

Match-fixing: Criminalisation vs the *Ultima Ratio* Principle



SALOMĖJA ZAKSAITĖ | Postdoctoral Researcher at Mykolas Romeris University, Lithuania | Postdoctoral fellowship is being funded by European Union Structural Funds Project “Postdoctoral Fellowship Implementation in Lithuania”.

Recommendation CM/Rec(2011)10 of the Committee of Ministers to member states on promotion of the integrity of sport against manipulation of results, notably match-fixing

“Manipulation of sports results” covers the arrangement of an **irregular alteration** of the course or the result of a sporting competition or any of its particular events (such as matches, races) in order to obtain an **advantage** for oneself or for others and to **remove** all or part of the **uncertainty** normally associated with the results of a competition.

DRAFT CONVENTION

Manipulation of sports competitions” means an (intentional) arrangement, action or avoidance resulting in an **improper alteration** of the course or result of a sports competition [(particularly each performance comparison within the competition rules of the sport movement)] or any of its particular parts (e.g. matches, races) in order to obtain **an (illegal) advantage** (particularly for the purpose of causing a financial – notably through irregular betting – or another benefit) **for oneself or for others** and **remove all or part of the uncertainty** properly associated with the outcome or the running of a competition with the consequence of **jeopardizing the integrity of sport**.

This definition shall be prejudice to the criminal offenses set forth in accordance with the Chapter III of this Convention.



The definitions are quite wide and: 1) they cover a large range of acts, not necessarily connected with criminal law; 2) they imply somewhat philosophical, interpretative features that depend on judge's (arbiter's) discretion such as “all or part of uncertainty normally associated with sports competition“ and “jeopardizing the integrity of sport”.



Quite a broad concept implicates different kinds of responsibilities

The presented comments on the draft Convention also stress that this is a general definition, not intended to define the scope of criminal offences.



What forms of manipulations are dangerous enough to be criminalised, why and when disciplinary liability does not suffice?



One of the most “marginal” and questionable forms of (potential) match-fixing are **pre-determined draws** in chess. The essence of such draws is that before a game the players agree not to fight or even rehearse the “peaceful” game in advance. Such **tactics** are quite widespread, especially in cases where the design of the tournament is very stressful. The general opinion among the chess players is that fixed draws should be tolerable because to play all the games honestly is usually extremely hard physically and emotionally.

Disciplinary Offence



The next step, where manipulations INCREASE their jeopardizing features, is a disciplinary offence. A recent example of match-fixing as a disciplinary offence occurred in London Olympics where four pairs of women's doubles badminton players, including the Chinese top seeds, have been ejected from the Olympic tournament **for trying to throw matches in an effort to secure a more favourable quarter-final draw.** The Badminton World Federation read a brief statement, saying the players had been disqualified for breaching two parts of the players' code: **"Not using one's best efforts to win a match and conducting oneself in a manner that is clearly abusive or detrimental to the sport".**



Lastly, match-fixing is considered as a crime. In this context match-fixing is often compared to doping-related offences, noting that the “fight” against doping seemed to be effective with the help of criminal law measures and analogous fight is recommended in case of match-fixing.



WHAT *corpus delicti* FITS TO MATCH-FIXING?

FRAUD involves deception (*the misleading interaction between victim and perpetrator*) + monetary loss.

Problems: in match-fixing monetary loss does not necessarily occur; victims are sometimes not very clear (match-fixing can be called as one of the “victimless” crimes).

CORRUPTION – misuse of public power.

Problems: sportsmen do not necessarily execute public power (in case of referees the question is simpler as referees do execute public power).



POSSIBLE SOLUTIONS

- To broaden the understanding of **Fraud**
(where deception shall be understood not only as direct misleading interaction between perpetrator and the victim but also as dishonesty).
- To broaden the understanding of **Corruption**
(The functions of public administration can inter alia be applied to sportsmen).
- To impose a **new separate crime** of match-fixing.



Grounds for Criminal Liability

The main reasons attracting criminal liability are as follows: match fixing causes certain harm and betting operators might suffer certain damages; also, match-fixing sometimes might be not only the form of corruption, but also the form of transnational organized crime; disciplinary institutions are not able to ascertain and prove the fact of match-fixing without the help of the police; disciplinary law and the scope of its application might be relatively narrow, covering only sport's community.



So what should be the features of a match-fixing violation that make it a crime?

Firstly, it should be **a great harm**, while, for example, such criteria as “abuse of the game” or “rough play” should not be sufficient for criminal liability. In this context, one of the most doubtful is the *corpus delicti* of Manipulation of sports competitions through coercion (Art. 16) in the draft Convention.



OPTION A

Chapter III - Substantive criminal law

Article (A)16 - Manipulation of sports competitions through coercion

Each Party shall adopt such legislative or other measures as may be necessary to establish as criminal offences under its domestic law **the acts threat or use of force or other forms of coercion**, when committed **intentionally** to impose an arrangement, an action or an avoidance to **alter the natural and fair course** of a sports competition.



If coercion is understood very broadly (for example, not only as blackmail, poisoning, abduction, but also as abuse of power or of a position of vulnerability), then it comes to a question of what **should not** be regarded as coercion.

Practical example



Does **coach's advice** to his/her (usually **somewhat subordinated**) players not to show the best efforts in order to get more favourable opponents in the next round constitute a kind of coercion in sports sense?

Why does disciplinary liability not suffice for such acts? One must be cautious: if “harm” is understood too broadly and applied too vaguely, then criminalisation of match-fixing can become a selective measure for overly discretionary punishment. In turn, the principle of *ultima ratio* is potentially violated.



The distinction as well as contributory interaction is possible when the functions of each legal system and the nature of offence as well as the sanction for the offence are taken into account. Criminal law as *ultima ratio* can be applied only when the harm of the offence is relatively big (obvious), while (only) disciplinary law is applied when the harm is not enough the dangerous act to be criminalised. When manipulations are considered as recognized tactics of the sport, no liability is to be applied.

Thank you for your attention.

salomeja.zaksaite@mruni.eu

