same time, public relations in the field of the fight against doping, as well as in the field of protecting the health of citizens, act as an object of assault when committing doping violations. The objective side of this type of offense is an external manifestation of an act described in anti-doping rules. The subjective side is characterized by guilt, and the subject of the anti-doping rule violation is the athlete, trainer and other persons (athlete personnel) specified in the anti-doping rules.

4. To date, in accordance with the current legislation in Russia in the field of the fight against doping, the following types of liability may apply:

a) criminal liability (Article 230.1 of the Criminal Code of the Russian Federation - Inclusion of an athlete to use substances and (or) methods prohibited for use in sports), was introduced by the Federal Law of 22.11.2016 N 392-ФЗ, art. 230.2 Use in relation to the athlete of substances and (or) methods prohibited for use in sports;

b) administrative responsibility (Article 6.18 of the Code of Administrative Offenses of the Russian Federation - Violation of the requirements established by the legislation on physical education and sports to prevent and combat doping in sports

c) sports responsibility (in accordance with anti-doping rules);

d) civil liability (in the form of damages in accordance with Article 15 of the Civil Code of the Russian Federation, penalties, forfeits);

e) labor liability (disciplinary liability of athletes and coaches who are employees and liability); The conditions for bringing athletes and coaches to legal liability are the same as in the cases with other employees, except that in the case of dismissal as a disciplinary sanction on the basis of Art. 348.11 and 348.11-1 of the Labor Code of the Russian Federation, the reason for such dismissal should be the presence of an anti-doping organization report.

5. Amendment of the criminal law regarding the enforcement of the rules providing for liability for inducing an athlete to use doping in Russia has its drawbacks, which may become an obstacle to the practical application of this kind of articles. So, according to the author, it is necessary to exclude from the articles of the Criminal Code of the Russian Federation 230.1 and 230.2 an indication of a special subject - a trainer, a specialist in sports medicine, another specialist in the field of physical education and sports, since, as practice shows, in fact, an athlete can be doped and other persons.

Thus, each type of legal liability can be applied to athletes and coaches, which, according to the author, should keyly influence the use of doping in Russia and strengthen the fight against it.

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5. Article 348.2 of the Labor Code of the Russian Federation provides that in addition to the conditions established by Article 57 of the Labor Code of the Russian Federation, the following conditions (including) on:

- obligations of the athlete to comply with the all-Russian anti-doping rules and anti-doping rules approved by international anti-doping organizations, to undergo doping control;

- the obligations of the athlete to provide information about his whereabouts in accordance with the all-Russian anti-doping rules in order to conduct doping control;

That is, disciplinary action against an athlete for anti-doping rule violation may occur if this employee fails to fulfill the specified labor duties. Since article 348.2 of the Labor Code of the Russian Federation imperatively indicates the inclusion of such obligations in an employment contract, it seems that if for any reason such obligations regarding compliance with anti-doping rules and the communication of his whereabouts are not included in the employment contract, then in this case should be guided by part 3 of article 57 of the Labor Code of the Russian Federation. That is, not the inclusion of these conditions does not make the employment contract with the athlete invalid, and the specified information should be entered in the annex to the employment contract or in a separate agreement of the parties, concluded in writing, which will be an integral part of this contract.

As for the trainer, Article 348.2 of the Labor Code of the Russian Federation establishes that, in addition to the conditions established by Article 57 of the Labor Code of the Russian Federation, a condition on the obligation of the coach to take measures to prevent an athlete (s) from violating the Russian anti-doping rules and anti-doping is mandatory rules approved by international anti-doping organizations, as well as personally comply with them.

The labor legislation of Russia does not contain separate rules governing any special procedure for imposing disciplinary sanctions on athletes and coaches, and, therefore, the general procedure for imposing disciplinary sanctions provided for in art. 193 of the Labor Code of the Russian Federation.

6. For violation of anti-doping rules by employees (athletes, coaches), disciplinary action may be possible with disciplinary action against the perpetrators in accordance with the norms of the Labor Code. Moreover, this type of legal liability is characterized by the existence of a special mandatory procedure, the violation of which entails the illegality of the application of disciplinary liability. For violation of anti-doping rules, both the athlete and the coach may be subjected to any of the penalties: remark, reprimand, dismissal.

At the same time, a violation of anti-doping rules is a specific disciplinary offense for which, along with disciplinary liability, sports responsibility can also be applied, moreover, it is used not by the employer, but by a specialized entity - an anti-doping organization, a sports federation (league) that is not an employer for a

violator of the rules, but her decision, for example, on long-term disqualification, directly affects the ability of the employee to fully fulfill his labor functions.

7. The disciplinary liability of an athlete as an employee for anti-doping rule violation may be expressed in two forms. First, an athlete (trainer) may be charged by the employer as a disciplinary offense for failure to fulfill his labor obligation to comply with the Russian anti-doping rules and (or) anti-doping rules approved by international anti-doping organizations. For which one of the disciplinary sanctions specified in Article 192 of the Labor Code of the Russian Federation can be applied. Secondly, an athlete's violation, including a one-time violation, of the all-Russian anti-doping rules and / or anti-doping rules approved by international anti-doping organizations, recognized as a violation by decision of the relevant anti-doping organization. The specified violation will be an independent basis for the dismissal of an athlete or coach on the basis of paragraph 2 of Art. 348.11 of the Labor Code of the Russian Federation or Art. 348.11-1 of the Labor Code of the Russian Federation, respectively.

As can be seen from the description of these two forms, if in the first case the right to determine the violation event belongs directly to the employer, then in the second case, non-compliance with the doping rules is a disciplinary offense only when it is recognized as a violation by the relevant anti-doping organization.

From the meaning of the above norms, it follows that the law does not connect the possibility of termination of labor relations at the initiative of the employer in view of violation by the employee of the anti-doping rules neither from the gravity of the misconduct, nor from the type of punishment for violation of the anti-doping rules, that is, dismissal may follow as a misconduct that entailed acceptance by an anti-doping organization the decision to apply a warning to it as a punishment, or for a violation that entails a disqualification for a period of, for example, four years.

8. The Labor Code does not provide for cases with the participation of athletes (coaches) of any basis that would increase, under certain circumstances, the time for imposing disciplinary sanctions when investigating cases of violation of anti-doping rules by athletes, such as, for example, in cases of conducting an audit, checking the financial and economic activities or audits, as well as in the case of criminal proceedings, as defined in Article 193 of the Labor Code of the Russian Federation.

It seems that it would be advisable to include in this article a norm establishing an increase of up to two years for disciplinary action against athletes during an anti-doping organization investigation into a possible anti-doping rule violation, as provided for in criminal proceedings.

A similar situation is observed in relations with the coach, despite the fact that he does not pass a test, but from the meaning of Art. 2.5 (“Falsification or attempted falsification in any component of doping control”), 2.6 (“Possession of a prohibited substance ...”), Article 2.7 (“Distribution of a prohibited substance”), Art. 2.9 (“Competing”), Art. 2.10 (“Forbidden cooperation”) the subject of liability for them may be the coach.

There is a gap in the labor legislation that violates the right of the employer, on the one hand, limiting it to the terms of disciplinary sanctions on athletes-workers, samples of which were checked by anti-doping laboratories and gave a positive result for doping, but, on the other hand, do not provide the employer with the right be notified of the results of such an analysis.

9. Labor legislation does not contain any specifics for protecting labor rights and freedoms for this category of workers. However, if we talk about additional methods of protection, it must be emphasized that part 3 of article 348.1 of the Labor Code of the Russian Federation prescribes that “the specifics of the regulation of the work of athletes are established by labor legislation and other regulatory legal acts containing labor law,” ... as well as local regulatory acts adopted by employers ... taking into account the norms approved by the sports all-Russian federations, and the opinion of the elected body of the primary trade union organization. " From the above norm, we can conclude that acts of the all-Russian sports federations can establish additional methods for the protection of labor rights and freedoms for athletes and coaches. An example is the Disciplinary Committees of sports leagues and federations.

10. The right of a Russian athlete (trainer) to apply to the court with a demand for reinstatement upon dismissal for the use of doping is essentially truncated. That is, in accordance with the current labor and civil procedure legislation discussed in the previous chapter, an employee (athlete, trainer) can appeal in a court of general jurisdiction only the legality of the dismissal procedure, i.e., the procedure for imposing a disciplinary sanction in the form of dismissal for a doping violation and he does not have the right to appeal the essence of such dismissal and the legality of the decision to punish the use of doping, since this issue is outside the competence of the federal court.

For the effective protection of the rights of an athlete or trainer dismissed for anti-doping rule violation, it seems necessary to supplement Art. 215 Code of Civil Procedure of the Russian Federation as follows:

The court must suspend the proceedings in the event of:

“... the impossibility of considering this case before resolving another case considered in civil, administrative, criminal proceedings, as well as an administrative offense or anti-doping rule violation, considered on appeal in accordance with the norms of anti-doping legislation ”;

11. It follows from the meaning of the existing anti-doping rules that the presumption of guilt applies to any person (athlete and trainer including), and the standard of proof of innocence of these persons is the balance of probabilities.

Article 3.1 of the WADA Code indicates that the standard of proof for an anti-doping rule violation is that the anti-doping organization identifies such a violation at an acceptable level for the hearing experts. This standard of proof is more compelling than the “balance of probabilities,” but less conclusive than the presence of “reasonable doubt.” At the same time, the priority is precisely the “balance of probabilities” in proving innocence.

It follows from the foregoing that in the procedure for considering a case of anti-doping rule violation, the subjective perception of the situation by the experts who consider the case is of primary importance. In this situation, the level of general and professional knowledge of experts, i.e. it can be assumed that the same case can be considered in different ways, depending on who is the expert (arbitrator).

In turn, it is enough for the athlete to prove that, due to objective reasons and circumstances, there was a likelihood of contamination of his sample under conditions of working with it in the laboratory.

This approach cannot be called perfect, because, as you can see, the standards of evidence are vague and not clearly defined, which makes it difficult to protect the rights of athletes and doping trainers, and the decisions of anti-doping organizations about the guilt and punishment of athletes and trainers are doubtful objectivity.

Thus, with respect to athletes and coaches, in most cases, anti-doping legislation provides for the presumption of guilt. Moreover, in the event of their dismissal, the protection of their rights is complicated by the fact that the decision of the anti-doping organization to punish a doping violation takes effect from the moment of

its adoption and can serve as the basis for dismissal even when it is appealed on appeal to the International Sports Court in Lausanne.

At the same time, the next problem is that when a lawsuit is filed with a court of general jurisdiction to reinstate work, both the athlete and the coach are virtually unable to defend their right to legality of dismissal in full, since the deadlines for considering an appeal against a decision by an anti-doping organization, which served as the reason for the dismissal, much longer than the period of going to court to protect their rights. The established art. 392 of the Labor Code of the Russian Federation, a period of one month for going to court with a request for reinstatement in work seems to be insufficient. Since the time limits for reviewing appeals in the CAS court are calculated from three months and, in any case, when applying to the court with a claim for reinstatement, neither the athlete nor the coach will be able to provide evidence of the cancellation of the decision to apply sanctions against them by the anti-doping organization.

Also, the author proposes to the labor legislation (Part 4, Article 193 of the Labor Code of the Russian Federation) to amend the limitation period for disciplinary sanctions against an athlete and a trainer up to two years from the date of the misconduct. Otherwise, according to the dissertation, the right of the employer to hold the employee accountable for violation of labor discipline is leveled. Since the deadlines for imposing disciplinary sanctions are not later than six months from the date of the offense, established by Art. 193 of the Labor Code of the Russian Federation are insufficient due to the anti-doping organization's lack of obligation to report an anti-doping rule violation by the athlete or trainer directly to the employer, which may lead to the omission of the indicated six-month deadline for disciplinary action, since doping proceedings last more than six months.

Summarizing the whole dissertation research, the author notes that the labor-law aspect of the violation of anti-doping rules by athletes and trainers needs further study due to periodic changes in anti-doping legislation in the Russian Federation and abroad.

Since 2021, amendments to the anti-doping rules have been introduced, which will include pressure on whistleblowers as a violation and an international standard on anti-doping education is introduced. That is, research in this direction can be continued in parallel with the consideration of the problem of doping in other areas of law: criminal, civil, administrative. Research in this direction can be continued in parallel with the consideration of the problem of doping in other branches of law: criminal, civil, administrative. In addition, it is necessary to take into account the emerging trends in increasing the responsibility of athletes and

coaches for violating anti-doping rules, which may entail an infringement on the labor rights of athletes and coaches as workers.

Conclusions based on the results of the study confirm the reliability of the results that have been tested in scientific publications, speeches at scientific conferences, open lessons in the Ministry of Sports of Russia, speaking as an expert in television and radio broadcasts, as well as participating in courts of general jurisdiction, in CAS International Sports Court (Lausanne) as a representative of athletes and coaches, as well as in the Anti-Doping Committee of the Russian Anti-Doping Agency (RUSADA).

According to the author, the results of the work can be used to improve the labor legislation of Russia, as well as the legislation on the fight against doping in sports. In addition, the conclusions drawn from the results of the study and practical examples cited in the work can be used both by practicing lawyers in protecting the rights of athletes and coaches, and in teaching activities in the specialty "Jurisprudence".

List of the author's publications reflecting the main scientific results of the dissertation research:

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