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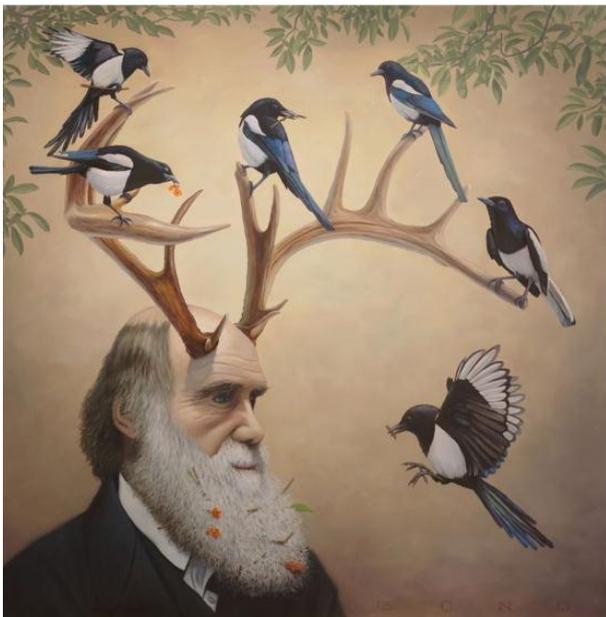
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Criminal remedies of anti-doping security provision

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Abstract

The article analyzes the experience of legislative regulation of criminal liability for doping crimes in France, Germany, Italy and Russia via the dialectical method of scientific knowledge. As a result, it is also necessary to provide liability for the use of substances that can hide the use of doping. The authors come to the conclusion that the establishment of criminal liability for the use of doping by an athlete him-/herself is impractical since this act is not socially dangerous.

Key words: Crime, Doping, Criminal, Law, Security.

Recursos penales de la provisión de seguridad antidopaje

Resumen

El artículo analiza la experiencia de la regulación legislativa de la responsabilidad penal por delitos de dopaje en Francia, Alemania,

Italia y Rusia a través del método dialéctico del conocimiento científico. Como resultado, también es necesario proporcionar responsabilidad por el uso de sustancias que pueden ocultar el uso del dopaje. Los autores llegan a la conclusión de que el establecimiento de responsabilidad penal por el uso de dopaje por parte de un atleta no es práctico, ya que este acto no es socialmente peligroso.

Palabras clave: crimen, dopaje, penal, derecho, seguridad.

1. INTRODUCTION

Modern legislation in the field of anti-doping security is in its infancy. In modern sports, when the results of competitions often differ by a fraction of a second, unscrupulous athletes, coaches, doctors and other persons take the risk of using doping to improve sports results. Periodically there are new revelations related to doping scandals. In such circumstances, it is legitimate to establish a legislative prohibition on doping. It is noteworthy that along with this, there are talks on alternative approaches to doping prevention.

The issues of fight against doping began to raise in the sixties of the 20th century at the international level. The first European document in this area was adopted by the Council of Europe in 1967 – the Resolution (67)12 on the Doping of Athletes. Subsequently, a number of international documents were adopted to expand the legal regulation of anti-doping. In particular, in 1989 the Council of Europe adopted the Anti-Doping Convention, later in 2005 the International Convention against Doping in Sport was adopted at the level of the United Nations. In Article 8 of the latter convention provided that

states-parties shall adopt or encourage the relevant entities within their jurisdictions to adopt measures to prevent and to restrict the use and possession of prohibited substances and methods by athletes in the sport (ALTAN, OZTURK & TURKOGLU, 2018; BARRETO & ALTURAS, 2018).

In 2003 the World Anti-Doping Code was adopted, but it was repeatedly amended, in 2015 it was revised, and still after that it was repeatedly changed. This code, among other things, establishes the liability of athletes, athlete support personnel and the regional anti-doping organizations. Following international anti-doping acts particular states have adopted laws at the national level that provide for liability for doping, including criminal laws. There are authors who criticize the establishment of criminal liability for anti-doping violations. They point out that public opinion and a violation of the ethos of sport are not enough to criminalize doping. In our opinion, the widespread use of doping, its negative consequences for the health of athletes, for the image and authority of a state, for the economy of a country fully justify the establishment of criminal liability for particular violations in the field of anti-doping security.

However, criminal remedies in this sphere are significantly different in different states. Their analysis is necessary for the improvement of national criminal legislation and possible unification of forms of criminal acts (BYRNES, 2010; RASOOLI & ABEDINI, 2017; SEMA, DEMIRKAN & EMRE, 2018).

2. METHODS

In the course of the study, first of all, the dialectical method of scientific knowledge was used in the framework of philosophical understanding of doping and security with their reference to each other. The systematic approach allowed to comprehensively study the anti-doping security system at the international and national levels. The comparative method allowed to compare the legal provisions on the regulation of public relations when ensuring anti-doping security in Russia, France, Germany and Italy. In addition to these methods, the methods of analysis, synthesis, induction and deduction were used, as well as the method of scientific modeling, which allowed to study the model of criminal law anti-doping security (CHRISTIANSEN, 2010).

3. RESULTS AND DISCUSSION

By anti-doping security, we understand the state of protection of athletes and all types of sporting events at the national or international level against the use by athletes, coaches, doctors or other persons of prohibited substances or methods aimed at illegal improvement of results of such competitions. It is provided by a variety of means, including legal remedies. The criminal legislation of many European countries contains provisions providing for liability for doping (KORNBECK & KAYSER, 2018). A. Byrnes observes that modern states face the challenge of the implementation of international

standards into national legislation. In France, a law against illegal trafficking in doping was adopted in 2008. This law amended the Sports Code of France with regard to liability for doping, including its criminalization. At the same time, such liability is quite strict. In particular, for the use of substances and methods that relate to doping a person faces one year in prison and a fine of 3750 euros (HENNING & DIMEO, 2018).

A person may be sentenced to five years of imprisonment and a fine of 75000 euros for the prescription, offer, inducement or use of substances or methods related to doping with respect to athletes participating in or preparing for competitions (AUBEL & OHL, 2014). The same penalty shall apply to the manufacture, import, export, transportation, storage or purchase of prohibited substances (doping) by an athlete for use without medical grounds. It is worth noting that the French legislator has provided for increased liability for these crimes (up to seven years in prison and a fine of up to 150000 euros) in the case of their commission by an organized group, against minors or an official in the sphere of sports (GERLINGER & PETERMANN & SAUTER, 2009).

Russian criminal legislation also provides for liability in the sphere of doping, however, unlike the French legislation, the Criminal Code of Russia in Articles 230.1 and 230.2 do not provide for liability for doping by an athlete him-/herself and do not provide for liability for officials in the sphere of sports. Besides that, the Russian legislator in Article 230.2 of the Criminal Code of the Russian Federation

establishes liability for the use of substances and/or methods prohibited for use in sports with respect to an athlete, regardless of his/her consent, by a coach, sports medicine specialist or any other specialist in the field of physical culture and sports. It turns out that the use of doping against an athlete by his/her relative, another athlete or any other person is not a criminal offense. Under such conditions, it is impossible to admit that these rules effectively ensure anti-doping security in Russia.

In our opinion, the criminalization of the use of doping by an athlete him-/herself is impractical, since this act is not socially dangerous. We should follow the non-bis in idem principle. Therefore, the liability which he/she will carry within the framework of sports law (disqualification) is sufficient. In the criminal legislation of Germany, the liability for doping offenses is not within the scope of the criminal code, but in a separate law. In general, the German legislation in this sphere can be considered quite progressive.

According to GERLINGER ET AL. (2009) the liability for gene doping was first established here. In December 2015 the Act against Doping in Sport was adopted in Germany. In accordance with Section 4 of this act, athletes for the independent use of prohibited substances or methods, as well as other persons for their use of it with respect to other persons, manufacture, purchase, storage or turnover of such substances are subject to criminal punishment. The punishment for such crimes is quite strict and provides for imprisonment of up to three years. A more severe punishment (up to ten years of imprisonment)

may be assigned in the cases when it endangers the health of a large number of persons, when another person is at risk of death or serious injury, when the act is committed for mercenary purposes, against a minor or in a group.

The fact that persons are subject to criminal liability for both intentional and negligent acts is a distinguishing feature of the German law. In the case of negligence, the penalty may not be more than one year in prison. We believe that criminal liability should be imposed only for intentional actions in the sphere of doping. Negligence may result in disciplinary or administrative liability. It is noteworthy that the criminal liability is provided by the German legislator for the use of both: substances and prohibited methods. One of such methods is a blood transfusion. The Russian legislator has not provided for such liability in the Criminal Code, thus, we can see a lesser degree of anti-doping security in Russia. As the positive experience, the increased liability introduced by the German legislator for persons who commit doping crimes for mercenary purposes should be noted. This approach, in our opinion, is absolutely justified, since this motive indicates the extremely base motives of the liable person.

Another European state, the criminal legislation of which provides for liability for doping violations, is Italy. In 2000 the special law *Disciplina Della Tutela sanitaria delle attività sportive e della lotta contro il doping* was adopted. Initially, the rules on criminal liability were contained in this law. However, in 2018 the criminal code of Italy was revised and articles on liability for doping were included. Article

586-bis of the criminal code of Italy provides for the penalty of imprisonment for three months up to three years with a fine of 2582 up to 51645 euros for persons who purchase for others, give, inject into the body or otherwise promote the use of prohibited substances and drugs without prescription aimed at changing the psychophysical or biological conditions of the body in order to change the competitiveness of athletes or aimed at changing the results of control over the use of such drugs or substances.

The unconditional remarkable positive aspect is that the Italian legislator punishes not only for the use of doping but also for the use of substances that can hide its use. A more severe penalty is imposed in cases when it endangers health, it is committed against a minor, committed by an employee of the Olympic Committee, the National Sports Federation or by a person from a sports organization recognized by the Italian Olympic Committee in Italy. Such persons are also subject to life-long disqualification in respect of the specified organizations. The same Article provides for liability for illegal trade of drugs and pharmacologically or biologically active substances capable of changing the psychophysical or biological conditions of the body in order to change the sports characteristics of an athlete. The punishment for this act is quite severe and ranges from two to six years of imprisonment with a fine of 5164 to 77468 euros.

Doping violations were criminalized in Russia in 2016. Article 230.1 of the Criminal Code of the Russian Federation provides for criminal liability for inducing an athlete by a coach, by a specialist in

sports medicine or by any other specialist in the field of physical culture and sports to use substances and/or methods prohibited for use in sports. Article 230.2 provides that the use of substances and/or methods prohibited for use in sports by an athlete, regardless of his/her consent, by a coach, by a specialist in sports medicine or any other specialist in the field of physical culture and sports, is punishable. The introduction of criminal liability for inducing the use of doping should be noted as a positive experience. However, the specified provisions also have disadvantages.

In particular, the subject of this crime is specified very vaguely. This problem is pointed out by some authors who note that there is no official definition of a specialist in sports medicine, as well as of a specialist in the field of physical culture and sports in the current legislation. The punishment for these crimes is rather mild (up to one year of imprisonment and up to three years of imprisonment respectively).

The Russian legislator has provided for increased liability for the use of doping in respect of an athlete when it caused by negligence the death of this athlete or other serious consequences. With regard to the inducement of an athlete to use doping, it is indicated in the Criminal Code of the Russian Federation that there are more aggravating circumstances specified: the commission of a crime by a group; in respect of a minor athlete with scienter or in respect of two or more athletes; the use of blackmail, violence or threat of its use. These features may well increase the liability for the first of the specified

crimes, so it is reasonable to include them in Article 230.2 of the Criminal Code.

5. CONCLUSIONS

When establishing criminal liability for crimes in the sphere of doping, the following general provisions must be observed:

1. Criminal liability should be differentiated according to the act committed. Liability should be provided for inducing an athlete to doping, manufacture, purchase, storage, transportation and other actions that are performed with the purpose of use of doping by an athlete. It is also necessary to provide liability for the use of substances that can hide the use of doping.
2. An athlete, as well as any other person, should be held liable for crimes committed, and for crimes committed by a group or by officials using their official position there should be an increased liability.
3. Criminal liability should be incurred only by deliberate actions in this area.
4. The elements of an offense that make it qualify as a crime in the sphere of doping should be: the commission of an act in

respect of a minor; in case of endangering health, leading to death or other serious consequences; with the use of violence, threat or blackmail; commission of a crime for mercenary purposes.

Criminalization of offenses involving the use of prohibited substances and methods in sports is a necessary prerequisite for ensuring anti-doping security. Professional athletes often train and compete in different countries, so one of the most important tasks for the states today is to unify provisions on liability in the sphere of doping as much as possible. The conclusions made in this article should be the basis for further scientific research in this direction.

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