

MSC 2020**International Scientific and Practical Conference «MAN. SOCIETY.
COMMUNICATION»****CRIMINOLOGICAL ANALYSIS OF THE RUSSIAN ANTI-
DOPING CRIMINAL LAW**

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Abstract

In recent years, anti-doping sports problems have caused and still cause great attention of politicians, journalists, lawyers, and specialists in the sports field. As part of international obligations to implement a nationwide anti-doping program in 2016, Russia introduced criminal liability for inducing an athlete to use substances and methods prohibited in sports, as well as for applying such methods to an athlete. But, judging by the information available on the prevalence of these acts in Russian sports, the recently completed WADA study, despite the hopes placed by the legislator on the deterrent effect of the criminalization of doping, we have to admit that the existing system of anti-doping standards in Russia is clearly ineffective. The purpose of the study was to elucidate the causes of such a high latency of these crimes, as well as to give a criminological assessment of the validity and quality of their criminalization, and of the effectiveness of existing anti-doping sanctions. In addition to general scientific methods, private criminological methods were used: documentary methods, methods of expert assessment, and surveys. The results of the study made it possible to identify violations of legislative technology during the criminalization of acts involving the use of substances and methods prohibited in sports, which inevitably complicates the work of law enforcement agencies, insufficient level of anti-doping propaganda, lack of adequate responsibility of athletes and trainers for the use of prohibited drugs and methods as a determinant complex of the analyzed category of crimes.

2357-1330 © 2021 Published by European Publisher.

Keywords: Criminal liability, doping, sports

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1. Introduction

Novels of the 2016 criminal law were inspired by events related to the so-called «doping scandal» (Bezborodova, 2017; Duval, 2017; Markova, 2016; Noland, 2016). The official response of the Government of Russia to the bill on amendments to the Criminal Code explicitly stated that these changes were associated with the strengthening in 2015 of the anti-doping measures provided for by the World Anti-Doping Code, as well as with the increasing incidence of anti-doping rule violations.

In 2014, after the publication of some materials on the systematic use of doping in Russian sports, the World Anti-Doping Agency (WADA) created a special commission to study evidences of athletes using special stimulants. Based on this commission's work, the conclusions about violation of the World Anti-Doping Code by Russia were drawn out. Particularly, the director of the Anti-Doping Center, a Moscow anti-doping laboratory, G. Rodchenkov was accused by the commission of concealing the doping use by Russian athletes in September, 2015. The situation was aggravated by the publication in 2016 in the American New York Times of the statement by G. Rodchenkov about the existence of a certain “doping program” of Russia (as cited in Malcolm et al., 2017; Zwaagstra, 2016). The “doping scandal” caused the suspension of more than 60 Russian athletes from participating in the 2016 Olympic Games, as well as the disqualification of the entire Paralympic team of Russia.

The public relations areas that suffer from this phenomenon are fair play principles, ethical principles and educational values, sports authority, people's health (Geeraets, 2018; Namee, & Tarasti, 2010), and even national security, to which we can add the authority of the state under the flag of which athletes stand. It is demonstrative that, during the discussion of this topic at the international level in the context of doping scandals, organized crime has been mentioned as well (Hughes, 2013; Medsafe official website, 2013). Thus, in 2014, Director General of the World Anti-Doping Agency D. Howman, calling organized crime the main threat to sports, especially dwelled on the activities of criminal groups distributing prohibited drugs, such as steroids, the human growth hormone, erythropoietin (as cited in Russian Olympic Committee official website, 2016).

A year earlier, in February 2013, the report from the Australian Government Crime Commission on organized crime and doping use in sports was published. In particular, it expressed concern that the sport doping problem might spill over beyond the purely sportive sphere (Renni, 2013).

Thus, it is obvious that the object of crimes associated with the anti-doping rules violation is a rather significant group of public relations, and criminalization of such acts meets the social demand.

In this regard, it should be noted that “only circumstances which together objectively confirm the criminal degree of their social danger, including the prevalence and growth dynamics of these actions, the significance of values protected by law on which they encroach, the significance of their harm, as well as the impossibility to overcome them thanks to different legal means can serve as a basis of criminality of anti-law actions”.

Judging by the sociologic researches results, the prevalence of anti-doping rules violation is estimated by a statistically significant value which cannot be ignored (De Hon & Van Bottenburg, 2017; Mikhaylova, 2009). The data of investigative and judicial practice demonstrate the greatest possible level of their latency: for three complete calendar years there is not a single convict according to the RF Criminal

Code Articles 230.1 and 230.2. Although, it is worth noting that in April 2019, in press there appeared information about the first criminal case sent to the court. Herewith, according to the data of Judicial Department of the RF Supreme Court, the conviction of the involved person under the RF CC Article 230.1 did not take place.

In this regard, we can assess such subjective elements of criminological characteristics of the acts under consideration as personal traits of both the offender and the victim, as well as the motive and purpose of the crime, taking into account only the results of sociologic studies, but not the materials of criminal cases (Connor, 2009).

2. Problem Statement

Such an element of characterization as criminologically significant signs of an act, including its social danger, is determined, firstly, by specialized international documents in this field. No doubt, the problem of using prohibited drugs by athletes undermines the fair play principle itself, it is far from a new problem or a problem of any one nation, as it is a global worldwide problem in accordance with that exclusive place that sport takes in the mankind life (Smith, & Stewart, 2015). Back in 2005, the United Nations adopted the International Convention against Sport Doping, developed by UNESCO. A year later, the Russian Federation ratified this international agreement and it should be noted that the vast majority of states, the United Nations members, (187 countries what makes 97%) joined this Convention. However, despite the importance of this step of the international community in its struggle for preserving ethical principles, moral values in sport, and athletes' health, analysts still note the lack of efficient monitoring tools which can help to reveal problems in anti-doping policies of the states-members as well as to determine the compliance with the obligations imposed by the Convention (Houlihan et al., 2019).

But the problem is more than the prevalence of doping in sport and insufficient effectiveness of the tools monitoring the struggle against doping. An essential circumstance and almost the main brake on the struggle for fair sport is the lack of criticism of prohibited substances use both in athletes and sports fans (Connor, 2009). Domestic studies show that the significant proportion of the population does not regard the doping use as a violation (Mikhaylova, 2009), supporting the idea about uselessness of prohibitions (Anderson, 2013).

3. Research Questions

The study was conducted to determine adequate forms of public responses, including legal ones, to anti-doping rules violation. Since this act is criminalized, we must determine the contents of its criminological characteristics, as well as the effectiveness of the measures taken.

4. Purpose of the Study

To effectively counteract the violations of anti-doping rules, it is necessary:

- to find out the causes for such a high latency of crimes provided for by the RF Criminal Code Articles 230.1 and 230.2;
- to give a criminological estimation of validity and quality of these acts criminalization.

5. Research Methods

During the examination of validity and quality of criminalization of use of prohibited substances and methods in sports, general scientific methods were used, particularly, the method of induction: as a way of selecting a number of private single factors by means of a content – analysis of mass media publications, and free-access biographical information about athletes, in order to draw out the general conclusion from observations.

Also, to achieve the study aims, private criminological methods were used: a documentary method related to the examination of fundamental regulatory acts of national and international levels governing the counteraction to the use of prohibited substances and methods in sports, scientific publications and materials of investigative and judicial practice (in the form of reports of the Judicial Department of the Supreme Court of the Russian Federation on the state of criminal record) (Judicial statistics from the Judicial Department under the Supreme Court of the Russian Federation, 2020); the method of expert assessments, for which four sport officers and heads of public associations of sport fans were involved; a survey of persons in the focus-group (i.e. of those involved in sports).

When processing the collected material, we used such general scientific methods as comparison, analysis and synthesis, and deduction, which allowed us to formulate certain general conclusions.

6. Findings

In order to find out the causes of high latency of acts associated with the use of substances and methods prohibited in sports, alongside with other studies the survey of 60 young people, students of Saint Petersburg higher educational institutions, that were involved in the past and continue to engage in sports amateur activities, was conducted. The survey showed that all amateur athletes, without exception, used doping at least once, either on their own initiative, or at the suggestion of a coach. Besides, the majority of respondents told that they knew from their acquaintances also engaged in sports that practically each of them had taken stimulants to achieve higher sport results; however, in the sports environment there is no condemnation of such behavior, and the use of stimulants is treated as something natural and taken for granted.

Persons involved as experts in the research of the problem of the use of substances prohibited in sports, among them sport functionaries and leaders of public organizations related to sports, also noted that it was extremely hard to break this situation in sports, especially in the field of athletics. Coaches and doctors, as well as agents, convince athletes that no one can win without doping, and there are ways to remove doping traces from the body. Besides, you cannot ignore the economic component of this problem. According to the leader of a regional public association of sports fans, “ego of athletes makes them take a doping, in order to win, and then winners conclude contracts with clubs, receive ads contracts, so it’s financially beneficial for athletes”.

At the same time, the mentioned experts (all respondents that were asked to give their expert assessment for the problem of using substances prohibited in sports) understand the necessity of moral education of athletes and sports specialists in the spirit of rejecting the doping use and condemning such behavior. The experts condemned athletes, now politicians sitting in state bodies, who were noticed to use

doping during their sports career. “This can’t be accepted. Such people should not be role models”. As a negative example, Tatiana K. is cited: a track and field athlete, twice Olympic champion, head of the Union of Athletes of St. Petersburg, and teacher at the Institute of Physical Culture named after Lesgaft. At the peak of her sport career, in 1984, in Paris she was invited to undergo doping-control, but she did not appear for samples taking.

Another example: Lyubov E., a skier, six-time Olympic champion, was disqualified in 1997 for consuming bromantanum. Since March 2007, she has been a deputy of Legislative Assembly of St. Petersburg.

Taking into consideration that the most vulnerable category in this case is underage athletes, the experts paid attention to the importance of educational and explanatory measures, work among parents of minors, explanation of the danger of doping for the young body, and of the threat of serious health problems. Among the circumstances complicating the detection of crimes related to the violation of anti-doping rules, the experts also mentioned the mutual responsibility existing in sports, due to which athletes, serving personnel, heads of sports organizations, and sports entertainments organizers are not interested, as a rule, in disclosing facts of consuming illegal drugs, because athletes are ambitious and desire to win by all means, coaches and medical workers do everything to ensure the victory for athletes and, thanks to that, show themselves in a favorable light, leaders have the similar way of thinking.

In scientific publications authors indicate that “the main problem that law enforcement officers face at the stage of collecting information about a crime committed in sports, is a certain isolation and closeness of the sports community from external influence and penetration” (Alekseeva, 2018, p. 98).

Besides, the experts draw attention to the lack of adequate responsibility of athletes for the use of illegal drugs and techniques (Gleaves & Christiansen, 2019; Qvarfordt et al., 2019). Despite the fact that athletes are full subjects of anti-doping rules violation and must be responsible for these deeds, during their criminalization in Russia the situation arose at which athletes were excluded from the sphere of criminal liability for the use of illegal substances and techniques. At the same time, criminal law and criminology specialists have different views on the necessity to widen the circle of subjects under Articles 230.1 and 230.2 of the RF Criminal Code, by including athletes there too (Mosechkin, 2017); opponents of this believe that, in order to punish athletes, it is quite sufficient to take disciplinary measures, such as disqualification, lifelong or for a certain period, which is a rather severe impact on the offender (Alekseeva, 2018; Bowers, & Paternoster, 2017; Mosina, 2017). In our opinion, however, this view about the allegedly sufficiency of disciplinary measures of responsibility is refuted by the widest spreading of doping violations. Perhaps, inclusion of athletes into the sphere of jurisdiction of the RF Criminal Code Articles on such violations will strengthen the preventive function of these regulations.

Another claim against the legislator is that in the dispositions of Articles 230.1 and 230.2 of the RF Criminal Code, the term “substance” used in them is not explained, this fact, together with the absence of specific criteria according to which substances (drugs) can be referred to as illegal, allows, in the opinion of some scientists, filling this notion with different contents (Ivanova, & Sokolova, 2016). We can object to this claim that the vast experience of anti-doping control authorities both Russian and international give us sufficient grounds to correctly interpret the terms used in criminal law regulations.

7. Conclusion

The results of this study allowed us to conclude about the validity of criminalization of the acts under consideration, but the absence of an athlete as a subject of Article 230.1 of the Russian Federation Criminal Code, from our point of view, reduces the preventive value of this norm. As elements of the determinant complex of this category of crimes, we can name the insufficient level of anti-doping propaganda, closeness of sports sphere, prevalence of group interests over public ones as a way to neutralize the legal prohibition, as well as the absence of adequate responsibility of athletes for the use of illegal drugs and methods.

Acknowledgments

The study was conducted with the financial support of the Russian Fund of Fundamental Investigations (RFFI) within the project № 20-011-00414 A “Criminal Law and Criminological Problems of Combating Crime in the Field of Sports”.

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