

Criminal liability for offenses is related to corruption in sports

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ABSTRACT

There is a piece of growing evidence that the sports industry has reached the level of optimum financial stability, but on the other side it has also created an environment for the emergence of specific corruption in the field of sports in the form of match-fixing and illegal betting. The corruption has crossed the roads to public administration and has spread into new areas of society. Corruption in sports involves any illegal, immoral, or unethical activity that attempts to deliberately distort the integrity of any sport thereby affecting or manipulating the outcome of the sports events. As a result, "sports corruption" today is large, global, and organized. The present study was conducted to highlight the rapidly expanding corruption issues in various spheres of public relations. This research has notified the lack of evidence in the field of sports at national and international levels regarding the issues of improving legal and organizational measures to prevent corruption and maintain fairness in sports. The study of scientific positions of experts on this issue in the comparative legal aspect will expand the theoretical provisions of the sciences of criminal law, to develop recommendations for improving existing legislation and law enforcement practice.

KEYWORDS

Sport; Corruption; Criminal liability; International cooperation.

1. INTRODUCTION

The sports industry continues to be one of the largest and fastest-growing industries across the world. In addition to the rapid growth of the sports industry, the nature of sports business has also changed. The popularity of sports competitions among the population has created significant financial infusions due to which the sports industry has become a multi-billion industry across the world. It has increased the need for sound administrative and business practices, as well as for individuals specifically educated for the unique nature of the sports industry. At one end where the sports industry has reached to the level of optimum financial stability, on the other side it has also created an environment for the emergence of specific corruption in the field of sports.

In Ukraine, corruption has crossed the roads to public administration and has spread into new areas of society. Corruption in sports involves any illegal, immoral, or unethical activity that attempts to deliberately distort the integrity of any sport thereby affecting or manipulating the outcome of the sports events. Many times, corruption scandals in football, boxing, and other sports have been highlighted in media.

One of the most common ways of committing corruption in the field of sports is bribery of athletes, sports agents, employees of sports clubs and others. At the same time, the fight against bribery in the field of sports is reflected both in the world criminal legislation in general and in the Criminal Code of Ukraine (hereinafter - the Criminal Code of Ukraine) in particular. Thus, in the Law of Ukraine of November 3, 2015, № 743-VIII it has been stated that "On the prevention of the impact of corruption offenses on the results of official sports competitions" of the Criminal Code of Ukraine amended Art. 369-3 "Illegal influence on the results of official sports competitions".

One of them is manipulating the results of the sports competitions by investing a huge amount of money from the lowest to the highest levels. It was found that many criminal gangs organize contract matches that own illegal sweepstakes: their intermediaries bribe athletes, as well as coaches, sports managers, or judges, in order to influence the results of the competition in one way or another.

2. METHODS

The methodology of the chosen problem is a systematic approach, as well as dialectical, formal-logical and structural-functional methods and other general scientific research methods, as well as special legal methods: comparative law and formal law. The methodological basis of the study is theory cognition, its general method of materialist dialectics. The following were used as general scientific research methods: formal-logical and systematic methods.

3. RESULTS AND DISCUSSION

Corruption in sports involves any illegal, immoral, or unethical activity that attempts to deliberately distort the outcome of the sports either for the personal gain of an individual or of any group. Corruption in modern sports poses a real and serious threat to the dynamic development of sports in Ukraine, as well as the image of the state. Corruption in modern sports has become a major hindrance to sustainable development, with a disproportionate impact on the integrity of the sports in Ukraine. The major concern is the significant rise in the extent and level of corruption in the industry of sports and the multitude of consequences in order to obtain illegal benefits to some individuals or organizations.

In particular, it is an illegal influence on the course of a sports competition and/or a sports competition with a predetermined result contractual competition. Over the past decade, the sports industry has experienced multiple forms of corruption in the form of bribery of athletes, sports judges, coaches, other persons engaged in sports; illegal sports betting, etc. The phenomenon of corruption negatively affects all domains of life. It destroys legal and ethical relations between people which negatively affects the development of social, financial, and economic processes and practically becomes the norm. There is a strong need for international sports organizations, the highest European and world political institutions to work in the direction of developing the sports industry by protecting it from the evil hands of corruption and to establish effective sports governance, especially in Ukraine.

The correct definition of the direct object of the crime is essential in its qualification. It should be clearly borne in the mind that criminal encroachments always harm not only one but several groups of social relations. This social danger is not limited to the threat of the ancestral object, because in social life one group of relationships always interacts with many others groups. Hence, when establishing the direct object of a crime, it is necessary to determine which public relations are harmed in the first place by criminal encroachment. Disposition of Part 1 of Art. 369-3 of the Criminal Code of Ukraine establishes liability for influencing the results of official sports competitions by bribery, coercion or incitement or conspiracy to the results of official sports competitions in order to obtain an improper benefit for themselves or a third party or obtain illegal benefits for themselves or a third party person. Since the impact in all other ways provided for in Part 1 of Art. 369-3 of the Criminal Code, may be committed by a common subject of crime, respectively, and bribery in an active form should also be considered as it may be committed by any person.

On the other hand, the subject of passive bribery should be recognized only as a special entity; an athlete, a person of support staff who participates in sports competitions, officials in the field of sports. However, if any person is recognized as a subject of passive bribery, the committed bribe cannot be characterized as one that is in connection with the course or results of an official sports competition. When any person obtains an illegal benefit for oneself or for a third party as a result of influencing the results of official sports competitions is responsible for the acquisition of illegal benefit. When the monetary benefit is transferred to another person as a reward for the recipient's influence on the results of official sports competitions; obtained as a result of such influence (in particular, as gain from sports betting), A crime in this form is considered to be committed exclusively with their intent.

The subject of bribery under the Criminal Code of Ukraine, as a rule, is an illegal gain. At present, there are multiple definitions of illicit gain in the Criminal Code of Ukraine, included in the note to Art. 160 and Art. 354 of the Criminal code of Ukraine. At the disposal of Art. 369-3 of the Criminal Code of Ukraine, the legislator does not specify the content of the concepts of "bribery" and "illegal gain". The list of items that can be used for bribery has been determined in paragraph 2 of Part 3 of Art. 8 of the Law of Ukraine "On Prevention of Influence on the results of official sports competitions of corruption offenses". It includes money, securities, property, property services, benefits, advantages. The list included in the 2 of Part 3 of Art. 8 of the Law of Ukraine is incomplete and too specific. Grodetsky (2016) stated that Art. 369-3 of the Criminal Code of Ukraine under illegal benefit should clearly mention the "funds or other property, benefits, privileges, services or intangible assets that offer, promise, provide or receive without legal grounds". The main direct object of illegal influence on the results of official sports competitions is the established procedure for carrying out official activities of officials in the field of sports. Additional direct obligatory objects of illegal influence on the results of official sports competitions are and the regulations (regulations) of this competition.

The annual plan of physical culture and sports activities of Ukraine is approved by authorities of the Ministry of Youth and Sports of Ukraine along with the allotment of duties by athletes, persons of auxiliary sports personnel who take part in sports competitions (Iasechko et al, 2020).

The subject of illegal influence on the primary outcome of sports events is an illegal benefit that may be in the form of cash or other property benefits, privileges, services intangible assets, any other benefits of intangible or non-monetary nature, which offer, promise, provide or receive without legal grounds. The law classifies at least one of the following acts as a corruption offense that affects the results of official sports competitions:

Bribery of athletes, the support staff participating in the sports competitions, sports officials, etc. Coercion or incitement to such acts or conspiring with them regarding the outcome of an official sports competition (contractual match) or regarding the provision of any exclusive information regarding the sports event.

Receipt by athletes, the support staff participating in the sports competitions, sports officials, etc. in the field of sports of money, securities, other property, use of property services, obtaining other benefits and advantages as a result of acts (bribery, conspiracy), or unauthorized use of exclusive sports information relevant to the sports competition, placing bets on sports according to the results of the official sports competition. Over the years, corruption has greatly occupied the field of sports in various games including football, hockey, and basketball due to their high popularity across the world.

The most common manifestations of corruption in sports are; Bribery of senior or head coaches in order to get included in the core team despite being non-talented and strongest. Bribery of team leaders is common in almost all sports. There have been multiple cases where they have systematically received illegal rewards from various groups, diasporas, communities for promoting the "right" people, while truly gifted athletes have gone unnoticed.

The other common manifestation of corruption in sports is the unfair distribution of ranking competitions among athletes for their selection into the national teams, guided by a personal interest in promoting certain athletes (not always the most worthy and prepared) to national or international competitions. Sometimes the training coaches also conspire with the authorities and officials of sports schools or organizations, sports committees, federations. This leads to unfair distribution of players in ranking tournaments and unfortunately, a weak athlete gains a high rating, which gives him the right to participate in international competitions like World Championships, Olympic Games. Substantial funds are also allocated to the selected candidates for their preparation for the international championships, despite looking at their actual abilities.

The other common manifestation of corruption in sports is the bribery of judges and unfair judgments made by the judges during the competition. In some sports, the outcome of the competition is determined by the subjective assessment of the judges of the sports performed by the athlete. Hence many times, the clash is seen between the judges and the people interested in the victory of one of the athletes. In such incidences, all disputes are treated in the favor of this participant. Contractual matches describe some variants of mutually beneficial conspiracy between athletes (tournament, material interest in victory, bookmakers). In addition, there are some cases of combining tournament and material interests of participants.

In the framework of the fight against corruption in the field of sports across the world, the roles and responsibilities of the International Criminal Police Organization (Interpol) stand crucial. In its reports, specific information on the work done in this area has been given. An exponential rise has been observed in the number of match fixing cases in the global sports community along with the incidents and allegations of corruption (Kalinina, 2021).

The match-fixing is not a one-man game. A large number of organized criminal groups are usually involved in corruption in sports on a larger scale. These crimes cross international borders and generate huge profits, which are then directed to other illegal actions. It has been widely estimated that the money flowing through illegal bookmakers is in hundreds of millions of euros in a year. Under fast network connectivity and the internet, gambling has become more accessible to bet on matches anywhere in the world (Iasechko & Zaitsev, 2021).

Hence there is a strong need to develop a coordinated strategy to prevent match-fixing by significant involvement of stakeholders at the national, regional, and international levels of cooperation. The established program of Interpol "Fair Sports" is global in the field of preparation, education, and initiatives for the prevention of match-fixing, as well as irregular and illegal betting (Iasechko et al, 2020). The key goals of Interpol include education and training of key people in sports, how to recognize, resist and report on attempts to bribe or falsify the results of matches and improve the training of law enforcement agencies to investigate corruption or match-fixing. This program includes a number of tools to protect sports from corruption, including national and regional seminars and e-learning modules. This program will assist sports organizations, government agencies, law enforcement, and other relevant stakeholders in developing prevention strategies, unit integrity, and training courses for specific audiences (Haberfeld & Sheehan, 2013).

The activity is based on five main principles, which include Partnership, Information, Coordination, Warnings, and Proactivity. The first principle is a partnership. Based on the principle of partnership, strategies should include partnerships between national sports organizations and bookmakers, as well as public authorities, including law enforcement and regulatory authorities. According to the second principle of the information, all the partners need specific advice regarding their specific roles and responsibilities for protecting and maintaining the integrity of the sport. The principle of coordination ensures a comprehensive and unified approach to both the prevention of match-fixing and the response to allegations of match-fixing. The principle of warning includes awareness-raising, training, and education, as well as deterrents such as regulations, security sanctions for unprofessional conduct. The last principle of proactivity is based on the proactive

measures for long-term preservation of the integrity of the sports by anticipating threats and creating the necessary preventive measures for the same.

Interpol also uses additional tools. For example, Interpol at the Large Support Group Event (IMESTs) can expand its capacity to assist member countries in preparing, coordinating, and implementing security measures at major events, including sporting events such as the Olympic Games or the World Cup. Council of Europe Convention on the Manipulation of Sporting Events 2014 (hereinafter referred to as the Convention)¹ states to investigate and sanction all the cases of contractual matches in order to ensure cross-border cooperation in combating sports manipulation and prevention. The Convention has imposed positive obligations on states to provide specific assistance to both public and private entities in addressing the multifaceted problem of sports manipulation. However, the elaborative assessment of the effectiveness of the mechanism of the Convention will be done after its entry into force and ratification by all signatories².

Prior to the adoption of the Convention, a new law based on gambling was adopted by Switzerland named (FAMG). It entered into the force in the month of January 2019. FAMG provided certain measures to combat corruption, a criminal offense for recording matches in sports. A specific obligation to report any suspicion of competition manipulation within 5-7 days has been established under Article 12 of the Convention which includes the information regarding the exchange of information between competent public authorities, sports organizations, and sports betting operators (Boss, 2019).

Hence, a strong and firm theoretical frame is required for the in-depth study of corruption in sport. There is a strong need to elaborate the content of illegal actions regarding liability for illegal influence not only on the result but also on the course of official sports competitions (manipulation of a sporting event). The adoption of this provision will ensure the effective implementation of the Council of Europe Convention on the Manipulation of Sporting Events. Any changes made in the sports event on an intentional basis and the unpredictable nature of the sporting event shall be considered a violation, regardless of whether such change affects the final outcome of the sporting event and whether such changes have occurred.

¹ Council of Europe Convention on the Manipulation of Sports Competitions. Council of Europe Treaty Series – No. 215. Magglingen/ Macolin, 18.IX.2014.

² Status of the Convention as of February 29, 2020: entered into force on September 1, 2019; out of 42 countries ratified 6 (Italy, Norway, Portugal, Moldova, Ukraine, Switzerland)

4. CONCLUSIONS

In the present study, the researcher has identified a few methods in order to provide a solution to the existing problem by expanding the range of entities covered by the Law of Ukraine "On Prevention of Corruption" of 14.10.2014 №1700-VII, so that it would be possible to bring to justice the corruption of all guilty entities, which are otherwise horse sports; providing a definition of the term "corruption" in the Criminal Code and enshrine this type of corruption as "corruption in sport"; cooperation with Interpol representatives on training and transfer of experience to national investigators and police officers to prevent corruption in sports and create separate investigative units, which will be internships in Interpol, and will specialize in the prevention and investigation of corruption sports, in particular, contractual money laundering, construction of sports facilities,

Based on the findings of this comparative legal study, the researcher concluded that it is necessary to supplement not only the legislation establishing criminal liability for manipulating a sporting event but also to introduce new sports management institutions in the field of sports management - anti-corruption compliance. In turn, the transformation of falsifications in sports into a criminal offense, the legal responsibility of sports organizations for "inability to prevent" crime are promising areas for preventing corruption and maintaining honesty in sports. In conclusion, it should be noted that significant steps have been taken in Ukraine to prevent the impact of corruption offenses on the results of official sports competitions and combat corruption in sports, but certain issues remain unresolved that negatively affect the implementation of measures to combat these offenses.

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