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Sport Crimes in Greece: the Protection of Sport by the Greek Penal Law.

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ABSTRACT

The purpose of this study was to show how the Penal Law protects sports in Greece against non-authentic and authentic sport crimes. A brief description of both categories is provided and the most important authentic sport crimes are discussed, as are the protection of the legal goods of the 'normal organization of the sport games' and the 'authenticity of the result of a game'. It is concluded that in the effort to find the best possible solution for the good of sport, the approach of the Greek legislature is very helpful.

KEYWORDS

Sport, crime, criminal law, Greece, Greek penal law

INTRODUCTION

The legal goods 'normal organization of sport games' and 'authenticity of the result of a game', which have been valued as worth protecting in the rules that standardize the authentic sport crimes, cannot be examined outside the general framework of sport, as it has evolved through the ages. In ancient Greece, sport was recognized as a factor for the harmonic development of the body, as a source of health and as a means of spiritual and moral education, both for the person and the society. It was rapidly evolved into a feature of civilization with an intense social role, a means of reconciliation between people and a main factor for global peace (due to the respectful Olympic ceasefire). In modern times, in the majority of the developed countries sport is considered as a

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principal social good. Recognizing the value of sports, the Greek Constitution declares that 'sport is under the protection and the highest supervision of the State' (Articles 9 & 16).

The principles of morality and deontology have played a major role in the elevation of sport into a social value and they have an immediate connection to it. The respect and the faithful compliance to the rules according to which sport games are held; the original and kind spirit of emulation; the recognition of the value of participation; and the confrontation of opponent athletes only in the sport field in order for the best to be distinguished at a certain time, are elements that form the athletic ideal, the sport spirit and the principles of Olympism. However, the fundamental element of utmost importance of sport during the ages is the principle of 'fair play', the refusal to pursue victory by any means (including the illegal and unethical ones) and the confrontation of opponents on equal terms. 2

However, in modern times, due to the profound commercialization and professionalism, sport has acquired a new dimension. In the recent past, a plethora of incidents have supported the argument that morality in professional sport yields to the huge economic profits resulting from obtaining a victory and/or breaking a record. 3

High level sport teams are based on huge capitals and constitute joint stock companies. The players are professionals and victories have mainly economic meaning for them. A new category of sport professions has evolved, while sponsorship and advertisement play a very important role. Even the Olympic Games did not escape this reality. Although until recently professional athletes were not allowed to participate in the Games, nowadays there is an effort for as many as possible professional athletes to compete. 4

The huge economic interest for sport action has brought about some inevitable consequences. Incidents of 'unsporting' behavior have been on the increase and the effort for victory enormously increased the use of substances of doubtful natural or artificial origin, with the purpose of improving athletes' performance. The profits from victories, or mere participation in some sport events, have led some people to search for methods to secure the victory even before the game starts. Fanaticism between supporters of opposing teams has been increased, enriched with social, political and ethnological elements and, consequently, led to ever harsher acts of violence. The rapid development of many kinds of speculation through sport (including the various forms of betting) has led to efforts to gain profits by falsifications of the results of games. 5

The sport movement tries to disciplinarily punish 6
those who exhibit intensely anti-sport behavior by
laying down strict rules, which may lead to the
expulsion of the offender from the sport family, not
only in order to protect the sport ideal and the
principle of fair play, but also in order to secure the
authenticity of the results of the games that have
a vivid economic interest. If a result of a sport
meeting is falsified due to bribery or doping a great
deal of damage is caused to many parties. The
limited effectiveness of disciplinary punishments, in
combination with the increase of such phenomena
has made the intervention of the penal law
necessary. It could be said that sport becomes a
social good worth protecting by penal law. While it
seems to be well grounded and correct, if sport
can not be protected by penal law, in the
framework of a liberally orientated penal law
system some dangers emerge.

The refusal to see sport as a legal good, due to its 7
abstract ideological content, contributes to the
recognition that in the authentic sport crimes the
offended legal good can be found in some aspects
of sport that can easily be understood. Provided
that sport games are the main demonstrations of
sport activity, it could be considered as the above
offended aspects of sport, the normal organization
of sport events and the authenticity of their
results, which are concrete enough to become the
objects of penal protection in a liberally orientated
penal law system. It could also be concluded that
these are the legal goods protected by the rules
that standardize the authentic sport crimes.

The fact that these rules are more recent than the 8
GPC does not mean that these two fundamental
principles of sport have been recently recognized
as legal goods. It is simply the impressive increase
of the offences against them and the
ineffectiveness of the relevant disciplinary rules the
main factors that have recently made their penal
confrontation necessary. The legislature seems to
desire the protection of the authenticity of the
results and the normal organization of sport
events. This is happening for the protection of the
capitals invested on a team, or on an organization
and the purity of the competition in sport, rather
than for the protection of the athletic ideal and the
principle of 'fair play'.

Because of its significant social and financial 9
interest, sport is considered as one of the most
important human activities. During sport activity, or
in relation with it, some of the participants
(athletes, coaches, administrators, etc.) exhibit
behaviors that are not only against the sport spirit,
but also offend the Greek penal theory 'legal
goods' and thereby constitute a crime under the

Greek penal law. These behaviors are described and standardized as crimes, as well as sport crimes, in the rules of penal law, included either in the Greek Penal Code (GPC), or in specific laws. Penal crimes committed in relation with sports could be classified as: a) non-authentic and b) authentic (Mavromatis, 2006, pp. 27 etc).

NON-AUTHENTIC CRIMES

Non-authentic crimes are those, which are 10
standardised either in the GPC (i.e., assault and bodily harms [Articles 308 – 315], homicide [Articles 299 – 302], insult, defamation and other crimes against honor [Articles 361 – 369], fraud [Article 368], disloyalty [Article 390], forgery and other relevant crimes [Articles 216 – 222]), or in specific penal laws (i.e., violation of drug laws [law 1729 / 1987], non-payment of insurance contributions [law 86 / 1967], violations of tax legislation [law 2523 / 1997], the illegal betting [law 2433 / 1996], etc.).

These crimes can be committed in any time, in any 11
place and by any person, regardless of athletic activity, but their accomplishment during, or in relation with sport activity constitutes a sport crime as well and may be dealt with in a different way. Offended by a non-authentic sport crime, the legal good is always the same regardless of the fact that the violation takes place in relation with sport, or not. For example, in the crime of bodily harm the offended legal good is always the integrity of the human body.

AUTHENTIC SPORT CRIMES

Authentic sport crimes are those which are 12
committed before, or during sport activity, or those which result from it. These crimes are standardised either as special crimes, or as variations of other crimes. When a crime is related to a sport activity the law confronts it in a special way. For instance, the administration of a certain prohibited substance to an athlete constitutes the offence of doping, while the administration of the same substance to a non athlete initially is not an illegal act, unless it leads to bodily harm, or constitutes a crime pursued by the law against drugs.

As the GPC does not comprise any relevant crime, 13
authentic sport crimes are standardised in specific laws. These crimes are: a) violence in relation with sport activities (law 2725 / 1999, Art. 41 – 41Z, as it is in effect after its modifications with the laws 3057/2002, 3262/2003 and 3472/2006), b) doping (law 2725 / 1999, Art. 28A – 1281A, as it is in effect) and c) bribery (acceptance of gifts for the falsification of a game result) (law 2725 / 1999, Art. 132, as it is in effect).

In these categories some other crimes, which do 14

not offend any legal good and the relevant actions, or omissions, could have also been included and treated only as disciplinary offences. These crimes are called 'false crimes' and are the crimes of: a) the disposal of a subsidy for a purpose different from the one it was granted for (law 2725 / 1999, Art. 50, par. 5, as it is in effect), b) the prohibitions for the participation in the administration of professional sports organizations (law 2725 / 1999, Art. 61, par. 7 and Art. 69, par. 13, as it is in effect) and c) the refusal of submitting documents to the Committee of Professional Sport during control (law 2725 / 1999, Art. 77A, par. 2, as it is in effect).

THE MOST SIGNIFICANT AUTHENTIC SPORT CRIMES

The authentic sport crimes are not only anti-sport, 15 but also offend a legal good (not necessarily the same in all authentic sport crimes), the identification of which could be done by approaching the most important authentic sport crimes:

First, the *basic crime of violence in relation to sport 16 activities* (law 2725 / 1999, Art. 41TM?, par. 1) initially seems to constitute a special form of simple bodily harm. However, the specialized form of bodily harm is standardized with the crimes of the law 2725 / 1999, Art. 41TM?, par. 4. Thus, the basic crime of violence in relation with sport activities of the law 2725 / 1999, Art. 41TM?, par. 1, should be considered as an independent crime, in which not only the violent acts that result in bodily harm are standardised, but also acts that are likely to result in bodily harm (i.e., throwing of objects, exhibiting violent behavior, possessing and using of objects like fireworks, etc.).

Through standardization of all acts of violence it 17 seems that the legislature intends to protect the legal goods of life and of the integrity of the body of all people participating in any way, in any sport event (be they athletes, coaches, trainers, referees, administrative staff, spectators, etc.) who are being offended, or being put in jeopardy by these acts.

The counter arguments to the above point of view 18 are the following: a) its acceptance would automatically mean that the legislature has evaluated the life and the bodily integrity of those participating in a game as more important than the life and the bodily integrity of all other people (in a modern liberal penal law system this argument is easily rejected); and b) even if this objection could be overcome, the fact that in the same way this rule punishes also the above acts even when they are taking place far away from sport fields, or before the beginning, or after the end of sport

events could not be satisfied (law 2725 / 1999, Art. 41^{TM?}, par. 2b).

It is concluded that the intention of the legislature 19 is the protection of legal goods of all people, certainly many more than those who participate in a game. It seems that the legislature is interested in maintaining the regular conditions of peaceful coexistence and free movement of legal goods, as far as the performance of sport activity is concerned, and, most importantly, the organization of sport games. Therefore, it could be considered that the main protected legal good is that of the 'order', or, otherwise, the 'normal organization of sport games' (or, of sport activities in general) as a special form of the legal goods of 'common peace' and 'public order' (Manoledakis, 1998, pp. 372 etc). The order in athletic events is put into jeopardy every time an act of violence occurs. Since the legislature considers that the normal organization of sport events presupposes the safe entrance into and exit from sports fields of all those participating, or attending the event, the order in athletic events is also jeopardized any time some of these acts of violence take place just before, or just after the game, inside, or outside the sport field. The legal goods of those who perform, participate, or simply attend sport activities, as well as of those who happen to live, or work close to sport fields should not be endangered.

As far as the protected legal good is concerned, 20 the same conclusion could be reached if the other penal rules of the law 2725 / 1999, Art. 41 - 41Z (e.g., the crime of putting in circulation, or disposing of tickets in defiance of the law, the crime of disobedience, or infringement of measures set by the police authority, etc.) were examined. It is obvious that the legislature's will is to prevent the creation of conditions that could allow, or even favor, violent incidents and to protect the secure organization of sport events as a legal good, standardising as crimes behaviors that jeopardise it.

Second, the *authentic sport crimes of doping* have a 21 lot in common with drug crimes. The administration and use of some substances are punished both as infringement of the relevant legislation concerning drugs, as well as doping. It is obvious that the legislature has taken into account the danger of harm to the health of the athlete. However, the threat of a lighter punishment in connection with drug crimes eliminates the possibility of doping being considered as a variation of a drug crime.

For the same reasons, doping crimes should not be 22 considered as variations of bodily harm. Besides, if such a point of view was adopted, the use of prohibited substances from the athlete himself, even if these substances cause problems to his

health, should remain unpunished, since the self-inflicted wound is always unpunished by Greek law. The legislature's choice to punish the use of prohibited substances from the athlete himself in order to improve his performance leads to the conclusion that his intention is to protect a legal good other than the bodily integrity. This legal good has an obvious relation with sport activity, the main demonstrations of which (the games / contests) are endangered, when not all the participants compete in accordance with the rules of each sport. This danger has to do with the reliability of the games and of their result, which is altered when the participants improve their performance illegally, by using prohibited substances.

It seems that the legislature recognizes the fact 23
that sport games should be held within the frameworks set by the sport legal order and that all athletes should participate equally within this framework. So, the need for honest and authentic sport games is evaluated as a legal good, which could be described as 'the originality, or the authenticity of the result of sport games'. This conclusion is confirmed by the fact that the fundamental element of the basic doping crimes is the administration of substances to an athlete, or the use of substances by him. Therefore, any case of such crime should be excluded if the user of such substances is not an athlete. Furthermore, in doping crimes the standardization does not concern the harm of the legal good, but the endangerment, since no alteration of the game result is required for its accomplishment. The administration of use of such substances constitutes the relevant crime, even if the athlete finally did not take part in the game, because the result of the game has been endangered anyway.

As far as the protected legal good is concerned, 24
the analysis of the new rules of law 2725/1999, Art. 128E, par. 4 & 6, with which the crimes of manufacturing, depositing, trading and possessing prohibited substances and methods, as well as the crime of obstructing the legal doping control are for the first time established, leads to the same conclusion. Since even the abstract endangering of the result due to manufacture, trade, etc., of prohibited substances is standardised as a crime the authenticity of the results of sport games is more effectively protected.

At this point, it should be mentioned that the 25
examined legal good could be defined as the attribute of every athlete to fight with his own strengths, or provided that the use of some substances (e.g. vitamins) is allowed by the sport legal order. Thus, the research for this legal good is focused more on the athlete and less on the

game he is participating in (or, is about to participate in). If this attribute is considered as a legal good, it should be evaluated more as the expression of the legal good of 'order'. The objection against this opinion is that every infringement of the rules, which define the way an athlete can participate, or the equipment he can use, should be standardized as a penal crime.

Third, the legislature deals with the *violations of the same legal good* through the standardization of the crimes of bribery for the falsification of a game. These crimes have a lot in common with the crimes of bribery of public employees and judges, found in the GPC, Art. 235 - 237. Actually, the demand, or acceptance and, correspondingly, the promise or giving of gifts constitute fundamental elements of these crimes, whose difference from the crimes examined is at the person that accepts the gift, or at the purpose this gift is given for. According to the dominant theory, the offended legal good in the crimes of bribery of employees and judges is the 'employee', since his impartial function in the society ceases to exist. On the contrary, in the crimes of bribery – acceptance of gifts for the falsification of a game result the offended legal good has an obvious connection with sport.

According to another theory (Bitzilekis, 2001, pp. 27 155 etc), in the crimes of bribery of employees and judges the protected legal good is the 'impartiality' of the service, a quality socially important, as the expression of the citizens' trust on its function. According to this theory, the criminal demerit lies in the inadmissible transaction between the citizen and the employee, which alters the relation between the citizen and the public administration. Adopting an analogous contemplation, the line of thought could lead to the opinion that in the crimes of bribery - acceptance of gifts for the falsification of a game - result the protected legal good is the 'impartiality' of referees, athletes and administrators. The criminal demerit here lies in the fact that a social activity of eminent interest (such as the sport activity), becomes an object of bribery, thus altering its social destination and its institutional function.

To amplify this point of view, the argument that 28 bribery is a crime of harm (because even if there is not any intention of altering the result, the impartiality of a referee's quality is always damaged every time there is an offer, or a demand for a present) could be brought forward. Although it seems to be essential for the crime of bribery of the GPC, this argument has no importance for the corresponding sport crime, because the latter is a crime of purpose and the intention of the falsification of the result of the game is an essential element of it. Consequently, whenever

this element is absent, there is no offence.

On the other hand, the fact that those who accept 29
the bribery could be any person relating to the
athlete, the referee, or the club contributes to the
refutation of this argument, since it means that
with this crime the 'impartiality' of other people
(other than the referees, the athletes and the
administrators) are protected. Also, it seems that
the protected legal good must be searched in the
game (as the main expression of the sport activity)
and not in the qualities of people participating in it.
Taking into account the endangering of the
property of a vast number of people, the
legislature wishes to secure games are as 'pure'
as possible. This way, the authenticity of the game
result is protected, standardizing to a crime not
only its violation due to the falsification of the
result, but also due to the promise, or the demand
for a gift for this purpose.

CONCLUSION

The argument that sport has the power to deal 30
with all its problems internally, by its own rules and
institutions, hence the assistance of penal law is
not necessary is dominating in the legal theory of
many countries. However, it is hard to deny that
the approach of the Greek legislature is very
helpful in the effort to find the best possible
solution for the good of sport.

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