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The Legal Aspects of Corruption in Sport Prawne aspekty korupcji w sporcie

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Abstrakt: W niniejszym artykule przedstawiono zarys obowiązujących oraz proponowanych rozwiązań jurydycznych, przeciwdziałających zjawisku korupcji w sporcie. Na początku rozważań poruszono zagadnienia o charakterze ogólnym, a mianowicie zdefiniowano pojęcie korupcji oraz pokazano jej oddziaływanie na funkcjonowanie społeczeństwa. Następnie omówiono wpływ zachowań korupcyjnych na życie sportowe. W głównej części pracy zaprezentowano wybrane rozwiązania skierowane przeciwko korupcji w sporcie oraz postulaty dotyczące przedmiotowego zagadnienia, wskazywane przez przedstawicieli doktryny prawa sportowego.

Abstract: The author of this paper presents legal measures against corruption in sport. The overall issues such as the notion of corruption and influence of corruption on the society are discussed in the beginning of this article. Furthermore, it is showed the influence of corruptive behaviours on sport. In the main part of this paper, the author considers selected measures against corruption in sport and opinions of legal researchers about them.

Key words: sport, corruption, law, anti- corruption measures, integrity of sport

Słowa kluczowe: sport, korupcja, prawo, przeciwdziałanie korupcji, integralność sportu

1. Introduction

Corruption is one of the most important problems of societies in the whole world, which is related to almost all areas of life. This phenomenon was known by ancients and it still exists.¹ This paper is about corruption in sport, but it is necessary to discuss this subject in general so as to highlight similarities and differences between corruption in sport and other examples of this phenomenon. It is important to point out that corruption is very diverse. In the beginning of this work, the author describes corruption. Next chapter is about the influence of corruption on society. Above- mentioned considerations let the Reader understand, why corruption is wrong. Further, the author tries to show that corruption is against integrity of sport. Author also focuses on overall anti- corruption measures and methods against corruption in sport.

2. The notion of corruption

Corruption is the word, which is often used to describe bribing, but as a matter of the fact it is broader problem. In Y. Dawood' s opinion, corruption is characterized by two main features, which are abuse of powers and inequality.² It is suitable definition, but it is necessary to elaborate it. Firstly, the author of this paper would like to answer to the question: what is the abuse of power? In other words, it is misuse of powers. It can be found out that corruption must be related to some possibilities or rights, which can be used in correct way, but in corruptive situations, they are not. It is essential to find the line between acceptable and corruptive behaviours so as to describe corruption. These last behaviours are especially related to people, who occupy posts related to confidence.³ The ability to be corrupted is thought to be connected with discretionary power of civil servants.⁴ Many anti- corruption legal acts are especially against public officials' abuses.⁵ At this point, it is worth to highlight that public officials are vulnerable to corruption. Misuse of public power is most reprehensible, but nowadays sports organizations play such important role in the world, that it is not justified to assert that sport corruption is less wrong than other its kinds. In sporting life, there are also officials, which are known as among others match officials.⁶ According to some regulations against corruption in sport, the persons, who can be corrupted, are players and players' support personnel.⁷ It is probably acceptable judicial solution, because of the fact that the notion of match official seems to be too narrow. Last mentioned group of people related to sporting activity is understood as trainers, coaches, agents, family members of players etc.⁸

¹ V. Tanzi, Corruption around the world, Causes, Consequences, Scopes and Cures, International Monetary Fund Staff Papers, Vol. 45 No. 4(December 1998), p. 559.

² Y. Dawood, Classifying Corruption, Duke Journal of Constitutional Law and Public Policy, Vol. 9, 2014, p. 103.

³ J. Bojarski, Korupcja gospodarcza, Wydawnictwo Naukowe UMK 2015, p. 107 (quoted B.A.K. Rider, Liability for Conflicts of Interest- An English Problem?, „ Development in European Company Law”, 1996, Vol. 1,p. 17).

⁴ S. Rose- Ackermann, Kleptocracy and Democracy, 90 Am. Soc'y Int'l L. Proc 83 1996, p. 83.

⁵ E. Choi, B. Ganjei, H. Schumann, Public Corruption, American Criminal Law Review, Vol. 52 Issue 4(Fall 2015), p. 1456.

⁶ A. Smith, All Bets Are Off: Match Fixing in Sport – Some Recent Developments, The Entertainment and Sports Law Journal, 9(1), 6. DOI: <http://doi.org/10.16997/eslj.31>, paragraph 7.

⁷ M. Ramos, Game, Set, Match- Fixing: will international Anti- Doping Initiatives Pave The Way For Similar Reform For Corrupt Betting in Tennis, Houston Journal of International Law, Vol. 32, 2009- 2010, p. 211.

⁸ M. Ramos, op. cit. , p. 209.

It is necessary to highlight that disciplinary responsibility is limited only for some persons, who professionally take part in sporting life. It is good solution to regulate list of such persons in sports law. In penal regulations, the most important is to regulate the notion of corruption or corruption in sport so as to be able to make a decision, if some act is the offence of corruption. It was mentioned above that one of the features of corruption is inequality.⁹ In opinion of this work's author, such inequality is related to the fact that results of some activity depend not only on known criteria, but also on others, which are corruptive. Therefore, the competition is not equal.¹⁰

Scholars point out that one of the most important criterion of corruption is distinction between public and private interest.¹¹ It is related to conflict of interest, which is also the feature of corruption.¹² This conflict can be related to fulfilling formal and public duties, because of pecuniary or status gains.¹³ It is also important to answer to the question: what is bribery? Bribery is narrower notion than corruption, defined as offering, giving or promising any advantage for something, which should be executed in other way in fair conditions.¹⁴

3. The influence of corruption on society

Corruption has a great influence on state and society. It is essential that this phenomenon is barrier for prestige, performance and legitimacy of the state.¹⁵ It is necessary to consider that corruption can have similar influence on image of sports organizations, which should be gours of fair play rules. It is also important to find out that acceptance of corruption is the reason, why people try to offer something attractive for officials, instead of fulfilling requirements. In sporting life, some athletes or members of sports teams should hardly train and do their best so as to reach good results. In the case of corruption, they try to achieve success in other way, thanks to connections or money. It is well-known that corruption distorts competition.¹⁶ This overall consideration can be related both to business and sporting life. It is obvious that corruption leads to negative social, economical and political effects.¹⁷ But in some scholars' opinions, corruption can be related to increasing of efficiency in economy.¹⁸ Such opinion can be considered only in economics. It is no point to do it in sport.

4. The integrity of sport and corruption

It is essential to explain the notion of integrity of sport. Integrity of sport is the coherence of values and actions in sporting life, which lead to loyalty of sportspersons and are against among others unfair advantages and manipulation of results or match fixing.¹⁹ It is also well known that integrity of sport is related to disappearing distinctions between

⁹ See note 2.

¹⁰ See note 16.

¹¹ Y. Dawood, *op.cit.*, p. 103.

¹² J. F. Kennedy, *The Problem: Corruption*, Virginia Law Review, vol. 45, Issue 2, 1959, p. 204.

¹³ B. Kook Min, *Corruption and Law*, The Korean Journal of Comparative Law, Vol. 8, 1980, p 157-158.

¹⁴ Art. 1. 1 . of the OECD Anti- Bribery Convention, https://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf.

¹⁵ M. Mangaze, *Combating Judicial Corruption*, Commonwealth Law Bulletin, Vol. 28, Issue 1(2002), p 590.

¹⁶ Preamble to the OECD Anti- Bribery Convention, https://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf.

¹⁷ S. Akcay, *Corruption and Human Development*, Cato Journal 26, 2006 p. 29.

¹⁸ *Ibidem*, p. 30.

¹⁹ http://www.ausport.gov.au/supporting/integrity_in_sport/about/what_is_sport_integrity.

languages, cultures, etc.²⁰ It is also obvious that corruption is against integrity of sport.²¹ This integrity is related to fair play rules. It is impossible to achieve integration between sportsmen from different countries without clear rules. It is also known that fair play rules, ethics and values of sporting activity play important role for sports organisations.²²

5. Anti- corruption measures

Overall anti- corruption measures can be related not only to criminal law, but also to civil law. For example in US, some companies must pay civil penalties, because of bribing in third countries.²³ There are Foreign Corrupt Practices Act and special FBI agents fighting with corruption abroad since 2007 in United States of America.²⁴ Furthermore, it is important to state that specialized investigation and prosecution units against corruption are in USA.²⁵ There is also OECD Anti- Bribery Convention in international law.²⁶ In this paper, the author would like to mention criminal penalties, because they are the most important anti- corruption measures. In the majority of the countries, there are penal regulations against corruption, which are overall. It is obvious because of the fact that corruption has bad influence on society and economics, what is showed in the third chapter of this paper.

6. Methods against corruption in sport

The scholars consider a few kinds of legal responsibility related to cheating in sport such as disciplinary, civil, administrative and criminal responsibility.²⁷ It is crucial to find out that there are lots of anti- corruption methods in sport. Above- mentioned measures can be divided into groups. First of them is related to special legal regulations. The example of such regulation is the offence of sports bribery, which is understood in Greece as „*acceptance of gifts for the falsification of a game results*”.²⁸ It is important to highlight that this kind of penal regulation is *lex specialis* of overall bribery. Such solution can be thought to be unnecessary, because bribery is also penalized. In opinion of this paper's author, it is important so as to enforce special regulations, because they can include some features of corruption in sport, which do not exist in overall penal law. Furthermore, such solution focuses on the fact that bribery in sport should be prosecuted by investigative authorities. It is crucial to find out that not only penal legislation, but also internal regulations of sports

²⁰ <http://www.interpol.int/Crime-areas/Crimes-in-sport/Integrity-in-sport>.

²¹ D. Howman, Supporting the integrity of sport and combating corruption, *Marquette Sports Law Review*, Vol. 23 Issue 2 (Spring 2013), p. 245.

²² J. Villeneuve, Acknowledging and Addressing the Issue of Match Fixing: The Case of Sport Organisations, *European Journal of Risk Regulation*, Vol. 6, Issue 4, 2015, p. 634.

²³ L. Benton, J. Clark, M. Reider- Gordon, A. Takher, Anti- corruption, *International Lawyer* Vol. 45, Issue 1(Spring 2011), p. 345.

²⁴ L. Benton, M. Kieval, K. Lindsey, K. Mandernach, P. Urofsky, A. Wrage, Anti- Corruption, *International Lawyer(ABA)*, Vol. 42, Issue 2 (Summer 2008), p. 709.

²⁵ J. Clark, J. Davis, M. Reider- Gordon, A. Wrage, Anti- corruption, *Intenational Lawyer*, Vol. 44 Issue 1(Spring 2010), p. 451.

²⁶ K. Loken, The OECD Anti- Bribery Convention: Coverage of Foreign Subsidiaries, *George Washington International Law, Review*, Vol. 33, Issue 2 (2001), p. 325.

²⁷ S. Zaksaitė, Cheating in Sport: Lithuanian Case for Legal Regulation, *US- China Law Review*, Feb. 2010, Vol. 7, No. 2(Serial No. 63), p. 1.

²⁸ A. Mavromatis, D. Gargalianos, Sport Crimes in Greece: the Protection of Sport by the Greek Penal Law, ISSN 1748-944X paragraph 13, https://www.researchgate.net/publication/273521936_Sport_Crimes_in_Greece_the_Protection_of_Sport_by_the_Greek_Penal_Law.

organisations are against corruption. It should be remarked that anti- corruption measures are differential. It is common opinion that it should be in force some international legal act against corruption, which can be based on anti- doping regulations.²⁹

It is necessary to notice that there are some practices against corruption in sport, which are related to regulations of sports organisations. There are disciplinary regulations against corruption, which are in codes of conducts³⁰ and disciplinary regulations of sports organisations.³¹ They exist disciplinary actions and anti- corruption programs.³² For example ATP organizes Tennis Anti- Corruption Program, which is regulated in the ATP Player's Code of Conduct.³³ There are also specialized bodies like the ICC's Anti- Corruption Tribunal(ACT)³⁴, which were founded so as to fight against corruption. It is important so as to regulate the definition of corruption in sports law. In opinion of this work's author such definition could be based on unjust result of match or championship or illegal influence on such result. It should be also regulated, what disciplinary penalty for corruption is. It can be among others fine or banning from playing or taking part in sporting activity.³⁵ Very interesting solution against corruption in sport is checking results in relation to some statistical anomalies so as to detect cheating. These statistical methods of checking results are used thanks to computer programs such as Betting Fraud Detection System(UEFA), Early Warning System(FIFA), International Sport Monitoring(IOC).³⁶ In the end of this part of considerations, it is important to highlight that there are regulations, which can make corruption more hazardous. For example, in UEFA's General Terms and Conditions for Referees, it is stated that referee should inform UEFA about any attempt of bribery.³⁷ It is regulation, which should limit corruption.

7. Legal acts against corruption in sport

There are lots of anti- corruption measures in sporting life. In this article the author would like only to discuss selected regulations, because it is unable to elaborate all of them. It is essential to state that in some countries among others in Poland, special regulations against corruption in sport were not enacted. There are only overall anti- corruption measures in these countries. It is not necessary to discuss these regulations very precisely, but it is worth to present a few opinions of this paper's author. Firstly, lawmaker in such countries are sure that overall anti- corruption measures are sufficient solution. Secondly, there are not legal differences between corruption in sport and overall corruption in legislators' opinions. Such opinions can be related to the fact that too many regulations can make the legal system complicated and unclear. Obviously, there are differences between corruption in sport and corruption in public life, but some regulations are enough general so as to counteract all corruptive behaviours. It exists also special, internal measures against corruption in sport. For

²⁹ M. Ramos, *op. cit.*, p. 203-204.

³⁰ Art. 4 of Code of Conduct of Australian Football Federation, http://www.footballaustralia.com.au/dct/ffa-dtc-performgroup-eu-west-1/National%20Code%20of%20Conduct_g6t65k0jmtl11v1pfcbymelz.pdf.

³¹ Art. 62, Section 6 of FIFA Disciplinary Code 2011 Edition, <http://www.fifa.com/mm/document/affederation/administration/50/02/75/discoinhalte.pdf>.

³² M. Ramos, *op.cit.*, p. 208.

³³ *Ibidem.*, p. 209.

³⁴ A. Smith, *op. cit.*, paragraph 20.

³⁵ Art. 62, Section 6 of Fifa Disciplinary Code 2011 Edition, <http://www.fifa.com/mm/document/affederation/administration/50/02/75/discoinhalte.pdf>.

³⁶ J. Villeneuve, *op. cit.* p. 636.

³⁷ A. Smith, *op. cit.*, paragraph 5.

example, Greek anti- corruption sports regulations are not in penal code, but in special sports law act. ³⁸ It is good solution, because it let understand that corruption in sport is very dangerous and should be punished. Furthermore, it shows that corruption in sport is other offence than overall corruption. It should be noticed that problem of this kind of corruption is also regulated among others in UEFA's General Terms Conditions for Referees and UEFA Disciplinary Regulations³⁹ and ATP Player's Code of Conduct⁴⁰ In common opinion, it should be in force international convention against corruption in sport , which could be similar to WADA.⁴¹ Unfortunately, such international legal act does not exist.

8. Conclusions

Corruption in sport has obviously negative influence on integrity of sport and society. This phenomenon should be combated not only by governments, but also by sports organisations. This kind of corruption should be also penalized. But it is not the most important, if countermeasures against this offence are regulated in penal codes or special acts. In opinion of this work' s author, it is easier to limit corruption in sport, if special regulations exist. It is also able, if overall anti- corruption regulations are only countermeasures against this phenomenon, but in last mentioned situation definition of corruption in sport should be considered by courts. Sports organisations play an important role in fighting against corruption, especially thanks to disciplinary codes. Disciplinary responsibility is very important, because corrupted match officials, players and other persons taking part in sporting activity can be punished by disciplinary bodies, which members are people, who are specialist in the area of corruption in sport. Furthermore, disciplinary penalties can be much more severe than others. Very interesting anti- corruption measures are computer programs, which check statistical information about sports events so as to find anomalies. Thanks to these instruments, untypical results can be checked, if they are effect of corruption. Unfortunately, there is not international convention against corruption in sport. It should be postulated that some international organization ought to develop regulations against corruption in sport. Such convention should include definition of corruption in sport, list of persons, who can be corrupted and some propositions of penalties. In above- mentioned convention, it should be selected solutions, which are in force in disciplinary codes and codes of conducts. Countermeasures used by different sports organizations and legislators should be developed and standardized in such international legal act.

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³⁸ A. Mavromatis, D. Gargalianos, op. cit. ,paragraph 14.

³⁹ A. Smith, op. cit., paragraph 5 and 6.

⁴⁰ Ibidem., paragraph 20.

⁴¹ D. Howman, op. cit., p. 247.

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