

RECENT JURIDICAL ASPECTS REGARDING THE SANCTION OF FISCAL EVASIONS AND MONEY LAUNDERING IN ROMANIAN FOOTBALL

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ABSTRACT. In contemporary society sport is considered a notable socio-economic, but also a normative phenomenon. However, the fulfilment of the rule of law in a constitutional state requires legal order – „namely the unity of law, effectively applied in the life of a community. In order for a legal system to work properly, it is necessary that all citizens obey the legal norms, and that all public officials regard these as the official standards of behaviour, following them rigorously” (Hart, H., L., A., 1963 as cited in Popa, N., 2008, p.87). It is well-known that not all social phenomena are also juridical in nature – however, the legal regulation of Sport already coexists with other norms and institutions of Law and, of course, it is an object of the sub-system of the science of Sport (seen as a branch of the educational system and of scientific research). Our assertions are supported by the following: the criterion upon which we categorise this notable social phenomenon as juridical is its own legality, which is obviously reflected at the legislative level. This paper presents recent developments in the phenomenon of criminality in Romanian football – sanctioned by Romanian Law Courts – a real step forward in the application of Law in the field of Sport.

Key words: *sport, legalisation of sport, criminality, fiscal evasions, money laundering, criminal liability*

REZUMAT. *Aspecte recente privind infracționalitatea în materia evaziunii fiscale și a spălării banilor în fotbalul din România.* În societatea contemporană, activitatea sportivă este considerată ca fiind un fenomen social-economic, dar și normativ, notabil. Pe de altă parte, activitatea de realizarea a dreptului vizează, într-un stat de drept, ordinea juridică - adică unitatea armonică a unor norme de drept, aplicată efectiv în viața unei colectivități. Pentru o bună funcționare a unui sistem legal este nevoie ca toți cetățenii să se supună normelor de drept, iar funcționarii să considere aceste reguli ca standarde oficiale de comportament, aplicându-le întocmai” (Hart, H., L., A., 1963 citat în Popa, N., 2008, p.87).

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Este cunoscut faptul că nu toate fenomenele sociale sunt și juridice – dar, normativitatea juridică a sportului coexistă deja cu alte norme și instituții ale dreptului și, bineînțeles, este obiect a subsistemului științei dreptului (privită ca ramură a învățământului și a cercetării științifice). Motivăm afirmațiile noastre cu următoarele: criteriul pe baza căruia distingem acest fenomen social notabil ca fiind juridic este însăși juridicitatea sa care se reflectă vizibil pe plan normative. Lucrarea prezintă aspecte recente privind fenomenul de infrafracționalitate din fotbalul românesc – sancționate de instanțele de drept comun din România – un real demers al realizării dreptului în domeniul sportului și conex acestuia.

Cuvinte cheie: *sport, normativitatea sportului, infrafracționalitate, evaziune fiscală, spălare de bani, răspundere penală*

Introduction

Sport helps satisfy important requirements in society, such as: the need for physical activities, recreational activities and enjoyment, for the spectators as well as the athletes. Sport is already considered a social institution. (Voicu, A., V., 1999, p. 6) For those who haven't yet studied sport in depth, we mention that it has become a notable social-economic phenomenon that needs to be legalised in order to regulate properly the new sport-related professions that have emerged (Mureșan, M., *Afterword* to Voicu, A., V., 1999), and Sport Law is a branch of Law and a sub-branch of the sciences of Law and Sport (Voicu, A., V., Fildan, S., Voicu, B., I., 2009). We agree with the idea that turning Law into an instrument of politics can create a very real danger to the constitutional state – however the dangers that we face now (legislative inflation, the excess of normativism as a trend towards self-destruction, the possibility of separation and aggravation of the conflict between the values of public order and those of the constitutional state in the process of law enforcement) threaten the very existence of the state (Craiovan, I., 2009) and they must not be allowed to change the normative nature of law. Therefore Law, seen as a normative phenomenon must be involved in and help regulate such an ample social phenomenon like sport.

“Sport is a growing social and economic phenomenon which makes an important contribution to the European Union's strategic objectives of solidarity and prosperity. The Olympic ideal of developing sport to promote peace and understanding among nations and cultures as well as the education of young people was born in Europe and has been fostered by the International Olympic Committee and the European Olympic Committees. Sport attracts European citizens, with a majority of people taking part in sporting activities on a regular

basis. It generates important values such as team spirit, solidarity, tolerance and fair play, contributing to personal development and fulfilment. It promotes the active contribution of EU citizens to society and thereby helps to foster active citizenship. The Commission acknowledges the essential role of sport in European society, in particular when it needs to bring itself closer to citizens and to tackle issues that matter directly to them. However, sport is also confronted with new threats and challenges which have emerged in European society, such as commercial pressure, exploitation of young players, doping, racism, violence, corruption and money laundering.” (European Commission, 2008, Paragraphs 1-3).

Sport, according to this definition, must contribute to the well-being of individuals in a given society. Practising sport and being involved in sport-related activities, within the limits of the regulations, corresponds to the social purpose of sport. However we cannot deny that any social institution is interdependent on other similar institutions. Society and culture both influence sport. Sport can create substantial material assets. The positive values and outcomes of sport can be perceived in relation with the stated purpose of sport in society and, not least, the way we sanction the deviations from the moral and/or legal norms that regulate sport and activities related to it. The necessity of implementing legal norms in sport activities seems obvious: *no one is above the law*, no natural person, nor juridical persona, nor any field of activity, up to and including sport. It stands to reason that in implementing legal norms in sport and related activities the principle of *nemo censetur ignorare legem* must be obeyed, among others.

In order to prevent illicit behaviour and avoid paying compensation for patrimonial damage, to avoid generating legal liability, it is necessary to permanently update one's professional training which must include legal knowledge. This can be achieved through legal education provided by persons who are well acquainted with sport matters and taking into account that: “*The case law of the European courts and decisions of the European Commission show that the specificity of sport has been recognised and taken into account. They also provide guidance on how EU law applies to sport. In line with established case law, the specificity of sport will continue to be recognised, but it cannot be construed so as to justify a general exemption from the application of EU law.*” (European Commission, 2008, p.14)

Methods

Today, crime is the phenomenon that displays the greatest adaptability to the new socio-economic circumstances. In this way criminal activities taking diverse forms have managed to reach all fields of activity in all countries, regardless of their economic development.

One of the fields where criminal activities have managed to settle is Sport with all its related activities which, according to some estimations, accounts for approximately 0.5-3.7% of the European Union's GDP. (Financial Action Task Force - **FATF – GAFI**, 2007, p. 7) Generally, sports requires, besides the display of certain physical qualities during competitions, investments in appropriate buildings or locations, advertising, awards and rewards, the transfer of athletes, management – either institutionalised or not, governing bodies etc., without further discussing bets or bookmakers, all of which are running money. It is estimated that given the current status of sport, all types of sports are now likely to attract criminal activities, from the elegant chess game to the K1 fights. Among all sports however, it seems there is one that draws the most attention and which has become highly appealing to criminal minds: football – and the following data will support this assertion. Football appears to be the most important sport in the world; with 38.000.000 registered players and 5.000.000 referees and officials, 301.000 clubs, it is played all over the world and it is the most popular sport, having considerable support from the impressive number of fans that watch football games from the stadium bleachers or their homes (for instance, the 2006 FIFA World Cup Final had more than 1 billion TV viewers, a number that represents 15% of the world's population). The market for professional football has greatly increased in recent times, being characterised by an unprecedented globalisation, with transfers of players being completed all over the world and across it, entailing large cross-border money flows which were outside the control of national or international football organisations. In addition to this, there are many private investors who choose to invest in football clubs, and therefore create money flows. Also, the rights of broadcasting the football matches and the ticket sales generate large funds, all of these practically describing football as a global industry that is experiencing economic growth (Financial Action Task Force (**FATF – GAFI**), 2007, p. 8-9).

Of all the forms of criminal activities that are considered highly compatible with sport in general, we believe the most serious to be tax evasion (Drosu, D., Ș., Tutungiu, M., E. 2005, p. 7) which means evasion of taxes and duties and other fiscal obligations, and the world encompassing field of sports, with its current financial dimension creates the premises for easy tax evasion.

Money laundering is almost as serious or perhaps equally harmful as tax evasion. Regarding this form of criminal activity, we would like to draw attention to the fact that illicit commercial activities result in a huge profit, but due to the transactions being made almost exclusively in cash, in order to ensure the trust of the “business partners”, the resulting profit is also in cash. Without a doubt, part of the profit then returns to funding the illicit activity that generated it in the first place, but the rest remains in the possession of the criminals, who try to conceal the illegal source of their money, and this activity is known as money laundering. (Dicționarul Explicativ al Limbii Române, [Electronic version])

Taking all the above into account, mainly that criminal activities appear in every country without exception, we will discuss the recent decision of the Romanian law courts to sentence to prison to be executed in detention certain persons who are well-known in the world of sports, especially the king of sports – football. (File nr. 3134/3/2009* of the Court of Appeal of Bucharest, 2009)

By indictment the Prosecutor's Office attached to the High Court of Cassation and Justice – the National Anti-Corruption Department (Direcția Națională Anticorupție, 2008) sent to trial eight persons, owners and presidents of football clubs, impresarios and other employees of companies working in this field, who between 1999 – 2005 completed 12 transfers of Romanian football players from the clubs Dinamo Bucharest, Rapid Bucharest, Gloria Bistrita and Otelul Galati to foreign clubs, violating the Romanian legislation and thus causing a total loss of 4 113 648 RON for the Romanian state (USD 1 485 071.5 calculated at the average exchange rate for 1999 – 2005), USD 598 667 in damage of the Romanian Football Federation, USD 10 969 690 in damage of the football clubs Dinamo Bucharest, Rapid Bucharest, Otelul Galati and Gloria Bistrita.

The status quo that emerged from the evidence adduced at trial and was maintained by the indictment mentioned above shows that as president of the Rapid Bucharest Club, the defendant **Copos Gheorghe**, during the month of January 1999, presented a false transfer agreement for player Dulca Cristian with the value of USD 120 000, hiding the real contract that had a value of USD 600 000; also, the same defendant registered in his accounting records a transfer agreement worth USD 100 000 for the transfer of Bratu Florin, the real value of the contract being USD 2 750 000.

As president of the Football Department of the Otelul Galati Club, the defendant **Stoica Mihai** concealed the transfer agreement for player Arhire Iulian, worth USD 700 000, announcing that the value of the transfer was USD 150 000. The same defendant signed a Memorandum of Understanding through which he accepted the sale of the rights of transfer of player Cernat Florin to an off-shore company from Holland, which later caused prejudice to the Dinamo Bucharest Club.

In the case of transfers completed by the “Dinamo” Bucharest Club during 1999-2005, the defendants **Borcea Cristian, Becali Ioan și Becali Victor** declared diminished values for the transfers of football players Codrea Paul, Contra Cosmin, Cernat Florin, Mara Bogdan, Mitea Nicolae, Alexa Dan și Mihalcea Dumitru, taking money that rightfully belonged to the “Dinamo” Bucharest Club, according to law and sport regulations en force. The money that was kept from the Club was transferred to Ltd.-type companies in Holland (Phoenix BV, Intermark International, both located in Rotterdam, Van Duisboden BV, Pyralis from Amsterdam). All these companies were owned by a Dutch lawyer who kept

2% of each evaded sum and then transferred the money to the accounts of Tierney Int. Ltd., Star Advisors SA and Star Ventures SA, all based in the British Virgin Islands – a well-known tax haven for offshore companies. Later, the money was transferred to various banks in Europe (more specifically in Gibraltar, Luxembourg, Switzerland) and from there, from the personal account of the defendant Becali Ioan, the money was transferred to Romanian bank accounts belonging to Becali Victor. The latter carried out cash withdrawals from these accounts amounting to 4.5 million Euros.

According to evidence, the defendants Copos Gheorghe, Borcea Cristian, Becali Ioan și Becali Victor, Pădureanu Jean, Popescu Gheorghe și Nețoiu Gheorghe transferred parts of the money to each other's personal accounts, without providing valid justifications (fictional loans, “accidental bank transfers” – a concept that does not exist in banking).

Also, the defendant **Pădureanu Jean** acting as president of the Gloria Bistrita Club, at the request of the defendants Becali Ioan and Becali Victor, accepted the sale of two football players' transfer rights: Ganea Ionel and Sânmărtean Lucian to the Dutch companies Phoenix Ltd and Intermark Ltd. In this way, the transfer of Ganea Ionel, valued at USD 2 000 000 was diminished to the sum of USD 600 000 – the sum that was registered in the accounting records of Gloria Bistrita Club as the value of the transfer; and in the case of Sânmărtean Lucian, whose transfer was worth USD 600 000, the sum of USD 300 000 was falsely declared in the accounting records and the defendant received in his personal account the sum of USD 105 000 from Intermark Ltd. The defendant **Popescu Gheorghe** (at that time an employee of the company Becali Sport) also took part in the dirty transfer of Sânmărtean Lucian. **Popescu Gheorghe** transferred the money paid by the Panathinaikos Athens Club for the transfer to the account of Intermark Ltd, the Dutch company mentioned before. The same defendant, together with the defendants Copos Gheorghe and Becali Ioan, contributed to forging the amount of money received for the transfer of player Bratu Florin, cashing as a loan in the name of the company Becali Sport approximately USD 1 600 000 from the total value of the transfer, USD 2 750 000.

Not least, the defendant **Nețoiu Gheorghe**, signatory of the 2004 transfer of player Alexa Dan, requested that the Chinese Club Beijing Guoan pay 403 000 Euros from the total amount of the transfer (730 000 Euros) into the account of the Dutch company Pyralis Ltd. Through this financial manoeuvre the above mentioned defendant together with the defendants Borcea Cristian and Becali Ioan caused prejudice to the Dinamo Club, as the total amount of transfer payment that reached its account was only 327 000 Euros.

The charges brought against these defendants were: tax evasion offences under Article 12 of Law no 87/1994 (Law no 87/1994 for fighting tax evasion), money laundering offences under Article 29, Paragraph (1), Letter A and C of Law no 656/2002 (Law no 656/2002 on the prevention and sanction of money laundering) and fraud offences under Article 244, Paragraphs (1) and (2) of the Criminal Code. To understand the legal basis for the trial and the sentence, we will proceed to analyse the elements of the offence of tax evasion and of money laundering, without addressing the elements of fraud, which is a common criminal offence and exceeds the theme we intend to analyse.

According to Article 12 of Law no 87/1994 avoiding the payment of fiscal obligations, in whole or in part, through withholding information about taxable income, concealing the object or the source of taxable income, or performing any other operations for this purpose shall be punished with imprisonment from 2 to 7 years and the denial of certain rights.

Discussion

I. The literature on this subject (Vizitiu, Ghe., 2001, p. 81-88) that has been published after the entry into force of this law (Law no 87/2004 regarding the combat against tax evasion) shows that the active subject of the criminal offence is “**qualified**”, meaning that the person who commits the crime is a taxpayer subject to payment of fiscal obligations, and the passive subject is the state, which is prejudiced by the criminal offence.

Action or inaction as elements of the objective nature of this criminal offence consist of concealing taxable income, concealing the asset or the source of taxable income, or performing any other operations for the purpose of concealing the source of taxable income.

If by evasion we mean an activity through which a person avoids something, circumvents something (Dicționarul Explicativ al Limbii Române, [Electronic version]), the action of concealing income can consist of the action of partially declaring taxable income, or inaction or abstention from declaring the whole taxable income.

Concealing the object also regards the situation when owning the asset is subjected to taxes, such as customs clearance or owning vehicles; while the action of concealing implies taking measures to prevent the fiscal authorities from learning about the asset or the lucrative activities, either by physically hiding the asset or by dishonest tax reporting (not registering assets or activities in the accountancy records, or registering them under false names); in other words, hiding the value of the asset or the lucrative activity. Furthermore, it must be shown that concealing the taxable income source targets material assets or profitable activities.

Not least, we acknowledge that the performing any other operations with the purpose of concealing the taxable income source also regards the deliberate falsification of records.

In relation with guilt as an element of subjective nature we wish to show that the offence is committed with direct intent qualified by purpose, which consists in hiding the taxable income source, or, in the case of other means of committing the offence, indirect intent.

According to Article 29 of Law no 656/2002, the following are considered to be money laundering (sanctioned with imprisonment from 3 to 12 years):

a) the exchange or transfer of assets known to originate from criminal activity, with the purpose of concealing their illicit provenance, or in order to help the person who committed the crime to avoid prosecution, trial or the execution of the sentence;

b) concealing the true nature of the origin, location, disposition, circulation or ownership of the assets or the rights governing those assets, knowing that they are the product of criminal activity;

c) acquiring, owning or using assets knowing they come from criminal activity.

(2) Attempt is also sanctioned.

(3) If the act was committed by a legal person, in addition to the fine, the court shall apply, as appropriate, one or more of the additional penalties provided for in Article. 531 Paragraph (3) Letters A-C of the Criminal Code.

(4) Knowledge, intent or purpose required as elements of the facts set out in Paragraph (1) may be inferred from objective factual circumstances.

II. With reference to the offense of money laundering, we would like to point out, together with other authors (Hotca, M., A., Dobrinou, M., 2008), that the active subject is not qualified, and any natural person who meets the general conditions of the active subject of the offense can have this quality and that the main passive subject is the state, but the offense may have a secondary passive subject where a social value belonging to a particular person or entity is injured or threatened.

However, the objective side of the first version of money laundering can be achieved in two alternative ways, either through a change of real action or by action of transfer of assets. Change action means any activity by which the the replacement of assets coming from a criminal offense with another good legal origin. Transfer action is a transaction transferring the rights in an object derived from the commission of an offense by another person.

Action to hide or conceal the real criminal nature of the property, location, disposition, movement or ownership or rights over the ownership of the asset consists of masking the origin or his legal situation, usually through complex legal, economic or financial operations.

Finally, the third version of the crime may result in three alternative ways, namely: acquisition, possession or use of property, knowing that such property is derived from criminal activity. The action to acquire an asset derived from a criminal offence consists of the activity by which a person acquires ownership of an asset of criminal origin, action for possession of an asset of criminal nature consists of the possession of an asset that is derived from a criminal offence, and the action of using a good result from a crime means any activity that obtain benefits from its use.

Conclusions

To conclude, in review of the facts, which were probably retained by the court as well, based on the evidence (during research and the writing of this paper the motivation of the court's Decision was not yet disclosed), the law and the brief theoretical explanations, we might see the reasons behind conviction. Of course we could discuss several other aspects of criminal law here, such as the application of the most favorable criminal law, given that meanwhile the laws have changed, but perhaps that discussion is best left for another paper.

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