

PANEL 4

Strengthening Good Governance / Anti-Corruption in International Sports Organisations

Michael Kubiciel

1. Overview

In its financial dimension, organized sports is comparable with other large economic sectors. In Germany, 1.5 to 2% of gross domestic product can be attributed to sports. In the 2014/2015 season, the clubs of the 1st and 2nd Football League alone achieved sales of more than 3 billion Euros. Internationally, sports associations such as FIFA, UEFA and IOC have gained an economic power that can be compared with multinational companies. As other economically relevant branches, the sports sector is threatened by corruption - from within by corrupt officials and athletes, but also from the outside. Criminal organizations wash up to 100 billion euros per year by sports betting. In addition, bets on manipulated football matches and other sports events can generate high profits. The extent of fraudulent betting has become apparent in the Europol investigations, which involved some 380 football matches in Germany, Spain, the Netherlands and Turkey. Matches in the World Cup and European Championship as well as games of European top leagues have been fixed, but also matches in amateur leagues. Recently, it has been reported that even tennis – formerly known as the "white sport" – was affected by game manipulations to an unprecedented extent.

2. The German Legislation

Germany is about to counter fraudulent betting and game manipulation by means of criminal law provisions that specifically address these forms of crime. A law, which will likely pass parliament before summer, will introduce two new criminal offenses: sports betting fraud (§ 265c StGB-E) and the manipulation of professional sports competitions (§ 265d StGB-E). After the implementation of the 2016 "Anti-Doping Act", which also includes criminal law provisions, the new law is another strong signal that Germany intends to protect the integrity of sports effectively. With the new law, Germany is at the

forefront of an international legal development as it is one of the first countries to implement international conventions on the protection of sports and the fight against fraudulent sports betting.

The new offense against sports betting fraud also is a reaction to the practical problems law enforcement bodies meet, when trying to apply the general provision of fraud to cases of match fixing. These difficulties are based on the fact that the fraud provision does not sanction the actual match fixing by players, referees and betters. Rather, the provision relates to the deception of the partner of the betting contract and punishes the damage of the assets of others. Fraud, however, takes place at a later time and at a different location than the previous match fixing, which is only a preparatory act for the actual fraud. Therefore, in order to give evidence of a fraudulent match fixing, law enforcement bodies have to prove two acts, which often take place in different countries. In addition, the prosecutor's offices and courts often face difficulties in demonstrating that the assets of other betters have been actually harmed.

The new provision on sports betting fraud avoids these difficulties by decoupling the criminalization from a pecuniary damage. Athletes, coaches and referees can be punished if they ask for or accept an advantage for influencing the course or the result of a sports competition, in order that another person unlawfully gains money by means of a sports bet. The active bribe-giver can be punished under comparable conditions. The provisions protect the integrity of sports as well as the assets of potential betters.

The second offense, the provision against the manipulation of a professional sports competition, only defends the integrity of sports against distortion of competition. It therefore does not presuppose that assets of a third party are being damaged. The provision criminalizes athletes, coaches and referees who ask for or assume an advantage in return for influencing a competition of organized sports in an irregular manner. Likewise, it allows for punishing those who promise or grant the advantage.

Criminalizing a manipulation of a professional sports competition has been criticized in Germany. Critics claim that the state intervenes in the autonomy of sports by punishing the corrupt circumvention of sporting rules. This argument, however, neglects the importance of sports for the society. To compete in sporting contests or to attend such

competitions as a spectator is a need of the people, deeply rooted in the *conditio humana*. In fact, a sport of the masses such as football is an integral part of an individualized society, as it unites people from all parts of the society and represents important values of a society. Because of the social importance of sports, players, trainers and referees play an exemplary role – for better or for worse. It is that exemplary function, that makes corruption in sports dangerous: If the corrupt circumvention of rules in an area, which is so important to society, increases, that would not only undermine the integrity of sports, but would, in the long run, also lead to an erosion of norms and institutions in other areas of society. Combatting corruption in sports hence does not only safeguard sports itself, it also safeguards important values, rules and institutions the society as a whole depends on.

3. Sports and compliance

Closing legal loopholes can only be one step in the fight against corruption. As I have said before, state regulation and self-regulation must work together. Nonetheless, self-regulation is underdeveloped in sports. In fact, many sports officials do not understand the importance of compliance to the same degree as it is already reached by executives of large and medium-sized enterprises. Although sports associations can be compared with medium-sized companies or even multinationals, they have not adopted compliance and anti-corruption measures comparable to those in other branches of the economy, despite companies like Siemens have shown that economic success and compliance can be brought together. For a long time, sportsmen, sport associations and sports clubs seemed to have no interest and no incentive to improve their compliance systems. Therefore, in my view, it has been about time for a new legislation which triggers necessary structural and behavioral changes. The new German laws against doping, sports bet fraud and manipulation of professional sports competitions could prove to be real “game-changers”.